United States Department of Labor
Employees' Compensation Appeals Board

G.H., Appellant	)	
and	)	**Docket No. 15-596**
	)	**Issued: June 3, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Johnson City, TN, Employer	)	

Appearances:
Thomas C. Jessee, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 23, 2015 appellant filed a timely appeal from a November 7, 2014 merit decision denying her claim for compensation. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a right knee injury in the performance of duty.

FACTUAL HISTORY

On January 18, 2014 appellant, then a 42-year-old city carrier, filed a traumatic injury claim alleging that on January 10, 2014 she sustained a right knee condition. She indicated that she was delivering mail through yards and one of the customer's door was open with a dog

[1] 5 U.S.C. § 8101 *et seq.*

barking and jumping on the screen door. Appellant turned quickly to get out of the yard and, when she stepped off the curb, her knee popped. She stopped work that day.

In a January 27, 2014 report, Dr. Bart McKinney, a Board-certified orthopedic surgeon, reported that appellant returned for follow-up of her knee. Appellant reported that she sustained a new injury to her knee at work on January 10, 2014 when she stepped off a curb awkwardly, and felt a pop in her knee. She went to a walk-in clinic and got a systemic steroid injection and then saw Dr. Benjamin D. England, a family practitioner, who did an intra-articular injection. Dr. McKinney noted examination findings and diagnosed osteoarthritis of the knee and knee pain. He stated that appellant may have sprained her knee when she stepped awkwardly or it may have flared up her arthrosis and/or questionable meniscus tear. Modified duty with restrictions was recommended for six weeks.

On March 5, 2014 appellant underwent right knee arthroscopic surgery with partial medial meniscectomy and chondroplasty, performed by Dr. McKinney.

On April 11, 2014 OWCP advised appellant of the deficiencies in her claim and provided her 30 days in which to provide additional factual and medical evidence. In an undated statement, appellant stated that she stepped off the curb and something popped in her knee. She stated that she called her supervisor who came out to check on her, and finished the riding part of her route. The next day, which was her day off, she could hardly walk. Appellant indicated that she returned to work on Wednesday and completed a Form CA-1, which she completed and returned on January 18, 2014. She stated that she went ahead with the knee surgery as she thought the paperwork was fine.

Several medical reports were received along with reports from a certified physician assistant dated August 4, 2013 and February 14, 2014. A partial June 4, 2013 report from State of Franklin Healthcare Associates noted that appellant was on a walking route with her job last week and had right knee pain. This morning, she walked about an hour and could not tolerate the pain. In an August 22, 2013 report, Dr. McKinney noted that appellant had complaints of right knee pain since June 2013 and indicated that she may have twisted her ankle at some point. X-rays were performed, examination findings noted, and osteoarthritis of the knee was diagnosed. In a September 9, 2013 report, Dr. McKinney reviewed a magnetic resonance imaging (MRI) scan of appellant's right knee and diagnosed pain in limb, tear of medial cartilage or meniscus of knee, and osteoarthrosis of lower leg. In a January 28, 2014 report, Dr. McKinney provided work restrictions for appellant. In a February 18, 2014 report, he diagnosed appellant with osteoarthritis of right knee and tear of medial cartilage and/or meniscus of knee. Postsurgical report of March 18, 2014 was provided.

In a January 20, 2014 partial report, Dr. England reported that on January 10, 2014 appellant stepped off a curb delivering mail and felt a pop and sudden pain. X-ray findings and examination findings were noted.

In an April 28, 2014 letter, Dr. McKinney noted that, per appellant's history, she provided two specific events that she stated were work related. The first injury occurred in June 2013 when she injured her knee, discussed this with her employing establishment, and was seen at Watauga Orthopaedics. Dr. McKinney stated that he saw appellant for the first time on

August 22, 2013. The second injury occurred on January 10, 2014 when she stepped off a curb awkwardly and reinjured her right knee. Dr. McKinney indicated that appellant had significant pain and difficulty with her right knee. He provided a detailed description of her physical and diagnostic findings. Appellant was diagnosed with mild knee arthrosis, questionable medial meniscal tear, medial femoral condyle bone bruising on September 9, 2013. At the time of her knee arthroscopy, she had right knee posterior horn medial meniscus tear, right knee grade 3 and grade 4 arthrosis, medial femoral condyle, and right knee mild grade 3 arthrosis, patellofemoral joint. Dr. McKinney stated that he did not have all the details of appellant's initial injury, but as far as the second injury of January 10, 2014, she was found to have some cartilage thinning and a questionable meniscal tear prior to this injury. He stated that the new injury seemed to aggravate this. Appellant had a significant meniscal tear and grade 3 arthrosis of her knee which the second injury may have aggravated. Dr. McKinney further stated that it was difficult to determine if the second work-related injury caused the injury, but advised it could be possible, but that it definitely worsened this condition and caused her further limitations.

By decision dated May 13, 2014, OWCP denied the claim as appellant had not established the factual component of fact of injury. It further found that even if the factual portion of her claim was established, the medical documentation showed she already had a meniscus tear prior to the alleged incident.

On May 23, 2014 appellant requested a review of the written record. Additional evidence was submitted. She indicated that management failed to properly handle her CA-1 forms.

In an undated statement with an illegible signature, a supervisor stated that on May 28, 2013 appellant reported that she may have injured her knee while delivering mail on her route. He noted a few days later appellant went to the doctors and was told she had damaged her meniscus. The supervisor indicated that Kerry McVey, manager of customer service, instructed him to have appellant fill out a CA-1 form, which she did complete. The supervisor indicated that was almost a year ago and he could not remember if he had ever completed management's part as he had never handled one before.

In a May 23, 2014 statement, Mr. McVey advised that appellant had reported to her supervisor that her knee was injured while delivering mail and had filled out a CA-1 form and gave it to him on May 28, 2013. He further stated that appellant reported she had again hurt her knee on January 10, 2014 and had also filled out a CA-1 form and gave it to her supervisor. Mr. McVey indicated that appellant had timely reported the injuries but neither CA-1 forms were properly turned into injury compensation.

In a May 23, 2014 statement, Susan Frazier, manager, mail processing operations, verified that appellant's CA-1 forms had not been entered until recently. She advised that the employing establishment had not controverted the claims and appellant was not at fault in any way for the delayed reporting.

A copy of a September 4, 2013 MRI scan report of the right knee was submitted along with April 28, 2014 modified-duty restrictions from Dr. McKinney and copies of evidence previously of record.

By decision dated November 7, 2014, an OWCP hearing representative converted the claim from a claim for traumatic injury to a claim for occupational disease, modified the prior decision to reflect fact of injury had been established but denied the claim as causal relationship had not been established.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[3]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition, and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition, and the specific employment factors identified by the claimant.[4]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[5] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.[6] The opinion of the physician must be based on a complete

[2] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[3] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *Solomon Polen*, 51 ECAB 341 (2000).

[5] *A.D.*, 58 ECAB 149 (2006); *Michael S. Mina*, 57 ECAB 379 (2006); *Y.J.*, Docket No. 08-1167 (issued October 7, 2008).

[6] *Sedi L. Graham*, 57 ECAB 494 (2006); *J.J.*, Docket No. 09-27 (issued February 10, 2009).

factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[7]

ANALYSIS

OWCP converted appellant's claim to that of occupational disease as she attributed her right knee condition to incidents occurring at work on May 28, 2013 and January 10, 2014. The employing establishment concurred that appellant had timely reported those incidents. The Board finds that the claim was properly converted to a claim for occupational disease as the knee condition was produced by the work environment over a period longer than a single workday or shift.[8] OWCP denied appellant's claim because there was insufficient medical evidence to establish that her diagnosed right knee conditions were caused or aggravated by her work activities. The determination of whether an employment injury is causally related to work factors is generally established by medical evidence.[9]

While Dr. England noted the January 10, 2014 work incident of stepping off a curb on January 10, 2014, no diagnosis of appellant's condition was reported or an opinion on causal relationship rendered. Thus, Dr. England's report is insufficient to establish appellant's claim.

In his April 28, 2014 letter, Dr. McKinney noted appellant's reports of two work-related injuries to her right knee. He indicated that he saw appellant on August 22, 2013, almost three months after her first injury. Appellant was diagnosed with mild knee arthrosis, questionable medial meniscal tear, medial femoral condyle bone bruising on September 9, 2013. Dr. McKinney noted that the second injury occurred on January 10, 2014 when she stepped off a curb awkwardly and reinjured her right knee. He stated that at the time of her knee arthroscopy, appellant had right knee posterior horn medial meniscus tear, right knee grade 3 and grade 4 arthrosis, medial femoral condyle, and right knee mild grade 3 arthrosis, patellofemoral joint. Dr. McKinney stated that, while he did not have all the details of her initial injury, she was found to have some cartilage thinning and a questionable meniscal tear prior to the second injury. He stated that the second injury seemed to aggravate this as the knee arthroscopy on March 5, 2014 revealed a significant meniscal tear and grade 3 and 3 arthrosis of her knee. Dr. McKinney further stated that it was difficult to determine if the second work-related injury caused the injury, but advised it may be possible. He stated, however, that the second injury definitely worsened her condition and caused her further limitations. Copies of his treatment reports were provided.

It is well established that proceedings under FECA are not adversarial in nature, and while the employee has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[10]

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[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] 20 C.F.R. § 10.5(q).

[9] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

[10] *D.G.*, Docket No. 14-901 (issued August 21, 2014).

The Board finds that, while Dr. McKinney's report is not completely rationalized, it offers support for a finding that appellant sustained an employment-related injury. Dr. McKinney provided a history of injury and results on examination. He also found that appellant's knee condition had worsened after her arthroscopy and opined that the second injury had aggravated her knee condition. Although Dr. McKinney did not provide a fully-rationalized medical opinion on causal relationship, he provided a consistent opinion based on examination findings and an accurate factual and medical background that appellant's knee conditions were aggravated by factors of her employment. While his report is not sufficient to meet appellant's burden of proof to establish her claim, it, along with the acknowledged delay by the employing establishment of properly handling her CA-1 claim,[11] is sufficient to require OWCP to further develop the medical evidence and the case record.[12]

On remand, OWCP should prepare a statement of accepted facts noting appellant's job requirements as a letter carrier and noting the two separate incidents of walking at work on May 28, 2013 and stepping off the curb on January 10, 2014. It shall then refer appellant to an appropriate medical specialist for a detailed opinion as to whether her right knee conditions are causally related to factors of her employment. Following this and any other further development as deemed necessary, it shall issue an appropriate merit decision on appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for decision.[13]

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims, Responsibilities*, Chapter 2.800(4)(b) (June 2011).

[12] *Id.; see John J. Carlone*, 41 ECAB 354 (1989).

[13] In light of the disposition of this case, counsel's arguments on appeal will not be addressed.

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this opinion.

Issued: June 3, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board