United States Department of Labor
Employees' Compensation Appeals Board

M.L., Appellant	)	
and	)	**Docket No. 15-0493**
	)	**Issued: November 20, 2015**
U.S. POSTAL SERVICE, POST OFFICE, West New York, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case submitted on the record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 5, 2015 appellant, through counsel, filed a timely appeal from an August 26, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the merits of the case.

ISSUE

The issue is whether appellant has established that she sustained a recurrence of disability on September 12, 2013 causally related to her accepted condition.

FACTUAL HISTORY

On November 14, 2011 appellant, then a 51-year-old mail carrier, filed an occupational disease claim (Form CA-1) alleging that she suffered a left knee meniscus sprain in the performance of duty. She noted that on October 29, 2011 she was pulling her cart with mail and the pain in her left knee increased by the time she reached the part of her route where she had to

[1] 5 U.S.C. § 8101 *et seq.*

go uphill.[2] Appellant first became aware of the disease on October 25, 2011. She stopped work on November 15, 2011. The record reflects that appellant returned to regular duty in April 2012.

On October 3, 2012 Dr. Ben S. Chouake, Board-certified in emergency medicine and internal medicine, noted seeing appellant on November 8, 2011 for left knee pain after a work-related accident. He noted treating appellant for this condition through January 20, 2012 and reevaluating her on June 21, 2012. Dr. Chouake diagnosed left knee strain and advised that from October 29, 2011 through June 21, 2012 appellant was occasionally unable to work due to pain and swelling from the knee injury.

After initially denying the claim, on October 8, 2013 OWCP accepted the claim for left knee strain. It advised appellant that she could file a claim for compensation if she lost time from work due to the work-related condition.

On November 21, 2013 appellant filed a recurrence of disability claim (Form CA-2) alleging that she stopped work on September 12, 2013 due to her accepted condition. The employing establishment indicated that appellant had not returned to work. In a November 22, 2013 letter, appellant's counsel provided claims for compensation for intermittent periods of disability (Form CA-7) commencing November 3, 2011 through January 4, 2012 and "for full compensation" for disability for the period January 24 to March 31, 2012 and from September 12 to November 1, 2013.

Appellant's counsel also provided medical evidence. In an October 15, 2013 report, Dr. Mark A.P. Filippone, a Board-certified physiatrist, noted appellant's history of injury of October 25, 2011 when she was pushing a cart on a snowy street and twisted the left knee.[3] He indicated that "she did not fall down, hit her head or lose consciousness." Dr. Filippone noted that appellant was diagnosed with a left knee strain. He examined her and provided findings which included an x-ray of the right knee which showed degenerative changes. Dr. Filippone advised that an x-ray of the left ankle revealed degenerative changes. He found that appellant had complaints of 7 out of 10 for back pain and pain in both knees with crepitations. Dr. Filippone also found a decreased pinprick sensation over the posterolateral aspect of both knees and calves and over the medial aspects of both feet. He also found: pain on stressing and ranging in the medial menisci of both knees; mild effusion bilaterally but no erythema; a negative drawer sign, and no gross ligamentous stability at the knees. Dr. Filippone diagnosed internal derangement of both knees, lumbosacral radiculitis, and rule out lumbosacral radiculopathy. He advised that he was placing appellant off work and referred her for physical therapy. Dr. Filippone opined that "all of the above are the direct result of the injuries sustained while at work for the [employing establishment]." He reiterated that they were "directly and solely the result of working for the [employing establishment]."

[2] The record reflects that appellant had preexisting bilateral knee complaints dating back to 2007.

[3] Dr. Filippone noted that appellant had a prior claim for a slip and fall at work with pain radiating to the right thigh and knee with numbness, tingling, and pain into both feet. Claim No. xxxxxx601. This other claim is not before the Board on the present appeal.

In an October 25, 2013 report, Dr. Filippone noted that he reexamined appellant and found that her medical history was unchanged. He indicated that she continued to have left ankle pain of 6 to 7 out of 10, pain in both knees and the low back of 5 out of 10. Dr. Filippone noted that this was despite not working and modifying activities of daily living. He advised that appellant was totally disabled and recommended chiropractic care.

In a November 12, 2013 report, Dr. Juluru P. Rao, a Board-certified orthopedic surgeon, noted that appellant was under his care since January 24, 2012, when she presented with complaints of pain in both knees. He examined the left knee and provided findings which included: tenderness over the medial joint; a positive McMurray's sign for medial joint pathology; and painful range of motion of the left knee. Dr. Rao indicated that he last evaluated appellant on September 18, 2013 and she had the same findings along with tenderness over the medial facet of the patella and no evidence of ligamentous instability and a varus alignment. He opined that appellant had internal derangement of the left knee with possible tear of the medial meniscus. Dr. Rao noted reviewing a November 11, 2011 magnetic resonance imaging (MRI) scan which showed evidence of contusion and osteochondritis of the medial femoral condyle and a positive signal suggestive of tear of the posterior horn of the medial meniscus. He diagnosed internal derangement of the knee; contusion and osteochondritis of the medial femoral condyle; and tear of the posterior horn of the medial meniscus in the left knee. Dr. Rao indicated that appellant continued to have pain and painful limitation of motion along with episodes of locking and giving way of the left knee. He opined that the conditions were "the direct result of the work-related activity the patient performed as a[n] [employee], which involves climbing up and down the stairs, bending, kneeling, pushing the postal cart through snow, and walking on uneven terrain. Dr. Rao recommended arthroscopy of the knee, partial medial meniscectomy and chondroplasty of the knee. He reiterated that it was his opinion that appellant's work-related activity as well as the incident of October 25, 2011 caused her condition. OWCP also received a prescription for physical therapy, physical therapy reports, and nurses' notes.

By letter dated December 9, 2013, OWCP advised appellant that additional evidence was needed to establish her recurrence claim. It noted that she returned to work in a full-time limited-duty capacity and continued to work until September 12, 2013, when she stopped work completely.

In a December 19, 2013 attending physician's report, Dr. Filippone diagnosed internal derangement of the left knee and checked the box marked "yes" in response to whether he believed the condition was caused or aggravated by an employment activity. He advised that appellant was totally disabled from September 12, 2013 to the present. Dr. Filippone continued to treat appellant.

In a letter dated January 16, 2014, counsel provided a new report from Dr. Rao. He argued that the new report supported that appellant continued to suffer residuals from her work injury and required additional medical treatment. In the new report, Dr. Rao noted appellant's history of injury and treatment and diagnosed internal derangement of the left knee with tear of the medial meniscus and osteochondritis of the medial femoral condyle. He opined that appellant's complaints of pain, swelling, and knee giving way were consistent with the work-related activities, which involved walking on uneven terrain, pushing the postal cart on the uneven terrain including snow and rain. Dr. Rao advised that the conditions were worsening due

to work-related activities and she was disabled from performing her occupation. He recommended physical therapy and surgical intervention. Dr. Rao opined that appellant's work-related activities as well as the incident on October 25, 2011 caused her condition. He opined that he was not aware of any preexisting conditions. Dr. Rao continued to treat appellant.

By decision dated January 27, 2014, OWCP denied appellant's claim for a recurrence of disability. It found that the evidence of record failed to establish that she was disabled, or further disabled, due to a material change of her accepted conditions.

On February 6, 2014 counsel requested a hearing with OWCP's Branch of Hearings and Review, which was held on June 11, 2014.

In February 11, March 14, May 16, June 20, July 14 and August 13, 2014 attending physician's reports, Dr. Filippone diagnosed internal derangement of the left knee. He checked the box marked "yes" in response to whether he believed the condition was caused or aggravated by an employment activity. Dr. Filippone advised that appellant was totally disabled and filled in September 12, 2013 to the present. In a separate report dated May 16, 2014, he noted reexamining appellant and found that her medical history was unchanged with no interval or intercurrent history of trauma or injury. Dr. Filippone advised that appellant continued to be symptomatic with left knee pain now rated 4 out of 10 despite not working, changes in her activities of daily living and taking medication and physical therapy. In a June 30, 2014 report, he noted appellant's history and advised that the left knee was still tender and crepitant and he suspected that Dr. Rao would need to do surgery on that knee. Dr. Filippone indicated that appellant continued to be totally disabled. He diagnosed internal derangement of both knees, lumbosacral radiculitis, and ruled out radiculopathy. Dr. Filippone opined that "[i]n my professional medical opinion, the aforementioned abnormalities were directly and solely the result of the injury sustained while at work."

In treatment notes dated November 5 and December 30, 2013, Dr. Rao noted that appellant was complaining of knee pain. He examined her left knee and found tenderness over the medial femoral condyle, medial knee joint line, and medial facet of the patella. Dr. Rao found that McMurray's sign was highly positive for medial joint pathology and had complaints of the left knee giving way and locking. He recommended physical therapy.

By decision dated August 26, 2014, an OWCP hearing representative affirmed the January 27, 2014 decision.

LEGAL PRECEDENT

Section 10.5(x) of OWCP's regulations provide that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[4]

[4] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.[5]

Appellant has the burden of establishing that she sustained a recurrence of a medical condition[6] that is causally related to her accepted employment injury. To meet her burden, appellant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.[7] Where no such rationale is present, the medical evidence is of diminished probative value.[8]

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.[9]

ANALYSIS

OWCP accepted appellant's claim for left knee strain. Appellant returned to regular duty in April 2012. She subsequently claimed a recurrence of total disability beginning September 12, 2013. However, the record does not contain a rationalized medical opinion, which sufficiently explains why appellant had a recurrence of disability on September 12, 2013 causally related to her October 25, 2011 accepted knee injury.

In support of her claim, appellant submitted several reports from Dr. Filippone. They included his October 15, 2013 and June 30, 2014 reports in which he noted appellant's history of injury and diagnosed internal derangement of both knees, lumbosacral radiculitis, rule out lumbosacral radiculopathy, and placed appellant off work. Dr. Filippone opined that "[i]n my professional medical opinion, the aforementioned abnormalities were directly and solely the result of the injury sustained while at work." He subsequently reiterated that they were "directly and solely the result of working for the [employing establishment]." The Board notes that the only condition that OWCP accepted was the left knee strain. Dr. Filippone did not offer a rationalized explanation to explain how these additional conditions were causally related to her accepted employment injury such that she sustained a recurrence of total disability on September 12, 2013 after returning to regular work in April 2012. Therefore, these reports are of

[5] *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

[6] 20 C.F.R. § 10.5(y) (2002).

[7] *Ronald A. Eldridge*, 53 ECAB 218 (2001).

[8] *Mary A. Ceglia*, 55 ECAB 626 (2004); *Albert C. Brown*, 52 ECAB 152 (2000).

[9] *Walter D. Morehead*, 31 ECAB 188 (1986).

limited probative value. In his October 25, 2013 report, Dr. Filippone opined that appellant was totally disabled and recommended chiropractic care. However, he did not provide an opinion regarding the cause of her disability. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[10]

In reports dated December 19, 2013, February 11, March 14, May 16, June 20, July 14, and August 13, 2014, Dr. Filippone diagnosed internal derangement of the left knee and checked the box marked "yes" in response to whether he believed the condition was caused or aggravated by an employment activity. He advised that appellant was totally disabled and filled in September 12, 2013 to the present. However, the checking of a box marked "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.[11]

Dr. Rao provided several reports. The reports included his November 12 and December 31, 2013 reports in which he diagnosed: internal derangement of the knee; contusion and osteochondritis of the medial femoral condyle; and tear of the posterior horn of the medial meniscus in the left knee. Dr. Rao opined that the conditions were "the direct result of the work-related activity the patient performed as a[n] [employee], which involves climbing up and down the stairs, bending, kneeling, and pushing the postal cart through snow and walking on uneven terrain. He recommended arthroscopy of the knee, partial medial meniscectomy, and chondroplasty of the knee. Dr. Rao reiterated that it was his opinion that appellant's work-related activity as well as the incident of October 25, 2011 caused her condition. However, these were not accepted conditions and without further explanation or rationale, these reports are of limited probative value and do not support a recurrence of disability on September 12, 2013 causally related to the October 25, 2011.

Other medical reports of record are of limited probative value as they do not provide an opinion regarding whether appellant's claimed recurrence of disability beginning September 12, 2013 is causally related to her October 25, 2011 work injury.[12]

OWCP also received nurses' notes and physical therapy reports. Health care providers such as nurses and physical therapists are not considered physicians under FECA. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.[13]

Accordingly, the Board finds that appellant has not met her burden of proof in this case as she has not submitted sufficiently reasoned medical opinion explaining why her recurrence of

[10] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[11] *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

[12] *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

[13] *Jane A. White*, 34 ECAB 515, 518 (1983). *See* 5 U.S.C. § 8101(2).

disability beginning September 12, 2013 was caused or aggravated by her employment-related condition.

On appeal counsel argued that appellant established her claim for a recurrence. However, as found above, appellant has not submitted the requisite medical evidence to establish her claim. She may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability on September 12, 2013 causally related to her accepted condition.

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 20, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board