United States Department of Labor
Employees' Compensation Appeals Board

L.K., Appellant	)	
and	)	**Docket No. 15-0675**
	)	**Issued: October 1, 2015**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Las Vegas, NV, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 9, 2015 appellant, through counsel, filed a timely appeal from a January 2, 2015 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 this case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's compensation benefits effective March 21, 2014; and (2) whether appellant met her burden of proof to establish that she sustained a tear of the of the left knee or aggravation of degenerative joint disease causally related to the accepted injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 30, 2012 appellant, then a 49-year-old transportation security officer, filed a traumatic injury claim alleging that on that date she twisted her left knee while walking to a briefing. OWCP accepted the claim for left knee sprain and paid benefits. The employing establishment offered appellant a light-duty position on May 21, 2012 and she returned to work. The exact date that appellant returned to work is unclear from the record.

A June 1, 2012 magnetic resonance imaging (MRI) scan of appellant's left knee was interpreted by Dr. Alison Nguyen, a diagnostic radiologist, as revealing medial meniscal posterior horn/posterior root ligament junction deep radial tear, moderate osteoarthrosis of the medial knee compartment, and patellofemoral chondral injury.

In a June 20, 2012 report, Dr. Eugene P. Libby, a Board-certified orthopedic surgeon, noted that this was appellant's initial office visit. He reported that she somehow misstepped and suffered a twisting injury to her left knee on April 30, 2012. Appellant noted immediate pain along the medial side of her left knee and was unable to bear full weight and suffered from sharp stabbing pain along the medial side of her left knee causing her to limp. Dr. Libby noted that her history was complicated by the fact that she had recently started treatment for left knee pain approximately one month or so before her April 30, 2012 injury and had received two viscos supplementation injections. Appellant indicated that her pain was different than the pain she experienced before the April 30, 2012 injury because the pain was sharper and located along the medial joint line of the left knee. The left knee also felt like it wanted to catch, which it never did before.

Dr. Libby provided examination findings and noted the June 1, 2012 MRI scan showed tear of the medial meniscus, moderate osteoarthrosis medial compartment, and patellofemoral chondral injury left knee. An impression of symptomatic traumatic medial meniscus tear left knee and decompensation preexisting degenerative joint disease left knee was provided. Dr. Libby indicated that with this episode there was a change in the left knee pain type, frequency, and intensity which went along with new meniscal injury on top of appellant's preexisting arthritic left knee pain. He opined that this was a classic mechanism of injury which can result in new onset meniscus injury/tear in a knee with preexisting degenerative joint disease. Dr. Libby explained that, with the intrinsic forces generated within the knee, what had the outward appearance of being a trivial injury was in reality significant and severe enough to result in meniscus tear with resultant pain. He concluded that the tear of medial cartilage or meniscus of knee occurred as a direct result of the April 30, 2012 left knee injury.

In a November 30, 2012 report, Dr. Bernard C. Ong, a Board-certified orthopedic surgeon, noted the history of injury and stated that the most probable diagnosis was medial meniscus tear with preexisting arthritis. He also noted that there were other possibilities in the differential diagnosis. Dr. Ong requested a left knee arthroscopic surgery to treat left knee meniscus tear and arthritis.

In a March 15, 2013 report, Dr. Ong noted that appellant reinjured her knee at work on March 9, 2013. He diagnosed left knee medial meniscus tear and arthritis and opined that she aggravated her left knee after twisting it.

In an April 22, 2013 report, Dr. Ong noted that appellant reported her left knee pain worsened since the reinjury of the left knee. He diagnosed left knee medial meniscus tear and arthritis. Dr. Ong stated that appellant aggravated her left knee after twisting it during a reinjury at work.

In a July 16, 2013 report, Dr. Libby opined that appellant's traumatic left knee sprain had resolved. He noted that she continued to have symptomatic traumatic medial meniscus tear of the left knee, for which he requested permission for her to undergo arthroscopic debridement surgery.

Appellant was thereafter referred for a second opinion examination. In an October 28, 2013 report, Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon serving as an OWCP second opinion physician, reviewed the statement of accepted facts, her medical history and reported physical examination findings. He indicated that appellant had a long history of osteoarthritis in the left knee, which was advanced in the medial compartment, and also had degenerative changes in the patellofemoral compartment that were associated with her genu varus deformities of both knees, which were congenital. Dr. Swartz reported that she was received viscos supplementation and injections a few weeks before the reported injury. A review of the records indicated that appellant had chronic painful osteoarthritis, which required treatment before her April 30, 2012 claim. He indicated that there was no specific evidence that a new medial meniscus tear resulted from the April 30, 2012 injury as a prior MRI scan was not available to compare pre-incident the status of the medial meniscus. Dr. Swartz noted that appellant had severe pain with bone-on-bone arthritis prior to her claim and continued with such pain. He found no evidence either way as to whether the undersurface tear of the medial meniscus related to appellant's claim or was simply part of an advanced degenerative process occurring in the left knee. Dr. Swartz found that appellant required a total joint replacement of the left knee, but stated that it was not related to the April 30, 2012 claim. He explained that she was having substantial problems before and after the twisting injury and it was unlikely that an undersurface tear could make any difference with respect to the painful advanced arthritic condition appellant was experiencing. Dr. Swartz reported her restrictions were attributable to her preexisting condition.

In a December 4, 2013 letter to appellant and Dr. Libby, OWCP provided a copy of Dr. Swartz' second opinion report and requested that Dr. Libby submit a report with objective findings and rationale which explained how the incident on April 30, 2012 aggravated her underlying degenerative condition and/or caused the medial meniscus tear.

In an August 14, 2013 report, Dr. Libby opined that the left knee traumatic sprain had resolved. In medical reports dated December 2 and 17, 2013, he continued to diagnose a left knee medial meniscal tear and degenerative joint disease left knee. In his December 17, 2013 report, Dr. Libby noted that appellant reported to him that she had felt no pain or problems with left knee before the April 30, 2012 incident. After reviewing Dr. Swartz' report, he reported that it appeared she was receiving Supartz injections into her left knee before her claimed work injury. Dr. Libby opined that appellant would benefit from a left knee replacement arthroplasty, but it would be best handled under her private health insurance. He discharged her from care and requested that her care be transferred to a pain management subspecialist for her future pain medication needs. No opinion on causation was provided.

In a January 21, 2014 report, Dr. Robert W. Patti, a Board-certified orthopedic surgeon, noted the history of injury and provided an impression of internal derangement of the left knee, likely torn medial and/or lateral meniscus; and marked quadriceps and hamstring weakness. He reported that he did not review any MRI scan reports. Dr. Patti also provided work restrictions. No opinion on causation was provided. In a January 21, 2014 Form CA-20, Dr. Patti reported that appellant twisted her knee at work and diagnosed internal derangement which he opined with a checkmark "yes" was caused or aggravated by employment activity. In a January 28, 2014 report, he provided a clinical impression of advancing degenerative arthritis of the knee and advancing medial meniscal tearing pathology, and some ongoing weakness bilaterally. Dr. Patti opined that appellant's left knee has on sequential MRI scans a worsening medial meniscal condition from a work-related injury. He also opined that her left knee condition was work related and total knee replacements of both knees were needed.

In a February 14, 2014 letter, OWCP advised appellant that it proposed to terminate her benefits on the grounds that she ceased to have residuals of her accepted work-related medical condition and no medical had been submitted to establish that the April 30, 2012 work incident caused or aggravated a meniscal tear or arthritis of the left knee. The termination was based on the opinion of Dr. Swartz, the second opinion referral physician. Appellant was provided 30 days to respond.

In response to the notice of proposed termination, OWCP received copies of previously submitted reports along with new evidence, which included January 28, 2014 work restrictions from Dr. Patti. In a February 27, 2014 report, Dr. Patti indicated that appellant has bilateral advanced degenerative arthritis of her knees, a nonindustrial condition. With that background, appellant had a noted twist of her knee as mechanism with acute onset of pain in her knee that has not gone away. The twisting was a trauma with the weakness of the tissues from the degenerative changes. Appellant has a torn medial meniscus likely attributable to that twisting injury a year and a half ago and she has loose bodies which could also be from the traumatic source. Dr. Patti stated that appellant needed a total knee replacement. He indicated that the current reason she still has significant disability was historically related to the medial tearing. Dr. Patti stated that he did not know whether the acute onset of appellant's prominent discomfort medially and deep was from the knee being twisted and progressing or tearing the medial meniscus. He also indicted that he reviewed records from Dr. Swartz.

In a March 10, 2014 report, Dr. Ong indicated that appellant had a left knee medial meniscus tear and severe arthritis. He stated that he had not treated her for nine months and felt questions regarding her left knee and treatment were best answered by her most current treating physicians, Dr. Libby and/or Dr. Patti.

By decision dated March 21, 2014, OWCP terminated appellant's benefits effective that day. Weight of the medical evidence was accorded to Dr. Swartz' opinion.

On April 2, 2014 OWCP received appellant's March 31, 2014 request for a telephonic hearing before the Branch of Hearings and Review, which was held October 17, 2014. Appellant explained that she had some minor treatment to her knee prior to the April 2012 injury and an injury on March 9, 2013, but she did not have any specific injuries to her knee prior to the

April 2012 work event. Counsel argued that the claim should be expanded to include the diagnosed meniscal injury.

OWCP received a June 1, 2012 left knee MRI scan report and a duplicate copy of Dr. Libby's June 20, 2012 report.

In a June 7, 2012 report, Dr. Robert P. Kaplan, a family practitioner, noted that appellant was walking and her left knee twisted on April 30, 2012. He reported on her physical examination of May 2, 2012 and the results of MRI scan and x-ray testing. Dr. Kaplan diagnosed torn meniscus of left knee and opined that the injury to appellant's left knee was related to her April 30, 2012 incident at work.

By decision dated January 2, 2015, an OWCP hearing representative affirmed OWCP's March 21, 2014 decision. She found that OWCP had met its burden of proof to establish that the accepted condition of left knee strain had resolved, and that appellant had not met her burden of proof to establish that any additional conditions were causally related to the accepted incident.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that, an employee has disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[2] OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[3] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.[4]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a left knee sprain on April 30, 2012 when she twisted her knee. The issue is whether it properly terminated her benefits effective March 21, 2014 as she no longer had residuals of the April 30, 2012 injury.

The Board finds that OWCP met its burden of proof to terminate appellant's benefits for the accepted left knee sprain condition. In his July 16 and August 14, 2013 reports, Dr. Libby, appellant's treating physician, opined that the traumatic left knee sprain had resolved. There is no medical evidence of record to dispute that the traumatic left knee sprain had, in fact, resolved. Dr. Swartz, OWCP's second opinion physician, stated in his October 28, 2013 report that appellant had a long-standing preexisting arthritic condition of the left knee, as well as congenital deformity. He concluded that, while appellant now required total knee replacement,

[2] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[3] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[4] *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

her current condition was not related to the accepted work injury. The other physicians of record discussed her current diagnoses, but did not find residuals of the accepted condition.

Thus, OWCP properly terminated appellant's benefits for the accepted left knee sprain condition as there was no evidence of residuals of the accepted condition.

LEGAL PRECEDENT -- ISSUE 2

For conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relationship. It is not OWCP's burden to disprove such relationship.[5]

To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.[6] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[7]

ANALYSIS -- ISSUE 2

Appellant had a history of left knee medial meniscus tear and degenerative arthritis in her left knee, OWCP developed the issue of whether the April 30, 2012 twisting injury permanently or temporary aggravated her degenerative condition and/or caused the medial meniscus tear. OWCP determined that the weight of the medical evidence rested with Dr. Swartz, a Board-certified orthopedic surgeon serving as the second opinion physician.

Based on a clinical examination, review of the medical record, and statement of accepted facts, Dr. Swartz opined that the medical record did not show a new medial meniscus tear resulting from the April 30, 2012 twisting injury. He explained that there were no MRI scan findings to compare the status of the medial meniscus before the incident to the recent MRI scan. Appellant had consistent, chronic painful osteoarthritis which required three visits in April 2012 in which she received viscos supplementation injections in her left knee antedating her April 30, 2012 claim. Dr. Swartz further explained that appellant had a long history of osteoarthritis in the left knee and the June 1, 2012 MRI scan noted a progression of tear involving the posterior horn medial meniscus which would not indicate previous tear. He stated that she was having substantial problems immediately before the April 30, 2012 incident and was having substantial problems since the incident. Dr. Swartz indicated that she required a total joint replacement of the left knee, but it was not related to the April 30, 2012 claim. He attributed appellant's meniscus tear and degenerative condition to other conditions not accepted by OWCP.

[5] *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

[6] *See Manuel Gill*, 52 ECAB 282 (2001).

[7] *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

The Board finds that OWCP properly accorded the weight of the evidence to the medical opinion of Dr. Swartz. Dr. Swartz' report contains an extensive review of the medical record, discusses appellant's prior history of arthritis in the left knee and her treatment with injections to the knee shortly before this incident and supports his opinion with reasoning.[8]

The reports from appellant's physicians are insufficient to cause a conflict of medical opinion with that of Dr. Swartz regarding causal relationship.

In his initial report of June 20, 2012, Dr. Libby opined that the tear of medial cartilage or meniscus of knee occurred as a direct result of the April 30, 2012 left knee injury. He stated that with this episode there was a change in the left knee pain type, frequency, and intensity which went along with a new meniscal injury on top of appellant's preexisting arthritic achy left knee pain. Dr. Libby indicated that twisting was a classic mechanism of injury which could result in new onset meniscus injury/tear in a knee with preexisting degenerative joint disease, as the intrinsic forces generated within the knee were significant and severe enough to result in meniscus tear with resultant pain. However, the conclusory findings do not explain how the meniscus tear could be separated from appellant's serious preexisting knee condition. Although Dr. Libby discusses generally the possibility that it could occur, there are no diagnostic studies to confirm that the meniscus tear was not also preexisting. Following a review of Dr. Swartz' report, Dr. Libby continued to attribute appellant's traumatic medial meniscus tear of the left knee and decompensation of the degenerative joint disease left knee to the mechanism of the twisting injury on April 30, 2012. He acknowledged that she had received injections into her left knee before the alleged injury and had reported the pain and problems with the left knee prior to the April 30, 2012 incident. Dr. Libby based his belief that the meniscus tear was work related on appellant's description of the pain as being "different." His reports contain no significant record review and his opinion is not based on comparative diagnostic tests. Dr. Libby's opinion relies almost entirely on appellant's perception that her pain changed after her April 30, 2012 occurrence. He offered better medical support for his conclusory opinion that she suffered a torn meniscus as a result of that occurrence.[9] Thus, Dr. Libby's reports are of diminished probative value and are insufficient to create a conflict in medical opinion.

In his November 30, 2012 report, Dr. Ong noted the history of injury and stated that the most probable diagnosis was medial meniscus tear with preexisting arthritis. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.[10] In March 15 and April 22, 2013 reports, Dr. Ong noted that appellant reinjured her knee at work on March 9, 2013 and her left knee pain worsened. While he opined that she aggravated her left knee after twisting it during a reinjury at work, he based the reinjury on a March 9, 2013 occurrence and not the April 30, 2012 occurrence. Thus, these reports do not discuss the April 30, 2012 occurrence and are of limited probative value.

[8] *See James Mack*, 43 ECAB 321 (1991).

[9] Medical evidence that states a conclusion, but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *See J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[10] *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

In a January 21, 2014 report, Dr. Patti noted the history of injury and provided an impression of internal derangement of the left knee, likely torn medial and/or lateral meniscus and marked quadriceps, and hamstring weakness. However, he offered no opinion on causation. The Board has held that 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] In January 21 and 28, 2014 reports, Dr. Patti related that appellant had twisted her knee at work and the diagnosed conditions of internal derangement and advancing degenerative arthritis of the knee and advancing medial meniscal tear pathology and ongoing bilateral weakness were caused or aggravated by employment injury. While he explained in his January 28, 2013 report that the sequential MRI scans of her left knee showed a worsening medial meniscal condition from a work-related injury, he offered no medical support for his opinion.[12] In his February 27, 2014 report, Dr. Patti explained that the twisting was a trauma with the weakness of the tissues from the degenerative arthritis of her knees. He opined, however, that he did not know whether the acute onset of appellant's prominent discomfort medially and deep was from the knee being twisted and progressing or from the tearing of the medial meniscus.

In his June 7, 2012 report, Dr. Kaplan noted the history of injury, diagnostic testing, and examination findings. He diagnosed torn meniscus of the left knee and opined that the injury to appellant's left knee was related to the April 30, 2012 occurrence. The Board finds, however, that Dr. Kaplan did not provide sufficient medical rationale explaining how her twisting occurrence of April 30, 2012 caused a new condition.[13]

On appeal appellant alleges that OWCP's decision is contrary to fact and law. However, there is no medical evidence that she has any residuals of her accepted left knee sprain. Furthermore, appellant's physicians lack the probative value necessary and those reports do not establish that the April 30, 2012 occurrence caused appellant's current left knee condition or aggravated a preexisting condition.[14] As appellant failed to provide such probative medical opinion in this case, the Board finds that she did not meet her burden of proof to establish her claim.

Appellant 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 OWCP met its burden of proof to terminate appellant's benefits effective March 21, 2014 as she no longer had any residuals causally related to her accepted left

[11] *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

[12] Medical evidence that states a conclusion but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *See J.F.*, Docket *supra* note 9; *A.D.*, 58 ECAB 149 (2006).

[13] *See J.F.*, *supra* note 9; *A.D.*, *supra* note 9.

[14] *W.W.*, Docket No. 09-1619 (issued June 2, 2010).

knee sprain. The Board further finds that she did not meet her burden of proof to establish that the April 30, 2012 twisting injury permanently or temporary aggravated her degenerative condition and/or caused the medial meniscus tear.

ORDER

IT IS HEREBY ORDERED THAT the January 2, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 1, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board