United States Department of Labor
Employees' Compensation Appeals Board

A.J., Appellant	)	
and	)	**Docket No. 15-1438**
	)	**Issued: October 9, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Madison, WI, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 22, 2015 appellant filed a timely appeal from an April 9, 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.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish a right knee condition causally related to the July 25, 2014 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence following the April 9, 2015 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt,* 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

On August 15, 2014 appellant, then a 52-year-old mail carrier, filed a traumatic injury claim alleging that on July 25, 2014 she injured her right knee when she fell at work. She stated that she was walking when her knee suddenly gave out. Appellant stopped work on August 8, 2014 and returned on August 12, 2014.[3]

In an April 8, 2013 x-ray of the right knee, Dr. Jason W. Stephenson, a Board-certified diagnostic radiologist, noted that appellant complained of right knee pain. The examination revealed no acute fracture or subluxation. Dr. Stephenson opined that appellant had mild patellofemoral joint and medial compartment osteophyte formation without joint space narrowing.

On April 8, 2013 appellant was also examined by Dr. Timothy P. Vanderbilt, a Board-certified orthopedic surgeon. Dr. Vanderbilt related her complaints of persistent left knee and right knee pain. He discussed appellant's medical treatment in 2011 and reported that she was doing well until she began to work 12-hour days, which exacerbated her pain. Dr. Vanderbilt related that, because her right knee was the "good" knee, she felt that she may have been over doing it and putting more stress on the right knee in order to protect the left knee. Upon examination of the bilateral lower extremities, he observed no joint swelling and full range of motion. Dr. Vanderbilt reported tenderness to palpation at the right knee lateral joint and left knee medial joint line. He explained that x-rays showed early arthritic changes, but no severe osteoarthritis. Dr. Vanderbilt noted that appellant had early arthritic changes, with overuse secondary to her job as a mail carrier and being on her feet for 12 hours a day, 6 days a week. He recommended that she work with restrictions until June 8, 2013 to allow her to strengthen her legs.

In a January 3, 2014 work restriction letter, Marcia Bolles, a physician assistant, noted that appellant worked for the employing establishment as a mail carrier. She reported that appellant could return to work on January 3, 2014 with restrictions of no working more than 8 hours per day and standing or walking no longer than 3 hours at a time without a break. Ms. Bolles advised that these restrictions were to remain in effect until February 1, 2014.

Appellant was examined by Mary Evenson, a physician assistant, on August 11, 2014. Ms. Evenson noted that appellant was unable to work from August 9 through 10, 2014.

In an August 13, 2014 duty status report, a family practitioner with an illegible signature noted that appellant was a mail carrier with right knee pain. Appellant was advised to resume work on August 13, 2014.

[3] The record reveals that appellant had a previously accepted case (File No. xxxxxx501) for an August 21, 2009 employment injury to her left knee. Her claim was accepted for aggravation of osteoarthritis of the left knee. OWCP reviewed the medical evidence from File No. xxxxxx501 and copied pertinent medical evidence into this present claim.

Appellant submitted Family and Medical Leave Act forms dated August 27, 2014, which indicated that her leave request was approved and an unsigned August 13, 2014 Form CA-16 authorization for examination and/or treatment that is mostly illegible.

By letter dated August 25, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish her traumatic injury claim. It requested additional factual evidence to substantiate the factual elements of her claim and medical evidence to demonstrate that she sustained a diagnosed condition causally related to the July 25, 2014 employment incident.

Appellant continued to receive treatment from Ms. Evenson. In August 27 and September 24, 2014 work restriction notes, Ms. Evenson diagnosed right knee strain and answered "yes" regarding whether appellant's injury was work related. She recommended that appellant continue working with restrictions of lifting up to 10 pounds, standing, walking, and sitting up to four hours, driving up to eight hours, and using a computer mouse up to eight hours.

In a decision dated September 29, 2014, OWCP denied appellant's claim finding that appellant failed to establish fact of injury. It determined that the evidence was insufficient to substantiate that the alleged July 25, 2014 incident occurred as appellant described and that the medical evidence was insufficient to establish that she sustained a medical condition causally related to the alleged work event.

On November 10, 2014 Dr. Geoffrey S. Baer, a Board-certified orthopedic surgeon, treated appellant for evaluation of her right knee and related her primary complaint of occasional locking of the knee with pain descending steps and kneeling. He discussed how he had treated her multiple times over the past couple of years. Upon examination of appellant's right lower extremity, Dr. Baer observed trace effusion with motion 0 to 130 degrees and decreased quad tone with poor quad contraction. He also reported tenderness over the medial joint line and medial and lateral patellar facets. Sensation was normal to light and patellar apprehension and firm endpoint were negative. Dr. Baer reviewed an October 27, 2014 magnetic resonance imaging (MRI) scan report of appellant's right knee which revealed a posterior root tear of the medial meniscus with multifocal cartilage loss along the central and posterior weight bearing surfaces of the medial and lateral patellofemoral articular surfaces. He stated that she was employed as a letter carrier with aggravation of right tricompartmental degenerative knee joint disease with underlying medial meniscus tear. Dr. Baer included a November 10, 2014 letter, which noted that appellant was his patient and restricted her work to one hour of walking for every eight-hour shift.

Appellant was treated again by Dr. Baer on December 11, 2014 for complaints of continued pain localized to the lateral and medial aspects of her right knee. Dr. Baer noted that she worked as a letter carrier for the employing establishment and currently had work restrictions of walking 1 to 1½ hours on her mail route. Upon examination of appellant's right knee, he observed slight swelling and tenderness to palpation over the medial joint line and the lateral joint line. Sensation was intact to light touch throughout the distal lower extremity. Dr. Baer opined that appellant's right knee pain was primarily related to tricompartmental degenerative joint disease (DJD). He explained that her pain was more consistent with her arthritic changes verses her meniscal tear.

In a February 2, 2015 letter, Dr. Baer confirmed that appellant was his patient. He noted that due to worsening knee pain she should remain off work beginning January 31, 2015.

Appellant also received treatment from Dr. Mark D. Wilson, an orthopedic surgeon, on February 12, 2015. Dr. Wilson discussed her medical history and conducted an examination. He observed limited range of motion of appellant's right knee and tenderness along her medial and lateral joint line and along the medial aspect of the patellofemoral. Lachman, Posterior drawer, McMurray, and Thessaly tests were negative. Dr. Wilson reported that appellant had right knee tricompartmental DJD with mechanical symptoms. He noted that she decided to undergo right knee arthroscopic surgery. Dr. Wilson provided a return to work form and indicated "yes" that appellant's injury was work related.

On February 17, 2015 OWCP received appellant's request for reconsideration.

On February 23, 2015 OWCP received appellant's response to the August 25, 2014 development letter. Appellant explained that on July 25, 2014 she was delivering mail when her right knee gave out while she went down some steps. She noted that July 25, 2014 was a Friday and she stayed off her feet over the weekend. Appellant went to the doctor's office on August 8, 2014 and submitted her claim on August 9, 2014. She stated that she had an MRI scan and x-rays completed. Appellant reported that she had a previous job-related knee injury when she fell in a pothole cover onto both her knees.

In a March 5, 2015 preoperative evaluation, Leslie L. Goodavish, a physician assistant, discussed appellant's history and conducted an examination. She observed tenderness over the medial line and pain on the patella. Ms. Goodavish reported that appellant had full sensation of the lower extremity and 2+ dorsal pedal pulses. She diagnosed right knee medial meniscus tear.

By decision dated April 9, 2015, OWCP affirmed the September 29, 2014 denial decision with modification. It accepted that the July 25, 2014 employment incident occurred as alleged, but denied the claim finding insufficient medical evidence to establish that she sustained a right knee condition causally related to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[5] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[6]

[4] 5 U.S.C. §§ 8101-8193.

[5] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[6] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.[7] There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[8] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[9] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.[10]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[11] The opinion of the physician must be based on a complete 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.[12] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[13]

ANALYSIS

Appellant has alleged that on July 25, 2014 she injured her right knee when she fell down at work. OWCP accepted that the July 25, 2014 incident occurred as alleged, but denied the claim finding insufficient medical evidence to establish that her right knee condition was causally related to the accepted incident. The Board finds that appellant has failed to meet her burden of proof to establish her traumatic injury claim.

In support of her claim appellant submitted an x-ray report of the right knee from Dr. Stephenson, dated April 8, 2013, which predated the date of this alleged traumatic injury. This x-ray confirmed that she had preexisting mild patellofemoral joint and medial compartment osteophyte formation without joint space narrowing. Appellant also submitted an April 8, 2013 report from Dr. Vanderbilt, who noted her belief that she might be placing more stress on her right knee to protect her left knee, which had an accepted claim for aggravation of left knee osteoarthritis. It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural

[7] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[8] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[9] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[11] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

[12] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

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

consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent, intervening cause attributable to the employee's own intentional conduct.[14] While these reports document appellant's preexisting right knee conditions, neither the x-ray, report of April 8, 2013, nor the report from Dr. Vanderbilt offer any medical opinion to explain how her right knee condition on the date of this alleged injury, July 25, 2014, would have been caused by her previously accepted left knee injury, sufficient to establish a consequential injury.

Following July 25, 2014 appellant submitted a report by Dr. Baer dated November 10, 2014 for her complaints of right knee pain and locking. Upon examination, Dr. Baer observed slight swelling and tenderness to palpation over the medial joint line and medial and lateral patellar facets. Sensation was normal to light and patellar apprehension and firm endpoint were negative. Dr. Baer related that an October 27, 2014 MRI scan of appellant's right knee revealed a posterior root tear of the medial meniscus with multifocal cartilage loss along the central and posterior weight bearing surfaces of the medial and lateral patellofemoral articular surfaces. He noted that she was employed as a letter carrier with aggravation of right tricompartmental degenerative knee joint disease with underlying medial meniscus tear. In a December 11, 2014 report, Dr. Baer explained that appellant's pain was more consistent with her arthritic changes verses her meniscal tear. While he provided examination findings and a diagnosed right knee condition the Board notes that he does not mention the July 25, 2014 employment incident nor opine on whether her right knee condition resulted from the July 25, 2014 work event. On the other hand, Dr. Baer attributes appellant's right knee condition as consistent with arthritic changes. The Board has found that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to her diagnosed medical condition.[15] In his February 2, 2015 report, Dr. Baer merely noted appellant's worsening knee pain, but offered no medical explanation as to the cause. As he does not attribute her current right knee condition to the July 25, 2014 employment incident, his reports are insufficient to establish her traumatic injury claim.

Appellant was also treated by Dr. Wilson, who in a February 12, 2015 report, discussed her medical history and conducted an examination. Dr. Wilson diagnosed right knee tricompartmental DJD with mechanical symptoms. He provided a return to work form and reported "yes" that appellant's injury was work related. Although Dr. Wilson indicates that her injury was work related, the Board has found that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[16]

The additional reports provided by physician assistants Ms. Evenson, Ms. Bolles, and Ms. Goodavish dated January 3, 2014 to March 5, 2015, are likewise insufficient to establish

[14] *See R.S.*, Docket No. 15-0576 (issued June 9, 2015).

[15] *John W. Montoya*, 54 ECAB 306 (2003).

[16] *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

appellant's claim. These reports are of no probative value as physician assistants and nurse practitioners, are not considered physicians as defined under FECA.[17]

Appellant submitted a duty status report dated August 13, 2014 with an illegible signature. A report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[18]

A partially completed and unsigned Form CA-16 was also submitted. A properly completed Form CA-16 authorization may constitute a contract for payment of medical expense to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The Form CA-16 of record was not fully executed by the employing establishment as it bore no signature authorizing treatment.[19]

On appeal, appellant alleged that Dr. Baer indicated in his report that his right knee injury was work related. As previously stated, however, Dr. Baer's reports are insufficient to establish her claim. Causal relationship is a medical question that must be established by probative medical opinion from a physician.[20] Because appellant has not provided such probative medical evidence in this case, the Board finds that she did not meet her burden of proof to establish her claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a right knee condition causally related to the July 25, 2014 employment incident.

[17] Section 8102(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).

[18] *See S.A.*, Docket No. 15-1092 (issued August 3, 2015).

[19] *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003).

[20] *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *David Apgar supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 9, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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