United States Department of Labor
Employees' Compensation Appeals Board

J.J., Appellant	)	
and	)	**Docket No. 15-1365**
	)	**Issued: September 23, 2015**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Hauppauge, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 1, 2015 appellant, through counsel, 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained an injury on September 30, 2013 in the performance of duty.

FACTUAL HISTORY

On October 17, 2013 appellant, then a 50-year-old revenue officer, filed a traumatic injury claim alleging that on September 30, 2013 she injured her right leg and knee when she

[1] 5 U.S.C. § 8101 *et seq.*

"stood up from a sitting position [and] heard her knee pop…." She stopped work on September 30, 2013. The employing establishment controverted the claim as appellant was teleworking from home and it was unclear if the incident was work related.

In an emergency room report dated September 30, 2013, appellant provided a history of a knee injury an hour early while walking. Dr. Ryosuke Ito, an osteopath, diagnosed knee pain, a knee strain, and a possible ligament injury.

In a report dated October 1, 2013, Dr. Alexander S. Finger, a Board-certified orthopedic surgeon, evaluated appellant for right knee pain. He stated, "She reports coming downstairs yesterday when she twisted and felt a pop and pain in the right knee." Dr. Finger diagnosed a right knee strain and possible anterior cruciate ligament injury.

A magnetic resonance imaging (MRI) scan study performed on October 3, 2013 revealed a tear of the medial meniscus of the posterior horn of the right knee.

In a progress report dated October 8, 2013, Dr. Finger discussed appellant's continued complaints of pain in her right knee and noted that an MRI scan study revealed arthritis and a tear of the medial meniscus.[2] He diagnosed a knee and leg sprain/strain and a tear of the medial cartilage or meniscus of the knee. Dr. Finger referred appellant for physical therapy.

By letter dated October 22, 2013, OWCP requested that appellant submit additional factual and medical evidence, including a factual statement describing the circumstances surrounding the September 30, 2013 incident and a detailed report from her attending physician addressing the causal relationship between any diagnosed condition and the identified work incident.

In a statement dated October 28, 2013, appellant indicated that she worked full time from her residence. She advised that immediately following a conference call with the power of attorney for a taxpayer she went to fax a memorandum about the conversation. Appellant stepped down into her den and "heard a pop [and] felt horrible pain" in her right knee. She telephoned her supervisor within a half hour about the incident. Appellant's daughter took her to the hospital when she got home from school.

In a form report dated October 29, 2013, Dr. Finger diagnosed a tear of the meniscus of the right knee and checked "yes" that the condition was caused or aggravated by employment. The history of injury on the form indicated that appellant twisted her knee going downstairs while working. Dr. Finger provided as a rationale for his causation finding that she "twisted [her] knee at work." He found that appellant was disabled for about eight weeks beginning October 1, 2013.

On November 13, 2013 the employing establishment controverted the claim as the history of injury on the claim form of appellant of experiencing a pop in her knee standing up differed from the history of injury contained in the medical reports of her injuring her knee walking down stairs. It also noted that she was working at home at the time of her injury.

[2] On October 16, 2013 a physician assistant opined that appellant was unable to work.

In a disability certificate dated November 19, 2013, Dr. Finger determined that appellant could resume work without restrictions. In a progress report dated November 19, 2013, he noted that she had not improved with physical therapy. Dr. Finger diagnosed a knee and leg sprain/strain and a tear of the medial cartilage or meniscus of the knee.

By decision dated November 29, 2013, OWCP denied appellant's claim after finding that she did not establish the occurrence of the September 30, 2013 work incident.[3] It determined that her description of the September 30, 2013 incident varied from the history of injury contained in the medical evidence. OWCP further found that appellant had not shown that she was injured at home performing a duty directly related to her employment.

On November 29, 2013 appellant requested an oral hearing before an OWCP hearing representative. She stated that when she telephoned her manager after her injury she was in significant pain and "by no means thinking clearly." Appellant indicated that she was working at her dining room table on her laptop and had to go to a lower level to use her fax machine. She submitted evidence documenting that she was performing work duties at the time of her injury.

In an e-mail dated December 6, 2013, appellant's supervisor confirmed appellant's description of the work duties she was performing on September 30, 2013.

At the telephone hearing, held on June 16, 2014, appellant stated that she worked at home in an upstairs office and at her dining room table.[4] She also used a fax machine for work located in a sunken den that had a step leading down into it. On September 30, 2013 appellant stepped down into her den to send a fax, heard a pop, and experienced "excruciating pain." She stated that she must have twisted her knee when she stepped down. Appellant crawled to the telephone and called her supervisor. She indicated that her supervisor completed the traumatic injury claim. Appellant noticed that the history was incorrect on the form, but did not believe that it mattered.

In a report dated May 23, 2014, Dr. Gregg J. Jarit, a Board-certified orthopedic surgeon, advised that appellant was status post partial lateral meniscectomy of the right knee. He opined that she was unable to work.

In an e-mail dated July 2, 2014, appellant's supervisor reviewed the hearing transcript and stated that appellant was "hurt while working" and reported it "as soon as she could…."

By decision dated September 5, 2014, an OWCP hearing representative affirmed the November 29, 2013 decision as modified to reflect that appellant had established the occurrence of the work incident. She determined, however, that the medical evidence was insufficient to show that she sustained a right knee condition as a result of the September 30, 2013 employment incident.

[3] A claims examiner signed the November 29, 2013 decision on December 2, 2013.

[4] On March 14, 2014 appellant's counsel requested a telephone hearing instead of an oral hearing.

In a report dated April 25, 2014, received by OWCP on January 15, 2015, Dr. Jarit noted that appellant was scheduled for surgery on May 14, 2014 and would be off work until May 28, 2014. He found that she could currently perform light duty.

In a form report dated December 12, 2014, Dr. Jarit described the injury as occurring when appellant, while working from home, "tripped when walking from her office to the den." He diagnosed a medial and lateral meniscal tear status after a partial medial and lateral meniscectomy. Dr. Jarit signed below a statement on the form that the work activities described resulted in the diagnosed condition.

On January 15, 2015 appellant, through counsel, requested reconsideration.

By decision dated April 9, 2015, OWCP denied modification of its September 5, 2014 decision. It found that appellant had not submitted reasoned medical evidence showing how the September 30, 2013 work incident caused or aggravated a diagnosed condition.

On appeal appellant's counsel contends that OWCP did not properly evaluate the medical evidence. He noted that she described a twisting injury to her knee which was supported by an appropriate evaluation of the medical evidence.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] has the burden of establishing 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.[6] 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.[7]

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.[8] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.[9] An employee may establish that the employment

[5] 5 U.S.C. § 8101 *et seq.*

[6] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[7] *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[8] *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

[9] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

incident occurred as alleged, but fail to show that her disability and/or condition relates to the employment incident.[10]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background, 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.[11]

OWCP's procedures address off-premises injuries sustained by workers who perform service at home. It states:

> "Ordinarily, the protection of [FECA] does not extend to the employee's home, but there is an exception when the injury is sustained while the employee is performing official duties. In situations of this sort, the critical problem is to ascertain whether at the time of injury the employee was in fact doing something for the employer. The official superior should be requested to submit a statement showing:
>
> > (a) What directives were given to or what arrangements had been made with the employee for performing work at home or outside usual working hours;
> >
> > (b) The particular work the employee was performing when injured; and
> >
> > (c) Whether the official superior is of the opinion the employee was performing official duties at the time of the injury, with appropriate explanation for such opinion."[12]

ANALYSIS

Appellant alleged that she injured her right knee on September 30, 2013 when she twisted her knee walking down a step in her residence on her way to use a fax machine in furtherance of her employment duties. Her supervisor confirmed that she was performing official work duties in a telework status at the time of the alleged incident and thus in the performance of duty.[13] While the original history of injury provided on the claim form of her experiencing knee pain after standing from a sitting position varied from the history provided on the medical reports of her twisting her knee going down stairs, appellant explained that her supervisor completed the

[10] *Id.*

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

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(f)(1) (August 1992); *see also S.F.*, Docket No. 09-2172 (issued August 23, 2010).

[13] *Id.*

claim form and that at the time she described the incident to her supervisor she was in considerable pain and not able to think lucidly. Appellant subsequently provided a detailed description of the circumstances surrounding the September 30, 2013 incident. OWCP accepted the occurrence of the September 30, 2013 employment incident. The issue, which remains, is whether the medical evidence is sufficient to establish that appellant sustained an injury as a result of this incident.

On September 30, 2013 appellant received treatment from Dr. Ito at the emergency room. She provided a history of experiencing knee pain one hour earlier while walking. Dr. Ito diagnosed knee pain, a knee strain, and a possible ligament injury. He did not, however, directly address the cause of the diagnosed conditions and thus his opinion is of little probative value.[14]

In a report dated October 1, 2013, Dr. Finger obtained a history of appellant experiencing right knee pain and feeling a pop in her knee after going down stairs the day before. He diagnosed a right knee strain and potential injury to the anterior cruciate ligament. Dr. Finger did not, however, specifically attribute the diagnosed conditions to the September 30, 2013 work incident; consequently, his opinion is insufficient to meet appellant's burden of proof.[15]

On October 8, 2013 Dr. Finger evaluated appellant for continued right knee pain. He reviewed the findings on an MRI scan study demonstrating arthritis and a medial meniscus tear. Dr. Finger diagnosed a knee and leg sprain/strain and a tear of the medial cartilage or meniscus of the knee. Again, however, he did not provide an opinion that the identified employment incident resulted in the diagnosed right knee condition and thus his report is of diminished probative value.[16]

In a form report dated October 29, 2013, Dr. Finger diagnosed a tear of the meniscus of the right knee and checked "yes" that the condition was caused or aggravated by employment. He explained his causation finding by noting that appellant "twisted [her] knee at work." Dr. Finger found that she was disabled from work for approximately eight weeks beginning October 1, 2013. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[17] While Dr. Finger noted on the form that appellant twisted her knee while working, he did not provide any medical reasoning explaining how or why the twisting of her knee resulted in the diagnosed conditions and thus did not support a causation finding.[18]

[14] *See A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[15] *Id*.

[16] *Id*.

[17] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[18] A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale. *See K.D.*, Docket No. 14-1781 (issued August 14, 2015); *T.F.*, 58 ECAB 126 (2006).

In a disability certificate dated November 19, 2013, Dr. Finger determined that appellant could resume work without restrictions. In a progress report dated November 19, 2013, he diagnosed a knee and leg sprain/strain and a tear of the medial cartilage or meniscus of the knee. As Dr. Finger did not offer any opinion on the cause of appellant's condition, his reports are of diminished probative value on the issue of causal relationship.[19]

On April 25, 2014 Dr. Jarit indicated that appellant would be off work after surgery from May 14 to 28, 2014. In a form report dated December 12, 2014, he obtained a history of appellant tripping on her way from her office to her den while working at home. Dr. Jarit diagnosed a medial and lateral meniscal tear status post a partial medial and lateral meniscectomy. He signed below a statement that work activities described resulted in the diagnosed condition. Dr. Jarit did not, however, provide a medical basis for his finding of causation. 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.[20]

On appeal appellant's counsel contends that OWCP did not properly review or evaluate the medical evidence. He asserts that she described a twisting injury that resulted in the diagnosed condition and that a proper review of the medical evidence substantiates causation. Appellant, however, has the burden to submit a well-reasoned medical report based on an accurate history explaining how the work incident caused a diagnosed medical condition.[21] As discussed, she failed to submit a rationalized medical opinion supporting that her right knee condition was causally related to the September 30, 2013 work incident. Consequently, appellant did not meet her burden of proof to establish an employment-related traumatic injury.

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury on September 30, 2013 in the performance of duty.

[19] *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

[20] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[21] *See D.B.*, Docket No. 14-1815 (issued December 16, 2014).

ORDER

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

Issued: September 23, 2015
Washington, DC

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

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

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