United States Department of Labor
Employees' Compensation Appeals Board

C.D., Appellant	)	
and	)	**Docket No. 16-0177**
	)	**Issued: April 15, 2016**
U.S. POSTAL OFFICE, MAIN POST OFFICE, Washington, DC, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 9, 2015 appellant, through counsel, filed a timely appeal from a September 15, 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 met his burden of proof to establish that he sustained a left knee injury causally related to an April 22, 2014 employment incident.

On appeal counsel asserts that the September 15, 2015 decision is contrary to fact and law.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 23, 2014 appellant, then a 48-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 22, 2014 he injured his left knee when it gave way while delivering mail. He did not return to work.

In support of his claim appellant submitted physician work activity status reports from Concentra Medical Centers dated April 23 to May 14, 2014. On April 23, 2014 Dr. Mana T. Elmo, a Board-certified internist, diagnosed left knee sprain and advised that appellant could return to restricted duty. On April 25 and May 14, 2014 Felicia McKelvin, a physician assistant, diagnosed left knee sprain and pain. She advised that appellant could perform modified duty. Dr. Qi Chen, Board-certified in preventive medicine, and Dr. Michael V. Williams, a family medicine specialist, reiterated the diagnoses and restrictions on April 30 and May 7, 2014 respectively. On May 14, 2014 Ms. McKelvin reiterated the diagnoses and advised that appellant could return to restricted duty.

In correspondence dated May 20, 2014, Charlene D. Richburg, health and resource manager with the employing establishment, challenged the claim. She noted that until the date of injury appellant had been off work for 11 months due to an accepted May 3, 2013 right knee injury. Ms. Richburg related that, after being on the street for two hours and delivering mail for 20 minutes, he claimed this new injury and stated that he needed to go to the doctor. Bryant Hubbard, customer service manager, noted that appellant had just returned to work after a right knee injury. He related that appellant returned to the employing establishment at 12:11 p.m. on April 21, 2014, stating that his knee hurt, and he left. Mr. Hubbard related that appellant did not claim a new injury until he reported to work on April 22, 2014 and asked to be taken to Concentra, and then claimed he hurt his left knee.

By letter dated May 21, 2014, OWCP informed appellant of the evidence needed to support his claim. In letters dated May 23 and 24, 2014, appellant indicated that he had left knee pain before the claimed April 22, 2014 injury, due to altered gait mechanics related to his May 3, 2013 right knee injury. He maintained that he injured his left knee when he put weight on it. On June 2, 2014 appellant reported that he was on the street for two hours, but only delivered mail for 20 minutes. He stated that, after he injured his left knee and returned to the employing establishment, he reported the injury to Mr. Hubbard.

Appellant submitted additional medical reports from Concentra dated April 25 to June 18, 2014. Ms. McKelvin completed treatment notes on April 25 and May 14 and 19, 2014 in which she noted a history that he hurt his knee at work. She provided physical examination findings and diagnosed muscle strain of left knee and acute knee pain. On April 30 and May 7, 2014 Dr. Chen and Dr. Aisha Rivera, Board-certified in preventive medicine, noted seeing appellant for follow-up of left knee sprain. Each described physical examination findings and provided work restrictions.

A May 29, 2014 magnetic resonance imaging (MRI) scan of the left knee demonstrated scarring at the anterior cruciate ligament, likely from chronic sprain without acute injury, a suspected nondisplaced oblique tear at the posterior horn of the medial meniscus, and minimal chondrosis in the medial compartment.

Dr. Michael A. Hill provided a physician work activity status report on May 30, 2014. He diagnosed knee sprain, derangement of posterior horn of medial meniscus, and knee pain and advised that appellant could work with restrictions. In reports dated June 4, 2014, Ms. McKelvin reiterated her diagnoses and conclusions. In reports dated June 11, 2014 Namat Said, a physician assistant, provided physical examination findings. On June 18, 2014 Dr. Williams provided findings and diagnosed acute knee pain, posterior horn derangement of the medial meniscus, and muscle strain of the left knee and provided work restrictions.

By decision dated July 3, 2014, OWCP denied appellant's claim because the medical evidence of record did not demonstrate that the claimed medical condition was caused by the established work-related incident.

On July 11, 2014 appellant, through counsel, requested a hearing. He submitted medical evidence previously of record. Karen Ramos, a physical therapist, reported that functional capacity evaluation on June 24, 2014 demonstrated that appellant could perform medium work duties with limitations.

In a July 2, 2014 report, Dr. Michael Wallace, a Board-certified orthopedic surgeon, reported a history that appellant, who was recovering from a right knee arthroscopy, had misstepped while climbing stairs, and injured his left knee. He described left knee examination findings, reviewed the MRI scan, and diagnosed a possible medial meniscus tear in the posterior horn. Dr. Wallace advised that appellant could work with restrictions.

A notice of termination during probation period dated April 24, 2014 indicated that appellant was terminated effective that day because he failed to work in a safe manner.

At the hearing, held on January 26, 2015, appellant described his right and left knee injuries. He testified that on April 22, 2014 when he put weight on his left knee while walking up steps, the knee gave out and he fell to the ground. Appellant indicated that he called the employing establishment, but no one answered, and he then went back to the employing establishment, and Mr. Hubbard told him to finish his route and when appellant stated that he could not due to pain, Mr. Hubbard told appellant he was terminated. The record was held open for 30 days.

By decision dated March 10, 2015, an OWCP hearing representative found that the medical evidence was insufficient to establish causal relationship and affirmed the July 3, 2014 decision.

On May 22, 2015 appellant, through counsel, requested reconsideration. In an April 20, 2015 report, Dr. Wallace noted that in April 2014 appellant went up a step delivering mail and his left leg gave out on him, causing a pretty severe left knee injury. He provided knee examination findings, noting full range of motion, but pain at the limits of flexion, and a positive McMurray's test on the medial joint line. Dr. Wallace diagnosed knee joint pain and advised

that appellant's history and examination were consistent with a meniscal tear. He recommended a new MRI scan.[2]

In a merit decision dated September 15, 2015, OWCP denied modification of its prior decision, finding that Dr. Wallace's April 20, 2015 report was neither detailed nor well rationalized concerning the causal relationship between a left knee meniscal tear and the accepted incident.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[3] including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.[4] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[5]

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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[6]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[7] 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 employee.[8] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[9]

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[2] A right knee MRI scan dated April 21, 2015 was submitted. The record does not include an additional left knee MRI scan.

[3] *J.P.*, 59 ECAB 178 (2007).

[4] *R.C.*, 59 ECAB 427 (2008).

[5] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *T.H.*, 59 ECAB 388 (2008).

[7] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[8] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[9] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

Medical opinion, in general, can only be given by a qualified physician.[10] Section 8101(2) of FECA provides that "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.[11] Registered nurses, licensed practical nurses and physicians' assistants are not "physicians" as defined under FECA. Their opinions are of no probative value.[12]

ANALYSIS

The Board finds that the claimed April 22, 2014 incident occurred as alleged. The medical evidence submitted by appellant, however, is insufficient to establish that this incident caused a medical condition related to the April 22, 2014 incident.

Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.[13] No physician of record did so in this case.

A physician assistant is not considered a physician under FECA.[14] The record includes a number of reports from Ms. McKelvin and Mr. Said. As they are not considered physicians as defined under FECA,[15] their reports are of no probative medical value on the issue of whether appellant sustained a left knee injury causally related to the April 22, 2014 incident.

Appellant also submitted a number of physician work activity status reports from physicians at Concentra Medical Centers. These activity status reports merely included diagnoses and work restrictions and did not contain an opinion regarding the cause of any diagnosed condition. 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.[16] Similarly, the May 29, 2014 MRI scan of the left knee did not provide a cause of any diagnosed condition. Likewise, in reports dated April 30 to June 18, 2014, while Drs. Chen, Rivera, Hill, and Williams provided physical examination findings and diagnoses that included acute knee pain, posterior horn derangement of the medial meniscus, and muscle strain/sprain, none of the physicians discussed the history of injury or the cause of any diagnosed condition. These reports, therefore, are insufficient to establish that appellant sustained a left knee injury causally related to the April 22, 2014 incident.

[10] *E.K.*, Docket No. 09-1827 (issued April 20, 2010).

[11] 5 U.S.C. § 8101(2); *see Roy L. Humphrey*, 57 ECAB 238 (2005).

[12] *Roy L. Humphrey, id.*

[13] *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

[14] *Roy L. Humphrey*, *supra* note 11.

[15] *Supra* note 11.

[16] *Willie M. Miller*, 53 ECAB 697 (2002).

In his reports dated July 2, 2014 and April 20, 2015, Dr. Wallace reported a history that appellant took a misstep while climbing stairs and injured his left knee. He described left knee examination findings, reviewed the MRI scan, and diagnosed a possible medial meniscus tear. Dr. Wallace opined that appellant's history and examination were consistent with a meniscal tear. The Board finds that his opinion lacks sufficient detailed medical rationale to discharge appellant's burden of proof that he sustained an employment-related left knee injury on April 22, 2014. At no time did Dr. Wallace positively link the possible medial meniscus tear or any other diagnosed left knee condition with the April 22, 2014 incident. He did not explain how a misstep could have caused any injury to the left knee. Without a detailed medical report describing how and why appellant sustained a left knee condition caused by the April 22, 2014 incident, he has not met his burden of proof.[17]

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to a claimant's federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[18] As Dr. Wallace did not adequately explain or describe physiologically how or why the April 22, 2014 employment incident caused a left knee condition, his opinion is of diminished probative value.[19]

It is appellant's burden to establish that the claimed left knee condition is causally related to the April 22, 2014 incident. He submitted insufficient evidence to establish a left knee condition caused by this incident.

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 appellant did not meet his burden of proof to establish that he sustained a left knee injury causally related to an April 22, 2014 employment incident.

[17] *See W.S.*, Docket No. 14-1022 (issued July 1, 2014).

[18] *A.D.*, 58 ECAB 149 (2006).

[19] *See M.L.*, Docket No. 14-1128 (issued September 17, 2014).

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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