United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 16-0753**
	)	**Issued: August 9, 2016**
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 7, 2016 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs (OWCP) dated January 29, 2016. 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 an injury to his right knee and right shoulder causally related to a September 15, 2015 employment incident.

FACTUAL HISTORY

On September 16, 2015 appellant, a 52-year-old electronic technician, filed a traumatic injury claim (Form CA-1) alleging that he injured his right knee and right shoulder when he

[1] 5 U.S.C. § 8101 *et seq.*

tripped and fell to the ground on September 15, 2015. He stopped work on September 16, 2015 and returned to modified duty on September 21, 2015.

Appellant was seen by Dr. Kevin P. O'Rourke, an emergency medical physician, at the Missouri Baptist Medical Center on September 15, 2015. Dr. O'Rourke noted that appellant had experienced a fall. Multiple contusions were diagnosed.

By letter to appellant dated December 29, 2015, OWCP informed appellant that, while it had initially handled his claim administratively and authorized payment of a limited amount of medical expenses, it was reopening his claim because his medical bills had exceeded $1,500.00. It noted that the merits of the claim now needed to be formally considered and advised that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. OWCP asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether his claimed condition was causally related to his federal employment. Appellant was afforded 30 days to submit this additional evidence.

In a September 21, 2015 report, Dr. Joseph Karre, an osteopath, noted that appellant was experiencing right shoulder and right knee pain due to a work injury which occurred on September 15, 2015. He related that appellant was moving a machine at work when he tripped over it and fell forward, landing on his right side; as a result of this fall appellant injured his right shoulder, right knee and neck. Dr. Karre reported that appellant underwent x-rays, which were negative. Appellant was off work for one week and was experiencing pain, which he rated as a 7 on a scale of 1 to 10. Dr. Karre noted that appellant had focal pain in the right knee with some soft tissue swelling. He had good range of motion in the right knee, but had patellar crepitance. Appellant also had diffuse muscle soreness in his right shoulder girdle, with range of motion limited in all directions with flexion and abduction to 90 degrees. Dr. Karre reported that appellant's pain extended to his trapezius, pectoralis, and cervical muscle. He diagnosed acute strain of the neck muscle, contusion of right knee, and right shoulder sprain.

In a September 25, 2015 report, Dr. Karre related that appellant's pain was somewhat diminished but was still significant in the neck and shoulder region. He advised that his right knee was improved. Appellant continued to undergo physical therapy and was working modified duty. Dr. Karre reiterated his previous diagnoses and continued appellant on modified duty with restrictions. He allowed appellant to lift up to 10 pounds constantly, with no reaching above the shoulders, no squatting, and no kneeling. On October 8, 2015 Dr. Karre reiterated his previous findings and conclusions.

In an October 20, 2015 report, Dr. Karre noted improvement in appellant's right shoulder and right knee due to physical therapy. He reported that appellant's right knee always had soreness with arthritis and that the original injury had healed. Dr. Karre advised that appellant was experiencing generalized soreness through the right shoulder girdle, which extended into the anterior cervical strap muscles and posterior paraspinal muscle and trapezius and that appellant had good range of motion in the right shoulder, but with limited abduction and flexion. He noted that the right knee bruising had resolved and appellant had good range of motion in the right knee. Appellant, however, continued to experience chronic joint soreness in the right knee.

On October 27, 2015 Dr. Karre reiterated his previous findings and conclusions.

In a November 5, 2015 report, Dr. Karre advised that appellant was experiencing continued pain in the upper right back, shoulder, and neck. He reported that appellant continued to experience pain in both knees but advised that this was associated with chronic underlying arthritis. Dr. Karre opined that appellant's long-term prognosis was difficult, especially with his underlying chronic pain and arthritis. He returned appellant to full duty with no work restrictions.

On November 20, 2015 Dr. Boris Khariton, a physiatrist, noted that appellant was seen at the request of Dr. Karre for right shoulder pain. He noted that on September 15, 2015 appellant was moving a machine at work, when he fell primarily on his right side, hitting his right arm and shoulder. Dr. Khariton diagnosed right shoulder pain.

In a December 4, 2015 report, Dr. Khariton noted that appellant had mild decreased range of motion in the right shoulder due to pain complaints and several trigger points over the right trapezius muscle and the right lower cervical paraspinal muscles. He administered trigger point injections to the right trapezius muscle and right lower cervical paraspinal muscles.

In a January 8, 2016 report, Dr. Khariton noted that the trigger point injections had produced a substantial improvement of the right posterior shoulder and neck pain. He reported that appellant no longer had any significant pain and discomfort in the right posterior shoulder or neck area and had been on regular activity at work. Dr. Karre released appellant from care and advised him to continue regular activity at work.

By decision dated January 29, 2016, OWCP denied the claim, finding that appellant failed to provide sufficient medical evidence to establish a right knee or right shoulder injury causally related to the accepted September 15, 2015 work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish that 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 timely filed within the applicable time limitation period of FECA, that an injury was sustained 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.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established.

[2] *Id*.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

Causal relationship is a medical issue and the medical 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 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.[7]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[8]

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

ANALYSIS

OWCP has accepted that appellant tripped and fell to the ground at work on September 15, 2015. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.[10] The Board finds that appellant has not submitted rationalized, probative medical evidence to establish that the September 15, 2015 employment incident caused a personal injury.

Appellant was initially seen in an emergency room on September 15, 2015 by Dr. O'Rourke. Dr. O'Rourke noted appellant's history of a fall at work and he diagnosed multiple contusions. However he offered no medical opinion causally relating appellant's contusions to the employment incident. As such Dr. O'Rourke's report is of limited probative value.[11]

Appellant submitted several reports from Dr. Karre, who noted appellant's complaints of right knee pain and right shoulder pain on examination and diagnosed cervical strain, right

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Id.* For a definition of the term "injury," *see* 20 C.F.R. § 10.5(ee).

[7] *G.O.*, Docket No. 16-0311 (issued June 14, 2016).

[8] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[9] *Id.*

[10] *Carlone*, *supra* note 5.

[11] *See L.B.*, Docket No. 16-0486 (issued June 28, 2016).

shoulder strain, and right knee contusion with arthritis. He also administered x-rays, which were negative. In his September 25, 2015 report, Dr. Karre placed appellant on modified duty with restrictions, limiting him to no lifting exceeding 10 pounds, with no reaching above the shoulders, no squatting, and no kneeling. In his October 20, 2015 report, Dr. Karre noted improvement in appellant's right shoulder and right knee due to physical therapy and advised that he was experiencing soreness in his right knee due to arthritis, as the original injury had healed. He released appellant to full duty in his November 5, 2015 report.

In his December 4, 2015 report, Dr. Karre administered trigger point injections to the right trapezius muscle and right lower cervical paraspinal muscles and later reported that these injections produced a significant reduction in pain. In his January 8, 2016 report, Dr. Karre allowed appellant to continue on full duty and released him from treatment.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[12] While Dr. Karre noted complaints of right knee and right shoulder pain which he generally attributed to the September 15, 2015 work incident, his reports did not contain a probative, rationalized opinion regarding whether the September 15, 2015 work incident caused a personal injury. He did not sufficiently explain how medically appellant would have sustained right knee and right shoulder injuries because he tripped and fell to the ground on September 15, 2015. Dr. Karre did not adequately describe appellant's accident or how the accident would have been competent to cause the claimed condition. As such, his reports were not sufficiently rationalized to establish a causal connection between appellant's September 15, 2015 work incident and his claimed right knee and right shoulder injuries.[13]

Appellant also submitted reports from Dr. Khariton dating from November 20, 2015 to January 8, 2016. Dr. Khariton noted appellant's history of injury and diagnosed right shoulder pain. However pain is not a diagnosis, but it is rather a symptom. As Dr. Khariton did not provide a medical opinion causally relating a diagnosed medical condition to the accepted employment incident, his opinion is of limited probative value.[14]

Finally, while appellant also submitted a number of physical therapy reports to the record, the Board has held that reports from physical therapists are not considered medical evidence as they are not physicians under FECA.[15]

OWCP advised appellant of the evidence required to establish his claim. However, appellant failed to submit such evidence. Causal relationship must be established by rationalized medical opinion evidence. Appellant did not provide a medical opinion which describes or

[12] *See Anna C. Leanza*, 48 ECAB 115 (1996).

[13] *Supra* note 7.

[14] *See J.E.*, Docket No. 16-0370 (issued June 27, 2016).

[15] *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician's assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2).

explains the medical process through which the September 15, 2015 work accident would have caused the claimed injury. Accordingly, he did not establish that he sustained right knee and right shoulder injuries in the performance of duty. OWCP properly denied appellant's claim for compensation.

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 has not met his burden of proof to establish an injury to his right knee and right shoulder causally related to a September 15, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 9, 2016
Washington, DC

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

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

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