United States Department of Labor
Employees' Compensation Appeals Board

K.T., Appellant	)	
and	)	**Docket No. 15-1758**
	)	**Issued: May 24, 2016**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Ayer, MA, Employer	)	

Appearances:
Appellant, pro se
Sarah Tunney, Esq., for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 19, 2015 appellant filed a timely appeal from a March 4, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met her burden of proof to establish a recurrence of her medical condition causally related to her December 27, 2010 employment injury.

On appeal a memorandum of justification was received on behalf of the Director of OWCP. In this memorandum, the Director argues that appellant has not met her burden of proof to establish a recurrence of medical condition because more than 90 days elapsed after appellant's release from medical care to the alleged recurrence; therefore, appellant was responsible for submitting a medical report supporting causal relationship between her current condition and the accepted injury.

FACTUAL HISTORY

On December 28, 2010 appellant, then a 38-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on December 27, 2010 she slipped on ice on the compound walkway and sustained a right knee strain. The record does not indicate that she stopped work. OWCP accepted the claim for right knee strain. On February 16, 2011 Dr. Robert O. Voight, a Board-certified internist, diagnosed improved right knee strain and released appellant from medical care for her work-related condition. He advised that she could continue to work without restrictions and should transition from physical therapy to a home exercise program.

On December 4, 2014 OWCP received appellant's September 8, 2014 claim for recurrence of disability for medical treatment (Form CA-2a) of the accepted right knee condition. Evidence submitted with the claim included appellant's undated statement received December 4, 2014 and a September 3, 2014 right knee magnetic resonance imaging (MRI) scan report.

In a September 2, 2013 report, Dr. Eric Holstein, a Board-certified orthopedic surgeon, reported a history of an initial right knee injury playing basketball in 1988 and right knee anterior cruciate ligament (ACL) reconstruction in 1991. He noted that appellant reinjured her right knee at work on December 27, 2010 during a fall and he noted her current complaints of right and left knee pain. Dr. Holstein diagnosed severe right knee degenerative joint disease and mild left knee degenerative joint disease. He reported no change on physical examination. An assessment of knee degenerative joint disease and arthropathy of knee joint was provided. In a November 4, 2013 attending physicians report, Dr. Holstein noted that appellant had preexisting knee osteoarthritis and injured her right knee at work on December 27, 2010. He opined with a checkmark in a box marked "yes" that her current severe medial bone-on-bone arthropathy and lower leg joint pain was caused or aggravated by employment activity. Dr. Holstein noted that appellant had not been disabled since 2011. A return to work slip noted that appellant has been seen on October 24, 2013 for knee arthritis related to a fall at work on December 27, 2010.

In an August 28, 2014 report, Dr. Gregory Soghikian, a Board-certified orthopedic surgeon, noted that appellant's history of problems with the right knee dated back to high school sports and an ACL reconstruction in 1991. He also noted that she had a slip and fall on ice at work in 2010. The knee did relatively well until October 2013 when appellant started to complain of right knee pain. Dr. Soghikian presented examination findings and noted that the x-rays obtained showed severe osteoarthritic collapse of the medial joint and a screw in the proximal lateral femur consistent with a prior ACL reconstruction. He diagnosed severe osteoarthritis, medial compartment, which he opined was due to appellant's old injury and her old surgery, which was likely a meniscectomy. Dr. Soghikian opined that her work-related injury in 2010 was not a substantial contributing factor as she had not sought treatment for the knee ongoing since 2010 and osteoarthritic changes after meniscectomy were fairly well established complications of ACL injury and meniscectomy. A total knee replacement was recommended.

Medical reports from Dr. Kathleen Hogan, a Board-certified orthopedic surgeon, were also received. In a September 16, 2014 report, Dr. Hogan noted the history of injury as well as the initial right knee injury in high school and ACL reconstruction. She noted that appellant was diagnosed in 2013 with arthritis and that anti-inflammatories did not help. Dr. Soghikian had

referred appellant to her. She provided examination findings and reviewed x-rays and diagnosed knee arthritis. Dr. Hogan agreed with Dr. Soghikian that a total knee replacement was the best option for appellant. She advised that, based on the history of the fall, it was difficult for her to make a clear determination of whether or not this injury was related to the development of arthritis without more information. Progress reports dated October 28 and November 14, 2014 were also provided. It was noted that, while a knee replacement was in appellant's future, it should be put off as along as possible.

In a January 30, 2015 letter, OWCP acknowledged appellant's request for continued medical treatment due to a consequential condition, specifically an aggravation of her right knee arthritis caused by the original injury. It advised that for her to be entitled to additional medical treatment for her work injury after being released from care, or not receiving care for a significant period of time, she needed to provide evidence that her need for treatment was due to a worsening of the accepted medical condition without an intervening cause. OWCP noted that appellant was released from medical care for her work-related condition on February 16, 2011. It explained that the medical evidence submitted was insufficient to establish her recurrence claim. It requested that she provide additional factual evidence along with copies of all medical records for the work-related knee condition and a comprehensive, narrative medical report from her treating physician, which contained an opinion supported by medical rationale as the relationship between her current medical condition and need for treatment and the original injury. Appellant was accorded 30 days to submit the requested evidence.

In response, OWCP received evidence previously of record along with a February 21, 2015 authorization request form.

By decision dated March 4, 2015, OWCP denied the claimed recurrence of medical condition. It found that the evidence was insufficient to establish that appellant required additional medical treatment due to the December 27, 2010 work injury. OWCP advised that her claim remained closed for medical care.

LEGAL PRECEDENT

The United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.[1]

Recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment.[2]

[1] 5 U.S.C. § 8103(a).

[2] 20 C.F.R. § 10.5(y).

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal relationship between the employee's current condition and the original injury in order to meet her burden.[3]

An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury. To meet this burden, the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports her conclusion with sound medical rationale.[4]

ANALYSIS

OWCP accepted that appellant's December 27, 2010 employment injury resulted in right knee strain. On December 4, 2014 it received her September 8, 2014 claim for a recurrence of medical condition for medical treatment of the accepted right knee condition.

The record reflects that appellant last sought treatment for her work-related knee condition on February 16, 2011, when Dr. Voight diagnosed improved right knee strain and released her from medical care. Although Dr. Voight did not formally discharge appellant from treatment for her work-related condition, a sufficiently lengthy gap in treatment has the same effect as a formal discharge.[5]

Appellant then briefly sought treatment from Dr. Holstein from September through November 2013, where she was diagnosed with severe right knee degenerative joint disease and mild left knee degenerative joint disease. Dr. Holstein reported a history of an initial right knee injury in 1988, ACL reconstruction in 1991, and a fall at work on December 27, 2010. While he opined in a November 4, 2013 attending physician's report that her current severe medial bone-on-bone arthropathy and lower leg joint pain was caused or aggravated by employment activity and had advised in a return to work slip of October 24, 2013 that the knee arthritis was related to fall at work on December 27, 2010, Dr. Holstein failed to provide a well-rationalized medical opinion regarding the relationship between the currently diagnosed arthritis to either the 1999 right knee injury, the 1991 surgery or the December 27, 2010 work injury. While in his November 4, 2013 attending physician's report Dr. Holstein noted by checking a box marked "yes" that appellant's current condition was caused or aggravated by her employment, the Board has held that a checkmark "yes" or affirmative notation in response to a form question on causal relationship is insufficient, without medical rationale, to establish causal relationship.[6] Medical

[3] Federal (FECA) Procedure Manual, Part 2 -- *Recurrences,* Chapter 2.1500.4(b). (June 2013); *see also J.M.*, Docket No. 09-2041 (issued May 6, 2010).

[4] *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

[5] *See Kent W. Rasmusen*, Docket No. 04-1137 (issued August 4, 2004).

[6] *B.M.*, Docket No. 15-1233 (issued October 1, 2015).

evidence that does not offer any rationalized opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[7]

Appellant's release from active treatment in 2011 followed by the periods of relative inactivity beginning at that time and after 2011 justify OWCP's request that she submit a reasoned medical opinion establishing that the additional medical treatment was causally related to an objective worsening of the accepted medical condition without intervening cause.[8] As noted by the Director, because more than 90 days elapsed from appellant's last medical treatment to her claim of recurrence of disability, it is appellant's burden of proof to establish causal relationship.

The evidence of record does not establish that appellant's current need for medical care is related to the work-related injury of December 27, 2010. Dr. Soghikian, in his August 28, 2014 report, opined that the severe osteoarthritis found in the medial compartment, was due to her old injury and her old surgery, which was likely a meniscectomy. He explained that her work-related injury in 2010 was not a substantial contributing factor as she had not sought treatment for the knee since 2010 through now and that osteoarthritic changes after meniscectomy were a fairly well-established complication of ACL injury and meniscectomy. In her September 15, 2014 report, Dr. Hogan noted the history of the work injury, the prior right knee injury in high school, the ACL reconstruction, and that appellant was diagnosed in 2013 with arthritis. She advised that, based on the history of the work-related fall, it was difficult for her to make a clear determination of whether or not this injury was in anyway related to the development of arthritis without more information.

The Board finds that the evidence submitted by appellant lacks adequate rationale to establish a causal connection between the alleged recurrence of her medical condition and the accepted employment injury. Appellant maintains the burden to submit sufficient medical evidence to document the need for further medical treatment. If she is alleging that her current condition is consequential to her accepted December 27, 2010 injury, she must submit medical evidence which establishes that her condition is a natural consequence of the accepted injury.[9] Appellant did not submit such evidence as required and failed to establish a need for continuing medical treatment.[10]

Appellant may submit new evidence or argument as part of 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.

[7] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[8] *See C.T.*, Docket No. 15-0634 (issued September 9, 2015).

[9] *Supra* note 4.

[10] *See P.Q.*, Docket No. 14-1905 (issued May 26, 2015); *J.F.*, 58 ECAB 331 (2006).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of her medical condition causally related to her December 27, 2010 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated March 4, 2015 is affirmed.

Issued: May 24, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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