United States Department of Labor
Employees' Compensation Appeals Board

T.D., Appellant	)	
and	)	**Docket No. 16-1178**
	)	**Issued: November 9, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Jamaica, NY, 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 May 11, 2016 appellant filed a timely appeal of a February 19, 2016 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 traumatic injury in the performance of duty on December 29, 2015.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant submitted additional evidence with her appeal to the Board. The Board cannot consider this evidence as its review is limited to evidence which was before OWCP at the time of its merit decision. 20 C.F.R. § 501.2(c)(1); *P.W.*, Docket No. 12-1262 (issued December 5, 2012).

FACTUAL HISTORY

On December 29, 2015 appellant, then a 35-year-old casual mail handler, filed a traumatic injury claim (Form CA-1) alleging that, on that date at 7:45 p.m., she stepped between cars to work on a car and stumbled, falling to the floor, and hitting her right knee. The employing establishment checked the box marked "yes" in response to whether she was in the performance of duty at the time of the incident. Appellant stopped work on that date.

OWCP received several reports dated December 29 and 31, 2015 and January 4, 2016 from Dr. Manuel A. Ceja, an internist. In his December 29, 2015 attending physician's report (Form CA-20), Dr. Ceja noted that appellant had a right knee strain/sprain and contusion and checked the box marked "yes" in response to whether he believed that the condition was caused or aggravated by an employment activity. He indicated that she could return to light duty on December 31, 2015. In a December 31, 2015 attending physician's report, Dr. Ceja responded to the inquiry of the history of injury by filling in "tripped and hit [appellant's] right knee on the mail cart." He diagnosed right knee contusion, right knee sprain, and checked the box marked "yes" in response to whether he believed that the condition was caused or aggravated by an employment activity. Dr. Ceja noted that appellant would return on January 4, 2016 for a reevaluation and placed her off work until January 4, 2016. In a January 4, 2016 duty status report, he continued to advise that she not work.

In a January 13, 2016 letter, OWCP advised appellant that when her claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work. It noted that the employing establishment did not controvert continuation of pay or challenge the merits of the case and payment of a limited amount of medical expenses was administratively approved. However, the merits of the claim had not been formally considered and appellant's claim was being reopened because she had not returned to full-time work. OWCP explained the additional factual and medical evidence she needed to submit in support of her claim. It also noted that, on the claim form, appellant indicated that she "step between cars to work on one car, stumbled hit right knee, and fell on floor." OWCP noted that she claimed to have injured her right knee, but the circumstances regarding her injury were unclear.

In a December 31, 2015 report, Dr. Ceja advised that appellant stated that she "tripped and hit her right knee on the mail cart and fell on the floor." He advised that she had no prior injuries to any other body part and that she reported gradual improvement. Dr. Ceja examined appellant and diagnosed contusion of the right knee, subsequent encounter, and sprain of unspecified site of right knee. He advised that she was not fit for duty and she would return on January 4, 2016 for a reevaluation.

In a January 15, 2016 attending physician's report, Dr. Ceja noted that the history of injury was that appellant tripped and hit her right knee on the mail cart. He checked the box marked "yes" in response to whether he believed that the condition was caused or aggravated by an employment activity and diagnosed right knee sprain and contusion. Dr. Ceja checked the box marked "no" in response to whether appellant could return to work. He saw her on January 29, 2016 and recommended light duty effective January 29 to February 12, 2106.

In a January 21, 2016 report, Dr. Mark Bursztyn, a Board-certified orthopedic surgeon, noted that appellant was working as a mail handler and tripped and fell while at work on December 29, 2015. He examined her right knee and diagnosed right knee patellofemoral pain syndrome.

In a January 30, 2016 response to OWCP's request for additional information, appellant noted that she was new and may have gotten confused with regard to the wording of the items in the facility. She explained that the location was the same and provided photographs of the location at the employing establishment where she fell. Appellant explained that she had just completed loading some parcels onto a loading skid and her coworker was busy loading another. She indicated that she was on her way back to give another coworker his cutter, and was walking over the metal piece that connects one container to another, when she tripped and hit her right knee onto a slightly elevated metal piece and then hit her right knee to the floor. Appellant explained that this occurred around 7:45 p.m. and she alerted a coworker and her supervisor of the incident. She also advised that she was waiting to see if the pain would ease up so she continued working. However, the pain did not lessen, and appellant asked her supervisor to file an accident report.

In a February 8, 2016 report, Dr. Bursztyn diagnosed chondromalacia patellae, right knee and checked the box marked "yes" in regard to whether the incident appellant described was the cause of the injury or illness.

By decision dated February 19, 2016, OWCP denied appellant's claim finding that she did not establish an injury as alleged. It found that she did not explain factual discrepancies between whether she stepped between two cars to work on one car when she stumbled and hit her right knee and fell on the floor as opposed to her explanation that she was on her way to another employee to return a cutter when she was walking over a metal piece that connected one container to the other and she tripped and hit her right knee on a metal piece and then hit her knee again on the floor. OWCP found that appellant's explanation was unclear. Additionally, it found that the medical evidence did not establish an employment-related injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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,[3] and that an injury was sustained in the performance of duty.[4] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

[3] *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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.[6] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[7] 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.[8]

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[9] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.[10]

Rationalized medical opinion evidence is generally required to establish causal relationship. 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]

ANALYSIS

Appellant alleged on her claim form that, on December 29, 2015, she stepped between cars to work on one car and stumbled and hit her right knee and fell on the floor. The Board notes that the essential description is consistent, that she tripped and hit her right knee in the performance of duty. Furthermore, the employing establishment indicated that appellant was in the performance of duty and did not controvert the claim. Appellant also filed her claim on the date of injury. The medical records consistently indicate a history of her tripping and hitting her right knee on a mail cart. In a January 30, 2016 response to OWCP's request for additional information, appellant explained that she indicated that she had just completed loading some parcels onto a loading skid in one container and that, as she was on her way to return cutter to a

[6] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987).

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

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

[9] *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

[10] *Betty J. Smith*, 54 ECAB 174 (2002).

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

coworker, she tripped over an elevated piece of metal that connected one container to another. Appellant explained that this occurred around 7:45 p.m. and she alerted a coworker and her supervisor. As noted, an employee's statement alleging that an incident occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence. The Board finds that appellant's statements are generally consistent and not refuted by any other evidence. In view of the totality of the evidence, the Board finds that an employment incident occurred as alleged on December 29, 2015.

However, with regard to the medical evidence, the Boards finds that it is insufficiently rationalized to establish the second component of fact of injury, that the employment incident caused an injury. The medical evidence contains no reasoned explanation of how the specific employment incident on December 29, 2015 caused or aggravated an injury, but merely conclusory statements.[12] A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident or factors were sufficient to result in the diagnosed medical condition is insufficient to meet a claimant's burden of proof to establish a claim.[13]

OWCP received several from Dr. Ceja. In his December 29, 2015 attending physician's report, Dr. Ceja noted that appellant had a right knee strain/sprain and contusion and checked the box marked "yes" in response to whether he believed that the condition was caused or aggravated by an employment. In a December 31, 2015 and January 15, 2016 attending physician's reports, he responded to the history of injury by filling in "tripped and hit [appellant's] right knee on the mail cart." Dr. Ceja repeated his diagnoses and checked the box marked "yes" in response to whether he believed that the condition was caused or aggravated by an employment activity. The Board notes that while he filled in that appellant tripped and hit her right knee on the mail cart he merely checked the box marked "yes" with regard to whether he believed that the condition was caused or aggravated by an employment. However, the checking of a box marked "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[14] In a separate December 31, 2015 narrative report, Dr. Ceja advised that appellant stated that she "tripped and hit her right knee on the mail cart and fell on the floor." He diagnosed contusion of the right knee, subsequent encounter and sprain of unspecified site of right knee. However, Dr. Ceja offered no specific opinion on causal relationship. 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.[15]

In January 21 and February 8, 2016 reports, Dr. Bursztyn diagnosed chondromalacia patellae, right knee, and checked the box marked "yes" in regard to whether the incident appellant described was the cause of the injury or illness. However, as found above, the

[12] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[13] *J.D.*, Docket 14-2061 (issued February 27, 2015).

[14] *Linda Thompson*, 51 ECAB 694 (2000); *Calvin E. King*, 51 ECAB 394 (2000).

[15] *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

checking of a box marked "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.[16]

Because the medical reports submitted by appellant do not sufficiently address how or why the December 29, 2015 incident at work caused or aggravated a right knee condition, these reports are of limited probative value and are insufficient to establish that the December 29, 2015 employment incident caused or aggravated a specific injury.

On appeal appellant argues that she had requested a hearing on or about March 8, 2016, which was within the 30-day period and her request was denied, because she did not file a request within 30 days. However, the only decision before the Board is the February 19, 2016 decision. 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 met her burden of proof to establish fact of injury in the performance of duty on December 29, 2015. The Board further finds that she did not meet her burden of proof to establish a traumatic injury causally related to the accepted incident.

[16] *See supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the February 19, 2016 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: November 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