United States Department of Labor
Employees' Compensation Appeals Board

L.H., Appellant	)	
and	)	**Docket No. 16-1194**
	)	**Issued: October 27, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Buffalo, NY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, 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 May 16, 2016 appellant, through counsel, filed a timely appeal from an April 12, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 her burden of proof to establish a right knee injury causally related to an accepted June 15, 2013 employment incident.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 26, 2013 appellant, then a 58-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 15, 2013 she scraped her knee and the palm of her hand when she stepped down from a curb onto the street and her right knee buckled causing a fall. She stopped work on June 18, 2013.[3]

In a June 17, 2013 work release note, Dr. Kevin Coughlin, a Board-certified orthopedic surgeon, opined that appellant could not work until further notice.

The employing establishment controverted appellant's claim in a statement received on July 3, 2013. It pointed out that when appellant fell down on June 15, 2013 she informed R.N., supervisor of customer service, not to worry about the incident, and appellant did not immediately seek medical attention. The employing establishment noted that on June 15, 2013 appellant was working modified duty due to a previous work injury.

In a July 3, 2013 statement from appellant on which C.L., a human resources management specialist, provided a chronological timeline of the events surrounding the June 15, 2013 employment incident. The statement documents that on June 5, 2013 appellant stumbled on a runner and fell on her right knee. On June 6, 2013 appellant submitted medical evidence which authorized her to return to work with restrictions. She returned to modified duty on June 10, 2013. Her claim was accepted for medical benefits on June 13, 2015. On June 26, 2013 appellant filed another traumatic injury claim (Form CA-1) alleging that on June 15, 2013 she stepped off a curb when her right knee buckled, causing her to fall onto the street on her right knee. She then submitted medical evidence dated June 17, 2013, which recommended that she not return to work. C.L. requested that OWCP review the relationship between the June 5, 2013 injury and her current alleged injury and determine whether the two injury claims should be combined.

By letter dated July 8, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that appellant respond to a questionnaire in order to substantiate that the June 15, 2013 incident occurred as alleged. Appellant was also asked to submit medical evidence to establish that she sustained a diagnosed condition as a result of the alleged incident. She was afforded 30 days to submit this evidence. No additional information was provided.

OWCP denied appellant's claim in a decision dated August 16, 2013. It found that the factual evidence failed to substantiate that the June 15, 2013 incident occurred as alleged and that the medical evidence failed to establish a diagnosed condition causally related to any June 15, 2013 incident.

On August 8, 2014 OWCP received appellant's request, through counsel, for reconsideration.

[3] The record reveals that appellant has three previously accepted traumatic injury claims for an August 14, 2003 injury (OWCP File No. xxxxxx801); a February 14, 2008 injury (OWCP File No. xxxxxx616); and a June 5, 2013 injury (OWCP File No. xxxxxx755).

Appellant submitted medical reports from Dr. Coughlin dated December 5, 2008 through May 21, 2013 regarding treatment for bilateral knee joint arthrosis and persistent right knee joint osteoarthrosis pain.

On July 23, 2013 appellant underwent total right knee arthroplasty by Dr. Coughlin.

In reports dated June 17 to October 28, 2013, Dr. Coughlin related appellant's complaints of right knee pain and instability. He noted that appellant had experienced two falls which occurred on June 5 and 15, 2013. Dr. Coughlin reviewed appellant's history and noted that appellant had undergone a right knee arthroscopic medial and lateral meniscectomy and medial, lateral, and anterior compartment chondroplasty. Upon examination, he observed mild-to-moderate swelling about the right knee, tricompartmental crepitation with passive manipulation, and healed surgical sites. Right knee alignment was full and range of motion was near full. Dr. Coughlin diagnosed right knee pain and right knee joint arthrosis, certainly aggravated by the two recent falls at work. He recommended that appellant not work.

By decision dated April 12, 2016, OWCP modified the August 16, 2013 decision. It accepted that the incident occurred as alleged and that medical evidence contained valid diagnoses of aggravation of right knee arthrosis and contusion of the right knee, but denied appellant's claim finding that the medical evidence was insufficient to establish that her right knee condition was causally related to the June 15, 2013 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[5] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[6]

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.[7] There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[8] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[9] An employee may establish that the employment incident

[4] 5 U.S.C. §§ 8101-8193.

[5] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[6] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[8] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[9] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

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

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[11] 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.[12] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[13]

ANALYSIS

Appellant alleged that on June 15, 2013 she sustained a right knee injury when she stepped off a curb while delivering mail at work. The record reveals that she has a previously accepted work-related right knee injury. OWCP accepted that the June 15, 2013 incident occurred as alleged and that appellant was diagnosed with aggravated right knee arthrosis and right knee contusion. It denied her claim finding that the medical evidence failed to establish that her right knee condition was causally related to the June 15, 2013 work incident.

The record reveals that Dr. Coughlin had treated appellant for bilateral knee joint arthrosis and persistent right knee joint osteoarthrosis beginning in 2008. In reports dated June 17 to October 28, 2013, he related appellant's complaints of right knee pain and instability and mentioned that appellant had two falls at work on June 5 and 15, 2013. Dr. Coughlin reviewed appellant's history and conducted an examination. He observed mild-to-moderate swelling about the right knee and tricompartmental crepitation with passive manipulation. Dr. Coughlin diagnosed right knee pain and right knee joint arthrosis, certainly aggravated by the two recent falls at work. The Board notes that although Dr. Coughlin's opined that appellant's right knee condition was aggravated by the June 15, 2013 fall at work, he did not provide adequate medical rationale explaining how the fall at work actually caused or aggravated her current right knee condition.[14]

The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[15] Furthermore, the Board notes that Dr. Coughlin attributed appellant's right knee symptoms to two work incidents on June 5 and 15, 2013. A rationalized medical explanation is especially warranted in this case where appellant had two incidents at work that involved falls. An award of compensation may not be based on surmise, conjecture, speculation

[10] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[11] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

[12] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[13] *James Mack*, 43 ECAB 321 (1991).

[14] *See K.W.*, Docket No. 10-98 (issued September 10, 2010).

[15] *T.M.*, Docket No. 08-975 (issued February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.[16] Because Dr. Coughlin fails to provide adequate medical rationale or explanation for how the June 15, 2013 caused or contributed to appellant's right knee condition, his opinion is insufficient to establish appellant's claim.

On appeal, appellant's counsel alleges that OWCP's decision was contrary to fact and law. As explained above, however, the evidence of record fails to demonstrate that appellant's right knee condition was causally related to the June 15, 2013 employment incident and is insufficient to establish her traumatic injury claim.

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 her burden of proof to establish a traumatic injury causally related to a June 15, 2013 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2016 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 27, 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

[16] *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).