

FACTUAL HISTORY

On December 1, 2014 appellant, then a 48-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 6, 2014, she was delivering mail when a dog approached her in attack mode, she then twisted her right knee as she tried to escape. She alleged that this incident also aggravated a previous injury of August 26, 2008 to her lower back and left knee. In a handwritten statement submitted with the claim, appellant indicated that while escaping a dog attack on her route, she turned abruptly and twisted her right knee. She indicated that she refused medical attention at that time. Appellant stopped work on November 17, 2014.

The employing establishment controverted appellant's claim. The employing establishment contended that appellant failed to provide objective, well-reasoned medical evidence which demonstrated that her claimed conditions were causally related to factors of her federal employment.

Appellant had a prior claim before OWCP in xxxxxx524 that was accepted for a left leg contusion resulting from an August 26, 2008 employment injury. Appellant also submitted some diagnostic studies that predated her current alleged injury. A September 3, 2008 magnetic resonance imaging (MRI) scan of appellant's left knee was normal. An April 23, 2009 MRI scan revealed possible minor degenerative change at L4-5 with bulge.

In support of her claim, appellant submitted a November 17, 2014 report wherein Dr. Shahram Rezaamiri, a Board-certified neurosurgeon, noted that appellant injured her back on October 26, 2008 while she was pulling a dolly up a set of stairs at a local high school. He noted that appellant has been dealing with a myriad of treatment modalities over the past several years including lumbar injections in 2010 (which did not give her significant relief), physical therapy, NSAIDs, narcotics, and bracing. He indicated that the worsening happened in a gradual fashion and appellant denied any new trauma or accident. He noted that appellant's symptoms were worse than at the time of the initial accident. Dr. Rezaamiri assessed appellant with lumbar radiculopathy and low back pain -- lumbago.

By letter dated December 11, 2014, OWCP informed appellant that additional medical evidence was necessary to support her claim and afforded appellant 30 days to provide this evidence. Appellant responded to this letter by submitting medical evidence and further statements.

In an October 10, 2014 note, addressed to the employing establishment, appellant indicated that while exiting her vehicle a dog attacked her. She alleged that the dog did not bite her, but that she turned abruptly and twisted her right knee. Appellant signed a statement indicating that she did not seek medical attention nor did she wish to file a claim at that time.

In an October 27, 2014 initial report, Dr. Robert Karsch, a Board-certified orthopedic surgeon, noted that appellant saw him for left knee symptoms associated with an anterior knee pain. He noted that the symptoms began on August 26, 2008 when appellant pulled a dolly up stairs into a school to deliver mail, the handle pulled off, and she fell backwards twisting her left knee and further injuring her low back. Dr. Karsch also noted that appellant has been on limited

duty since the date of her original injury with no walking more than two hours. He further noted that last month appellant was chased by a dog and had to turn and run quickly to get away, and has been limping since that time because her left leg radicular symptoms were present again. Dr. Karsch listed his impression as possible tear of medial meniscus of left knee and ordered a new MRI scan. In a December 23, 2014 addendum, he clarified that appellant reinjured her knee on October 6, 2014 while working and being chased by a dog. Dr. Karsch asked to correct the prior note that indicated that she was injured "last month" while attempting to get away from a dog.

On December 12, 2014 appellant accepted OWCP's offer to work as a modified city carrier for 2.25 hours a day.

In a December 19, 2014 note, Dr. Tiffany Sanders, a physician Board-certified in emergency medicine, indicated that appellant was treated in the emergency department on December 19, 2014 and that she may return to work on December 22, 2014.

In an attending physician's report (Form CA-20) dated January 2, 2015, Dr. Rezaamiri diagnosed appellant with bulging lumbar disc and checked a box indicating that he believed that the condition was caused or aggravated by her employment. He specifically noted that on October 6, 2014 appellant claimed that she was frightened by a dog at work and that a sudden trauma would aggravate this type of injury. Dr. Rezaamiri noted that appellant was partially disabled.

In January 7, 2015 responses to questions from OWCP, appellant indicated that while walking on the grass to deliver mail, a dog leaped off a porch and charged her in an attacking manner. She stated that, following postal regulations, she pulled her dog spray and positioned her satchel in front of her while slowly backing up. Appellant stated that while doing so she lost her balance on the crest that joins the two yards together and the dog retreated back to the porch. She stated that when she was losing her footing, she turned abruptly to gain her balance and that was when she felt something pop. Appellant noted that she was already experiencing some discomfort and aching from her previous job-related injury dated August 26, 2008 that was documented in OWCP file number xxxxxx524.

In a statement received by OWCP on January 13, 2015, B.R., a coworker, indicated that appellant told her on October 6, 2014 that a dog had chased her, that she twisted her leg trying to get away from the dog, and that she advised her supervisor in writing. In another statement, S.J., a coworker, indicated that she speaks to appellant on a daily basis and that on October 6, 2014 appellant spoke to her about a dog that approached her in an attacking manner on her route that date, told her that she hurt her knee due to being startled by the dog, and stated that she was in pain. She continued to talk to her about how the pain was not subsiding.

By decision dated January 16, 2015, OWCP denied appellant's claim, finding that she had not established that the incident occurred as alleged. It also noted that the medical evidence did not establish that appellant sustained a diagnosed medical condition causally related to the employment incident.

By letter dated and received by OWCP on January 30, 2015, appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

A December 26, 2014 MRI scan of the lumbar spine was interpreted by Dr. Richard E. Barlow, a Board-certified radiologist, as showing mild early lumbar spinal stenosis at L4-5 where there is diffuse bulge of the disc annulus that is slightly eccentric to the right and bulging into the right neural foramen.

In a March 16, 2015 report, Dr. Samuel B. Milton, a Board-certified physiatrist, discussed appellant's injuries of August 25, 2008 and October 6, 2014. He assessed appellant with complaints of low back pain. Dr. Milton noted a normal neurological examination with the left anterior knee pain, MRI scan evidence of severe patellofemoral osteoarthritis with no evidence of internal derangement, and chronic low back pain. He noted MRI scan evidence of minor disc bulging with some lateral recess stenosis to the right that correlated with appellant's symptomology. Dr. Milton opined that based on medical documentation appellant appeared to have complaints of low back pain that had not resolved as a result of her injury from August 25, 2008 and as a result has ongoing restrictions. He noted that he was unable to relate with the medical documentation appellant's patellofemoral arthritis to her incident of August 25, 2008.

In a June 30, 2015 report from a follow-up visit, Dr. Karsch listed his impression of the left knee as degenerative joint disease -- patellofemoral, and noted that appellant would be a candidate for patellofemoral replacement in the future if she failed conservative treatment options. He noted that appellant was currently disabled from work from her spine physician.

At the hearing held on August 5, 2015, appellant described how her injury occurred, noted that she promptly reported the injury to her supervisor, and discussed her medical treatment. She stated that she told Dr. Rezaamiri about the dog attack when she first saw him. Appellant testified that she was currently not working. She noted that at the time of the injury she was working modified duty.

By decision dated September 28, 2015, the hearing representative found that incident had occurred as alleged. However, she denied appellant's claim because appellant had not met her burden of proof to establish that her claimed medical conditions were causally related to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence² 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.³

² *J.P.*, 49 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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.⁴ 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.⁵ 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.⁶ An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.⁷

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.⁸ 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.⁹

ANALYSIS

OWCP has accepted that the employment incident of October 6, 2014 occurred as alleged. However, it denied appellant’s claim because she did not establish an injury causally related to the accepted injury. The Board finds that appellant did not meet her burden of proof to establish that the accepted October 6, 2014 employment incident resulted in an injury.

Appellant did not seek medical attention for the October 6, 2014 employment incident until October 27, 2014, at which point she saw Dr. Karsch. Dr. Karsch noted in this report that appellant was chased by a dog during her employment the prior month and had to turn and run quickly to get away, and has been limping since that time. In an addendum dated December 23, 2014, he issued a correction and noted that appellant reinjured her knee when she was chased by a dog on October 6, 2014, and that his prior statement that she was chased the previous month was incorrect. Dr. Karsch’s general statement that appellant reinjured her left knee on October 6, 2014 does not constitute rationalized medical opinion evidence linking a medical diagnosis to the accepted employment incident. He did not provide a specific medical diagnosis indicating that a medical condition was caused or aggravated by the October 6, 2014 incident, nor did he provide an explanation as to how this aggravation occurred. A mere conclusion without the necessary

⁴ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁵ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁶ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindshi*, 57 ECAB 418 (2006).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

⁹ *James Mack*, 43 ECAB 321 (1991).

rationale explaining how and why the physician believes that a claimed employment incident resulted in a diagnosed condition is insufficient to meet a claimant's burden of proof.¹⁰

Dr. Rezaamiri did check a box marked "yes" on his attending physician's report indicating that appellant's condition of bulging lumbar disc was related to the October 6, 2014 employment incident, and noted that appellant informed him that she was frightened by a dog at work on that date, and that a sudden trauma would aggravate this type of injury. The Board has held that a physician's opinion that consists of checking a box on a form report without more by way of medical rationale, is of diminished probative value in establishing causal relationship.¹¹ No medical rationale was provided by Dr. Rezaamiri on the issue of causal relationship.¹² His brief statement on the January 2, 2015 attending physician's report is unrationalized. Although Dr. Rezaamiri's statement is generally supportive of a causal relationship, he did not explain the process by which appellant's particular work incident caused or contributed to the diagnosed condition.¹³ Furthermore, his statement is inconsistent with his earlier November 17, 2014 report wherein he specifically noted that appellant indicated that her lower back and leg pain happened in a gradual fashion and that appellant denied any new trauma or accident.

Although Dr. Milton mentioned the October 6, 2014 dog incident, he did not provide an opinion on whether there was any causal relationship between this accepted employment incident and appellant's back and knee conditions. Dr. Sanders merely indicated that appellant received treatment in the emergency room on December 19, 2014 and may return to work on December 22, 2014. She did not address appellant's medical condition. The Board notes that 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.¹⁴ The diagnostic studies, including the December 26, 2014 MRI scan report by Dr. Barlow, do not address a causal relationship.¹⁵ Accordingly, the medical evidence is insufficient to establish causal relationship between appellant's current medical condition and the accepted employment incident.

The statements by appellant and by B.R. and S.J. are also insufficient to establish causal relationship. Lay persons are not competent to render medical opinions.¹⁶ As noted, causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.¹⁷ The Board has held that the mere fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship; temporal

¹⁰ *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

¹¹ *N.K.*, Docket No. 15-1532 (issued March 11, 2016).

¹² *Id.*

¹³ *See J.S.*, Docket No. 14-818 (issued August 7, 2014).

¹⁴ *F.T.*, Docket No. 15-1109 (issued June 17, 2016).

¹⁵ *See G.M.*, *supra* note 10.

¹⁶ *James A. Long*, 10 ECAB 538 (1989).

¹⁷ *See S.C.*, Docket No. 16-0002 (issued November 25, 2015).

relationship alone will not suffice.¹⁸ Furthermore, appellant's personal belief that her employment activities either caused or contributed to her condition is insufficient, by itself, to establish causal relationship.¹⁹

As the evidence is insufficient to establish a causal relationship, appellant has failed to meet her burden of proof to establish her 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 established an injury causally related to the accepted October 6, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 28, 2015 is affirmed.

Issued: September 13, 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

¹⁸ *Id.*

¹⁹ *See D.I.*, 59 ECAB 158, 162 (2007); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).