United States Department of Labor
Employees' Compensation Appeals Board

L.D., Appellant	)	
and	)	**Docket No. 17-0435**
	)	**Issued: April 5, 2017**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Northport, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 19, 2016 appellant, through counsel, filed a timely appeal from a July 20, 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.

[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.*

ISSUE

The issue is whether appellant met her burden of proof to establish an injury causally related to a March 2, 2015 employment incident.

FACTUAL HISTORY

On March 3, 2015 appellant, then a 55-year-old medical administration specialist, filed a traumatic injury claim (Form CA-1) alleging that she injured her left leg/calf in the performance of duty on Monday, March 2, 2015. She reported that she tripped/slipped and lost her footing on ice in the parking lot. The reported time of the incident was 12:30 a.m.[3] Appellant stopped work on March 3, 2015 and received continuation of pay.

In an April 2, 2015 statement, appellant indicated that the early Monday morning March 2, 2015 incident occurred at the end of her tour of duty while she was attempting to enter her vehicle, which was parked on the employing establishment's premises. She stated that she was outside of her vehicle attempting to clear the windshield of snow and ice while it was still snowing. When appellant reached to clean the windshield, she reportedly slipped on a snow-covered patch of ice. Her leg immediately "gave away/out" and when she tried to step on it, she indicated that she could not walk on that leg (left) from the knee down. Appellant further indicated that she grabbed onto her vehicle's side view mirror to prevent herself from falling.

At approximately 8:30 p.m. on Monday, March 2, 2015, appellant sought treatment at the employing establishment's occupational health unit. Her chief complaint was left leg pain. The reported history was that appellant was reaching "for something yesterday" and her leg gave way. It was further noted that she "Did not fall." Dr. Nicholas E. Sakellarios, a Board-certified internist, evaluated appellant and referred her to the emergency department. The occupational health unit's progress notes did not include a specific diagnosis. Appellant transferred to the emergency department at approximately 9:00 p.m. on March 2, 2015. She was seen by Robert A. Milano, a registered nurse. Left lower extremity x-rays revealed no acute abnormalities. Appellant received a diagnosis of "left calf strain" and she was discharged at approximately 11:00 p.m. A March 2, 2015 duty status report (Form CA-17) included a diagnosis of calf strain; however, the author's signature is illegible.

In a report dated March 4, 2015, Dr. P. Warwick Green, a Board-certified orthopedic surgeon, indicated that appellant reported sustaining an injury on "March 1" of this year when she slipped on ice in the parking lot at work and twisted her left knee. He indicated that appellant initially reported pain in her left knee, but now she complained of pain in her right knee as well. Dr. Green also noted that x-rays of both knees showed mild narrowing of the medial joint space, bilaterally. Additionally, the right knee x-ray showed patellofemoral degenerative changes. Dr. Green noted tenderness along the medial and lateral joint lines of the left knee, but no effusion, collateral ligament laxity, or neurologic deficit. He diagnosed left knee torn medial and lateral menisci, and right knee chondromalacia patellae. Dr. Green recommended a left knee

[3] Appellant's regular tour of duty was 4:00 p.m. to 12:00 a.m. (midnight), Wednesday through Sunday. In an April 13, 2015 statement, the employing establishment advised that the March 2, 2015 incident occurred on premises in the designated employee parking area.

magnetic resonance imaging (MRI) scan and advised that appellant would be reevaluated in two weeks.

In an addendum to his March 4, 2015 report, Dr. Green clarified that appellant was injured on March 2, 2015, rather than "March 1" as originally reported. The addendum further noted that the incident occurred after appellant's quitting time while she was cleaning snow from her car. Dr. Green reported that appellant reached to clean her windshield and "stepped/slipped" on a big piece of ice. He diagnosed medial and lateral meniscus tears, and left knee chondromalacia patella. Dr. Green further commented that if the foregoing history was accurate, causal relationship existed between appellant's current complaints and the history of injury.

A March 20, 2015 left knee MRI scan revealed tri-compartment degenerative changes, partial tear involving the medial meniscus, small knee joint effusion, and small popliteal cyst.

In a March 25, 2015 follow-up report, Dr. Green noted that appellant continued to complain of left knee pain and she reported episodes of buckling. He indicated that the current physical examination findings revealed no changes in appellant's left knee, but that appellant's left knee MRI scan showed a tear of the medial meniscus. He diagnosed medial meniscus tear and recommended a left knee arthroscopic partial medial meniscectomy. Dr. Green also advised that appellant was unable to work until further notice pending authorization of left knee surgery.

In a March 27, 2015 claim development letter, OWCP requested that appellant submit additional factual and medical evidence. It afforded him at least 30 days to submit the requested information.

In an April 22, 2015 report, Dr. Green noted physical examination findings and diagnosed tear of the medial meniscus of the left knee. He also advised that appellant was unable to work until further notice.

In a decision dated April 30, 2015, OWCP accepted that the March 2, 2015 incident occurred as alleged, that appellant was in the performance of duty at the time, and that a left knee medical diagnosis had been provided. However, it denied her traumatic injury claim because the medical evidence did not establish that the diagnosed left knee conditions were causally related to the March 2, 2015 employment incident.

On April 21, 2016 counsel requested reconsideration of OWCP's April 30, 2015 decision. In support of the request, he submitted additional medical evidence from appellant's physician, Dr. Green.

In a March 7, 2016 report, Dr. Green noted that appellant reported that on March 2, 2015 she was reaching to clean snow off her vehicle's windshield in the parking lot after quitting time at work and that she slipped on a big piece of ice, thereby twisting her left knee. He reviewed his previously reported treatment and diagnostic studies through April 22, 2015. Dr. Green further noted that on May 12, 2015 appellant underwent left knee arthroscopy, including partial medial meniscectomy, chondroplasty of the medial femoral condyle, and excision of the medial semilunar plica.[4] Postoperatively, Dr. Green examined appellant on six occasions, most recently

[4] The record does not include a May 12, 2015 operative report.

on October 21, 2015, at which time he noted that her left knee continued to be symptomatic. He reported that appellant "sustained an injury to the left knee at work on March 2, 2015 when she slipped on a large piece of ice in the parking lot…." Dr. Green further indicated that "[a]ssuming the accuracy of the history, a causal relationship exists between [appellant's] current complaints and the history of injury."

By decision dated July 20, 2016, OWCP denied modification of its April 30, 2015 decision. It found, among other things, that the medical evidence did not adequately explain how the March 2, 2015 employment incident either caused or contributed to appellant's diagnosed left knee condition.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.[5]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[6] The second component is whether the employment incident caused a personal injury.[7] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[8]

Certain health care providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[9] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing

[5] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[6] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[8] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[9] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

entitlement to FECA benefits.[10] A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician.[11]

A medical report should bear the physician's signature or signature stamp.[12] OWCP may require an original signature on the report.[13]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her claimed left knee condition was causally related to the accepted March 2, 2015 employment incident.

The initial March 2, 2015 treatment records from the employing establishment's occupational health and emergency departments are insufficient to meet her burden of proof because Dr. Sakellarios failed to provide a specific diagnosis, and Mr. Milano, who diagnosed left calf strain, is a registered nurse, and therefore, not qualified under FECA to offer a medical opinion.[14] Additionally, the March 2, 2015 duty status report (Form CA-17) does not contain a legible signature, and thus, it is unclear who the author is and whether he/she is a qualified physician under FECA.[15]

Dr. Green, who initially examined appellant on March 4, 2015, indicated that she reported sustaining an injury on "March 1" when she slipped on ice in the parking lot "twisting her left knee." He later clarified that the correct date of injury was March 2, 2015. Dr. Green reported that there was tenderness along the medial and lateral joint lines of the left knee, but no effusion, collateral ligament laxity, or neurologic deficit. He diagnosed torn medial and lateral menisci of the left knee and chondromalacia patellae of the right knee. Dr. Green did not initially offer an opinion on causal relationship. However, in his April 2, 2015 addendum, he not only clarified the date of injury, but further indicated that the incident occurred when appellant was cleaning snow off her vehicle's windshield and she "stepped/slipped on a big piece of ice." Additionally, Dr. Green commented that if the "foregoing history is accurate, causal relationship exists between [appellant's] current complaint and history of injury."

The Board finds that the submission of Dr. Green's March 4, 2015 report and addendum does not establish appellant's claim for a March 2, 2015 employment injury because Dr. Green did not provide adequate medical rationale in support of his opinion on causal relationship. The

[10] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[12] 20 C.F.R. § 10.331(a).

[13] *Id.*

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a (January 2013). *See S.M.*, Docket No. 16-0593 (issued February 24, 2017) (registered nurses are not considered "physicians" as defined under FECA. Therefore, their opinions are of no probative value).

[15] *See D.M.*, Docket No. 16-1734 (issued January 27, 2017); *see also Merton J. Sills*, 39 ECAB 572 (1983).

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 that is unsupported by medical rationale.[16] Dr. Green made a conclusory statement that, if the factual history was correct, the diagnoses of left torn medial and lateral menisci and chondromalacia patellae would be related to the March 2, 2015 work incident. In addition to the fact that the statement is equivocal, Dr. Green did not describe how the March 2, 2015 work incident either caused or contributed to the diagnosed left knee condition(s).[17]

In his March 25, 2015 follow-up report, Dr. Green indicated that appellant continued to complain of left knee pain. He noted that there was no change on physical examination of the left knee. Dr. Green also noted that appellant's recent left knee MRI scan revealed a torn medial meniscus. He recommended left knee arthroscopic surgery. However, Dr. Green did not provide any further discussion of the cause of the diagnosed left knee condition or the need for surgery. He provided the same left knee diagnosis on April 22, 2015, and again did not offer an opinion on causal relationship. Consequently, Dr. Green's March 25 and April 22, 2015 reports are insufficient to satisfy appellant's burden of proof regarding causal relationship.

In a March 7, 2016 report, Dr. Green noted that on May 12, 2015 appellant underwent left knee partial medial meniscectomy, chondroplasty of the medial femoral condyle, and excision of the medial semilunar plica. The Board notes that the record does not contain a May 12, 2015 operative report. In his latest report, Dr. Green detailed his treatment of appellant from March 4 through October 21, 2015. He further noted that appellant had not reached maximum medical improvement, and could require further medical management. Additionally, Dr. Green indicated that appellant "sustained an injury to the left knee at work on March 2, 2015 when she slipped on a large piece of ice in the parking lot…." He then commented that "[a]ssuming the accuracy of the history, a causal relationship exists between [appellant's] current complaints and the history of injury."

The Board notes that Dr. Green's March 7, 2016 report is deficient for the same reason that his April 2, 2015 addendum report is deficient. Dr. Green once again failed to provide any medical rationale in support of his opinion on causal relationship between specific, diagnosed conditions and the March 2, 2015 work incident. He did not describe the March 2, 2015 work incident in any detail or explain the medical process through which it could have caused or contributed to the diagnosed left knee conditions. As such, Dr. Green's latest report is insufficient to establish causal relationship.[18]

For these reasons, appellant has not established a work-related injury on March 2, 2015. She has failed to meet her burden of proof.

[16] *C.M.*, Docket No. 14-88 (issued April 18, 2014).

[17] The Board has held that equivocal medical opinions are of limited probative value. *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956).

[18] *Victor J. Woodhams*, *supra* note 7.

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.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an injury causally related to a March 2, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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