United States Department of Labor
Employees' Compensation Appeals Board

P.R., Appellant	)	
and	)	**Docket No. 17-0848**
	)	**Issued: August 8, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Mahwah, NJ, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 6, 2017 appellant filed a timely appeal from a January 6, 2017 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 to consider the merits of the case.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish additional conditions causally related to the accepted employment injury of November 7, 2016.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its January 6, 2017 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision and therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

FACTUAL HISTORY

On November 10, 2016 appellant, then a 49-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that, while delivering mail on November 7, 2016, she injured her legs and toe when she fell while being attacked by a dog. She stopped work on November 8, 2016.

In a November 8, 2016 report Dr. Raffaella Kalishman, a Board-certified internist, indicated that while appellant was running from a dog on November 7, 2016, she fell and injured herself. She diagnosed swelling of the left knee joint, sprain of the right toe, type 2 diabetes mellitus without complication, and essential hypertension. In a November 10, 2016 report, Dr. Kalishman followed up on appellant's toe and knee injury. He noted that her toe was much improved, but that mild swelling was still present in her knee. In a November 14, 2016 note, Dr. Kalishman indicated that appellant was under his care on November 14, 2016 and could return to work on November 22, 2016. In a duty status report of the same date, she indicated that appellant had a very swollen knee with fluid in her joint and was unable to work.

In a November 10, 2016 report, Dr. Alice Nepomuceno Francisco, a Board-certified radiologist, interpreted a radiographic examination of appellant's left knee and found early mild degenerative arthritis, but no demonstrable acute fracture or dislocation.

By letter dated November 28, 2016, OWCP informed appellant that further information was necessary to support her claim and afforded her 30 days to submit this information.

In a November 21, 2016 progress note, Dr. Steven Ferrer, an orthopedic physician Board-certified in pain medicine and physical medicine and rehabilitation, noted that appellant was evaluated for left knee pain which began on November 7, 2016 following an employment-related injury. He noted that appellant was running from a dog when she lost her footing and fell, and landed directly on her left knee on a concrete surface. Dr. Ferrer diagnosed left knee sprain and contusion. He indicated that due to the persistence of knee edema and pain with ambulation, she was to remain out of work for two more weeks. In a December 5, 2016 report, Dr. Ferrer diagnosed left knee pain and left shoulder pain. He noted that, although appellant had not mentioned left shoulder pain during her last office visit, she had also been dealing with pain at the superior and posterior aspect of the left shoulder since her fall at work. Dr. Ferrer noted that it bothered her initially, improved, but was reexacerbated. He diagnosed sprain of the left knee, contusion of left knee, and left shoulder strain.

In a December 6, 2016 attending physician's report (Form CA-20), Dr. Ferrer indicated that appellant was totally disabled commencing November 7, 2016. He concluded that the diagnosed conditions were a result of the employment incident, noting direct trauma to the left knee, which caused edema and abrasions. In a work capacity evaluation of the same date, Dr. Ferrer found appellant unable to perform her usual job as she was unable to ambulate without discomfort or to perform repetitive movements of the left shoulder. He listed her tentative date to return to work as December 20, 2016, with restrictions to be determined.

In a December 19, 2016 report, Dr. Ferrer noted that due to persistent knee edema and pain with ambulation, as well as left shoulder pain and range of motion deficits, appellant was not able to return to work. He listed a tentative return to work date of February 1, 2017. Dr. Ferrer noted that appellant required a magnetic resonance imaging scan of her left knee. He

further noted that to address her left shoulder pain and impingement, she required an intra-articular corticosteroid injection for symptomatic relief.

By decision dated January 6, 2017, OWCP accepted appellant's claim for sprain of the left knee, contusion of the left knee, sprain of the right second toe, and abrasion of the left knee.[3] In a separate decision of the same date, it denied appellant's claim for strain of the left shoulder, swelling of the left knee joint, type 2 diabetes mellitus without complication, and essential hypertension.

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, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

The medical evidence required to establish causal relationship between a diagnosed condition and an accepted employment incident is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[5]

ANALYSIS

On January 6, 2017 OWCP accepted that as a result of the accepted November 7, 2016 employment injury appellant sustained a sprain of the left knee, contusion of the left knee, sprain of the right second toe, and an abrasion of the left knee. However, in a separate decision of the same date, OWCP denied appellant's claim for swelling of the left knee joint, strain of the left shoulder, type 2 diabetes mellitus, and essential hypertension. The Board finds that appellant has failed to establish that these additional conditions are causally related to the November 7, 2016 employment injury.

The Board finds that OWCP properly denied appellant's claim for swelling of the left knee joint. Dr. Ferrer did note persistence of knee edema and pain in ambulation in the left knee.

[3] OWCP also authorized retroactive supplemental wage-loss benefits commencing December 23, 2016.

[4] *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

[5] *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

Furthermore, Dr. Kalishman noted that appellant had a very swollen knee. However, pain and swelling of the knee do not constitute a definitive diagnosis, rather they are symptoms.[6]

With regard to appellant's diagnosed conditions of strain of the left shoulder, type 2 diabetes, and essential hypertension, the Board further finds that appellant has failed to submit a medical report containing a rationalized, probative opinion which relates these diagnosed conditions to her accepted employment incident of November 7, 2017. Appellant was initially seen by Dr. Kalishman and she did not note any left shoulder condition. Dr. Kalishman did note type 2 diabetes and essential hypertension. Although Dr. Kalishman noted appellant's medical conditions and described her employment injury, she never provided a rationalized medical opinion addressing causal relationship for any of these diagnosed conditions. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[7]

In his initial report of November 21, 2016, Dr. Ferrer discussed the November 7, 2016 employment injury and diagnosed left knee sprain and contusion of the left knee. On December 5, 2016 he first diagnosed left shoulder strain. However, in neither of these reports did Dr. Ferrer provide a rationalized opinion indicating that the shoulder strain was causally related to appellant's accepted employment injury. This is particularly noteworthy as appellant never mentioned left shoulder pain until one month after the employment injury. A medical opinion is of limited probative value if the physician has not provided an explanation for the delayed onset of symptoms.[8]

Furthermore, Dr. Ferrer never indicated that appellant's diabetes or hypertension were causally related to the accepted employment injury. It is appellant's burden of proof to submit a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[9] Neither the fact that a disease or condition manifested itself during a period of employment nor the belief that the disease or condition was caused or aggravated by an employment incident is sufficient to establish causal relationship.[10]

Finally, Dr. Francisco interpreted appellant's radiographic examination of the left knee, but never discussed any injury to appellant's left shoulder, appellant's diabetes, or appellant's essential hypertension. Accordingly, his report is of limited probative value.[11]

As appellant has failed to submit any medical report containing a rationalized medical opinion showing a causal relationship between her accepted employment incident and the strain of the left shoulder, type 2 diabetes, or essential hypertension, she has failed to meet her burden

[6] *J.H.*, Docket No. 11-933 (issued November 7, 2011).

[7] *See C.L.*, Docket No. 17-0249 (issued June 22, 2017).

[8] *See A.S.*, Docket No. 15-0696 (issued August 15, 2016).

[9] *Supra* note 8.

[10] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

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

of proof to establish her claim for these conditions. An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[12]

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 did not meet her burden of proof to establish additional conditions causally related to the accepted employment injury of November 17, 2016.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 6, 2017 is affirmed.[13]

Issued: August 8, 2017
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

[12] *D.D.*, 57 ECAB 734 (2006).

[13] The record contains a Form CA-16 dated November 8, 2016 and signed by the employing establishment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. *See D.M.*, Docket No. 13-0535 (issued June 6, 2013); *Val D. Wynn*, 40 ECAB 666 (1989). *See also* 20 C.F.R. § 10.300; Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3 (a)(3) (February 2012). Upon return of the case record, OWCP should address this issue.