

**United States Department of Labor
Employees' Compensation Appeals Board**

S.M., Appellant)

and)

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Buffalo, NY, Employer**)

**Docket No. 17-0998
Issued: August 17, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 6, 2017 appellant filed a timely appeal from a March 30, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 has established a right knee condition causally related to the accepted July 15, 2016 employment incident.

FACTUAL HISTORY

On July 25, 2016 appellant, then a 41-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on July 15, 2016 she injured her right knee when she "picked something

¹ 5 U.S.C. § 8101 *et seq.*

from the floor and [her] knee popped.” She noted that her knee also popped the following day when getting out of bed. Appellant did not indicate on the claim form that she had stopped work.

By letter dated August 1, 2016, OWCP requested that appellant submit additional medical evidence to establish her claim. Appellant was afforded 30 days to submit the necessary evidence.

Appellant submitted a statement on August 5, 2016, indicating that she visited the emergency room on July 16, 2016 and was off work for two weeks. She wrote that on July 15, 2016 she heard her knee pop at work and took pain medication. According to appellant, on July 16, 2016 she heard a louder, more painful pop in her right knee and as a result sought treatment.

A July 16, 2016 emergency room report indicated that appellant was treated for right knee pain after a twisting injury earlier that day. Dr. Amanda Werthman-Ehrenreich indicated that there were no significant physical examination findings and x-rays were negative.

A magnetic resonance imaging (MRI) report dated July 19, 2016 from Dr. Michelle Ding, a radiologist, diagnosed a right knee medial meniscus tear.

Appellant also submitted a July 28, 2016 report from a physician assistant.

By decision dated September 6, 2016, OWCP accepted that the employment incident occurred as alleged, but denied the claim for compensation. It found that the medical evidence of record was insufficient to establish the claim for compensation as it did not contain a diagnosis causally related to the accepted incident.

On December 13, 2016 appellant requested reconsideration and submitted reports from a physician assistant, physical therapists, and a nurse.

OWCP also received a July 21, 2016 report from Dr. Lance Formolo, a chiropractor. Dr. Formolo diagnosed biomechanical lesions of the lumbar and thoracic regions, spondylosis, intervertebral disc disorder, and myalgia.

In a report dated August 24, 2016, Dr. Robert Smolinski, a Board-certified orthopedic surgeon, diagnosed right knee medial meniscus tear, and right knee patella tendinosis.² The history reported was that on July 15, 2016 appellant was cleaning a dirty room at work when she sustained her injury. Examination results showed normal strength and sensation in the right knee, with tenderness to palpation of patellofemoral and medial joint line. The report indicated arthroscopic knee surgery was discussed.

The record indicates that appellant underwent right knee surgery on September 28, 2016. In a report of that date, Dr. Smolinski indicated that a right knee arthroscopy with meniscectomy and debridement was performed.

² The report was prepared by a physician assistant and signed by Dr. Smolinski on September 7, 2016.

By decision dated March 30, 2017, OWCP reviewed the merits of the claim, but denied modification. It found the medical evidence was insufficient to establish the claim. OWCP noted that the evidence of record did not establish that the claimed condition was caused by the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish an injury while in the performance of duty.⁴ In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.⁵

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested, and the medical rationale expressed in support of the physician’s opinion.⁶

ANALYSIS

Appellant filed a traumatic injury claim alleging that on July 15, 2016 she injured her right knee in the performance of duty. She described the incident on the claim form as picking something up from the floor. OWCP has accepted that an incident occurred as alleged. The issue is whether the medical evidence of record is sufficient to establish that the diagnosed right knee condition was causally related to the accepted employment incident.

The Board finds that the medical evidence of record is insufficient to establish appellant’s claim for compensation.

Appellant sought treatment on July 16, 2016 at an emergency room. However, the evidence from Dr. Werthman-Ehrenreich is of little probative value to the issue presented, as the report refers to right knee pain and a twisting injury without further detail. There is no detailed factual or medical history, or an opinion on a diagnosed condition causally related to the July 15,

³ *Supra* note 1.

⁴ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁵ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁶ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

2016 employment incident. Medical reports that do not provide an opinion on causal relationship are of little probative value.⁷

A July 19, 2016 MRI found a right knee medical meniscus tear, but diagnostic testing is of limited probative value as it fails to provide a physician's rationalized opinion on the causal relationship between appellant's work incident and her diagnosed condition.⁸

The August 24, 2016 report from Dr. Smolinski provides only a brief description of appellant picking up a dirty room at work, with no opinion on causal relationship between the right knee medial meniscus tear and the July 15, 2016 employment incident. Similarly, his September 28, 2016 report noted that appellant underwent a right knee arthroscopic meniscectomy, but he offered no opinion as the cause of this condition. As previously noted, as this report lacks an opinion regarding causal relationship, it is of limited probative value.⁹

As to the medical reports from the physician assistant, physical therapists, and nurse, these reports do not constitute competent medical evidence as these medical professionals are not considered physicians under FECA.¹⁰ Therefore, they have no probative value.

In addition, FECA provides that the term "physician" ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist."¹¹ Dr. Formolo did not diagnose a subluxation as shown by x-ray in his July 21, 2016 report and he is, therefore, not considered a physician under FECA. His report is of no probative value.¹²

A probative medical report must include an accurate and complete factual and medical history.¹³ In addition, the medical evidence should clearly explain how the specific employment incident caused or contributed to the diagnosed right knee condition.¹⁴ As appellant failed to submit rationalized medical evidence, the Board finds that she failed to meet her burden of proof.

⁷ See *L.M.*, Docket No. 14-973 (issued August 25, 2014).

⁸ See *G.C.*, Docket No. 17-0675 (issued June 15, 2017).

⁹ *Supra* note 7.

¹⁰ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See *George H. Clark*, 56 ECAB 162 (2004) (a physician assistant is not a physician under FECA); *Barbara J. Williams*, 40 ECAB 649 (1989) (a physical therapist is not a physician under FECA); see *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

¹¹ 5 U.S.C. § 8101(2).

¹² See *K.W.*, Docket No. 17-0205 (issued June 12, 2017).

¹³ See *Patricia M. Mitchell*, 48 ECAB 371 (1997); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

¹⁴ See *V.B.*, Docket No. 16-0883 (issued October 17, 2016).

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 a right knee condition causally related to the accepted July 15, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 30, 2017 is affirmed.

Issued: August 17, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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