United States Department of Labor
Employees' Compensation Appeals Board

G.B., Appellant	)	
and	)	**Docket No. 16-1295**
	)	**Issued: February 15, 2017**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Prescott, AZ, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 3, 2016 appellant, through counsel, filed a timely appeal from an April 25, 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 a bilateral knee condition causally related to factors of her federal employment.

On appeal, counsel contends that OWCP's decision is contrary to law and fact.

FACTUAL HISTORY

This case has previously been before the Board.[3] Appellant, a 51-year-old information technology specialist, filed an occupational disease claim (Form CA-2) alleging that her job duties aggravated her bilateral knee condition. She stated that ascending and descending stairs on a daily basis over a period of years aggravated a right knee injury she had sustained at work on May 31, 2006. By decisions dated November 10, 2010, August 17, 2011, and February 21, 2012 OWCP denied appellant's claim for bilateral knee conditions as the medical evidence failed to establish that the claimed conditions were causally related to factors of her federal employment. In a decision dated November 16, 2012, the Board affirmed OWCP's February 21, 2012 decision, finding that appellant had failed to establish an injury causally related to factors of her federal employment.[4] The facts of the case, as set forth in the prior decision, are incorporated herein by reference.

On July 8, 2013 appellant, through counsel, requested reconsideration. Appellant submitted May 6, 2010 x-rays of the right and left knees demonstrating small bilateral joint effusions and tricompartmental osteoarthritis bilaterally, greatest in the medial and patellofemoral compartments.

In reports dated May 6, 2010 through June 10, 2013, Dr. Jennifer Waara, a Board-certified family practitioner, diagnosed mild left extremity edema and bilateral osteoarthritis. She asserted that appellant had chronic right knee pain felt to have started after an injury at work on May 31, 2006 when she was doing inventory, outside of her job description, which involved a lot of walking and getting down on her hands and knees in order to obtain serial numbers off of desk, etc. This activity commenced on May 30, 2006 and the next day on May 31, 2006 appellant was walking down stairs and felt a pop in her right knee. She felt immediate pain, swelling, and increased warmth to the area. Dr. Waara stated that appellant was seen by the employing establishment's health unit the next day on June 1, 2006 and was diagnosed with a medial collateral ligament strain. She was restricted to desk duty for approximately four days. Appellant had x-rays taken of both knees on June 12, 2006 due to ongoing pain and the reports showed minimal degenerative change of patellofemoral joint and mild degenerative narrowing of the medial compartment of the left knee. Dr. Waara noted that she was not able to find a report that had a right knee in the impression. Appellant was seen by the employing establishment's health unit on June 7, 2013 and they extended her desk duties through June 12, 2006. Dr. Waara reported that appellant had an ongoing condition since a motor vehicle accident in 1999 which left her with chronic low back pain and required use of regular medication, noting that this may

[3] Docket No. 12-1023 (issued November 16, 2012).

[4] *Id.*

have helped her cope with her ongoing right knee pain. On May 6, 2010 appellant was seen for chronic bilateral lower extremity edema which had "gotten worse again in [March 2010]." Dr. Waara asserted that appellant did not report until later that she had the injury to her right knee in May 2006.

On May 18, 2010 Dr. Shirley Rheinfelder, a Board-certified family practitioner, diagnosed pain in joint involving lower left, unspecified intestinal malabsorption, pernicious anemia, and other unspecified hyperlipidemia. She opined that appellant's right knee pain was secondary to arthritis and noted that appellant had received a steroid injection that day.

In an August 2, 2010 report, Dr. Paul Pfluegar, a Board-certified orthopedic surgeon, diagnosed bilateral knee osteoarthritis and bilateral knee internal derangement. He asserted that appellant had some underlying degenerative arthritis of both knees, right greater than left, which was made worse by her weight. Appellant reported that she first noticed knee pain going up and down stairs at work. Dr. Pfluegar opined that appellant had medial meniscus tears of both knees and recommended a magnetic resonance imaging (MRI) scan of the right knee since her pain had been unrelieved with steroid injections. He noted that the left knee was doing relatively well and was stable at that time.

By decision dated April 25, 2016, OWCP modified its prior decision, finding that the medical evidence of record established fact of injury, but failed to establish causal relationship between appellant's condition and factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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, and that an injury[6] was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[8]

[5] 5 U.S.C. § 8101 *et seq.*

[6] OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

[7] *See O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

[8] *See D.R.*, Docket No. 09-1723 (issued May 20, 2010).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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.[9]

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that federal employment factors caused or aggravated her bilateral knee condition. Appellant identified the factors of employment that she believed caused the condition, including walking and ascending and descending stairs at work, which OWCP accepted as factual. However, in order to establish a claim that she sustained an employment-related injury, she must also submit rationalized medical evidence which explains how her medical condition was caused or aggravated by the implicated employment factors.[10]

In her reports, Dr. Waara indicated that appellant had ongoing conditions since a motor vehicle accident in 1999. She diagnosed mild left extremity edema and bilateral osteoarthritis. Dr. Waara noted that appellant had chronic right knee pain, which began after an injury at work on May 31, 2006 when she was doing inventory, outside of her job description, which involved a lot of walking and getting down on her hands and knees in order to obtain serial numbers off of desk, *etc*. This activity commenced on May 30, 2006 and the next day on May 31, 2006 appellant was descending stairs and felt a pop in her right knee. Dr. Waara did not provide any medical rationale explaining how appellant's employment activity of ascending and descending stairs caused or aggravated the diagnosed conditions.[11] Thus, the Board finds that the reports from Dr. Waara are insufficient to establish appellant's claim.

In his August 2, 2010 report, Dr. Pfluegar diagnosed bilateral knee osteoarthritis and bilateral knee internal derangement and opined that appellant had medial meniscus tears of both knees. He asserted that appellant had some underlying degenerative arthritis of both knees, right greater than left, which was worsened by her weight. Appellant reported that she first noticed knee pain going up and down stairs at work. Dr. Pfluegar failed to provide a rationalized opinion explaining how factors of appellant's federal employment, such as walking and going up and down stairs at work, caused or aggravated her bilateral knee condition. He noted that appellant's condition occurred while she was at work, but, as noted above, such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed conditions.[12] The Board has held that the mere fact that

[9] *See O.W.*, *supra* note 7.

[10] *See A.C.*, Docket No. 08-1453 (issued November 18, 2008).

[11] *Supra* note 8.

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

appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between appellant's condition and her employment factors.[13] Thus, the Board finds that Dr. Pfluegar's report is insufficiently rationalized to establish that appellant's condition was caused or aggravated by factors of her federal employment.

On May 18, 2010 Dr. Rheinfelder diagnosed pain in joint involving lower left and opined that appellant's right knee pain was secondary to arthritis. The Board finds that Dr. Rheinfelder's diagnosis of bilateral knee pain is a description of a symptom rather than a clear diagnosis of the medical condition.[14] Moreover, the Board finds that Dr. Rheinfelder failed to provide a rationalized opinion explaining how walking and ascending and descending stairs at work caused or aggravated appellant's bilateral knee condition. Dr. Rheinfelder's opinion is therefore of diminished probative value on the issue of causal relationship and is not sufficient to establish an employment-related injury.

Other medical evidence of record, including diagnostic test reports, is of limited probative value and insufficient to establish the claim as it does not specifically address whether appellant's diagnosed conditions are causally related to factors of her federal employment.[15]

On appeal, counsel contends that OWCP's decision is contrary to fact and law. Based on the findings and reasons stated above, the Board finds that counsel's arguments are without merit. As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the accepted employment factors, she failed to meet her burden of proof.

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 bilateral knee condition causally related to factors of her federal employment.

[13] *See Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[14] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[15] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (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).

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 15, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy 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