United States Department of Labor
Employees' Compensation Appeals Board

K.M., Appellant	)	
and	)	**Docket No. 17-0437**
	)	**Issued: June 1, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Patchogue, NY, Employer	)	

Appearances:
Paul Kalker, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 19, 2016 appellant, through counsel, filed a timely appeal from a November 18, 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.

ISSUE

The issue is whether appellant met her burden of proof to establish an injury causally related to the accepted December 1, 2014 employment incident, as alleged.

[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.*

FACTUAL HISTORY

On December 1, 2014 appellant, then a 53-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that she injured her "right leg behind knee" when lifting a heavy box of books on December 1, 2014 while in the performance of duty. She stopped work on December 2, 2014 and received continuation of pay through January 15, 2015.

Appellant submitted a December 2, 2014 report from Peter Wharton, a physician assistant, who examined her that day and advised that she would be off work through December 8, 2014. She returned for follow up on December 8, 2014 at which time Mr. Wharton indicated that appellant needed to be cleared by an orthopedist before returning to work.

In a letter dated December 24, 2014, OWCP requested that appellant submit additional factual and medical evidence in support of her claim, including a report from a qualified physician explaining how the reported work incident caused or aggravated the claimed injury.

Appellant submitted a December 11, 2014 report in which Dr. Keith R. Reinhardt, an attending Board-certified orthopedic surgeon, indicated that appellant reported that she was leaning over with a box at work on December 1, 2014 and felt a pulling sensation in the back of her right knee. She reported experiencing pain since that time localized mostly in the posterior aspect of her right knee. Dr. Reinhardt noted that x-rays of the right knee revealed moderate degenerative narrowing of the medial compartment, but did not demonstrate any acute fractures. He indicated that physical examination of the right knee showed mild-to-moderate effusion with stiffness and deep flexion secondary to the effusion. The distal motor and sensory examinations were intact. Dr. Reinhardt noted that appellant reported pain, swelling, and difficulty standing for prolonged periods and indicated, "She likely has an exacerbation of underlying arthritis with a degenerative meniscus tear." He further commented that, due to her arthritis exacerbation, appellant was 100 percent temporarily disabled from her job. Dr. Reinhardt treated appellant with a corticosteroid injection in her right knee.

In a report and a note dated January 6, 2015, Dr. Reinhardt advised that appellant remained totally disabled. In a January 8, 2015 note, he diagnosed right knee pain and indicated that appellant could not work until further evaluation. Dr. Reinhardt advised that he would arrange for appellant to undergo a right knee magnetic resonance imaging (MRI) scan.

In a decision dated January 28, 2015, OWCP denied appellant's claim for a December 1, 2014 work-related traumatic injury. It accepted the occurrence of an employment incident on December 1, 2014 in the form of lifting and handling a heavy box, but found that appellant had failed to submit sufficient medical evidence to establish an injury causally related to the accepted incident.

Appellant timely requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP received additional medical evidence, which included a January 30, 2015 attending physician's report (Form CA-20) from Dr. Reinhardt who listed the date of injury as December 1, 2014 and history of injury as "right knee was injured due to leaning over with a

box." Dr. Reinhardt noted, "waiting for [magnetic resonance imaging] MRI results" in the portion of the form for diagnoses[3] and he declined to answer a question regarding whether the observed condition was work related by noting, "waiting for the results of MRI to determine." He indicated that appellant was totally disabled from December 1, 2014 until "pending MRI results."

In a January 30, 2015 duty status report (Form CA-17), Dr. Reinhardt listed the date of injury as December 1, 2014 and noted, "possible meniscus tear, waiting for the MRI results" in the portion of the form for clinical findings. He noted that appellant was totally restricted from performing work duties.

A February 9, 2015 right knee MRI scan revealed tri-compartment degenerative changes, joint effusion, soft tissue edema, and large radial tear involving the posterior root ligament medial meniscus with associated medial extrusion of the body of the medial meniscus.

On March 2, 2015 Dr. James Penna, an attending Board-certified orthopedic surgeon, examined appellant and diagnosed right knee medial meniscus tear. He discussed the risk and benefits of surgery, and appellant opted to proceed with surgery.

On March 20, 2015 Dr. Penna performed right knee arthroscopic partial medial meniscectomy and chondroplasty of the medial femoral condyle.

Jennifer Castelli, a physician assistant, described appellant's postsurgical treatment for the period March 23 through May 11, 2015. OWCP also received physical therapy treatment records for March 30 through June 3, 2015.

By decision dated July 22, 2015, the hearing representative affirmed OWCP's January 28, 2015 decision. She found that the medical evidence received failed to provide a history of injury and a rationalized opinion explaining how the diagnosed condition was causally related to the December 1, 2014 employment incident.

On April 25, 2016 counsel timely requested reconsideration of the hearing representative's July 22, 2015 decision. He argued that the previously submitted medical evidence established that appellant sustained an injury on December 1, 2014 due to the accepted employment incident. Counsel further argued that an enclosed January 29, 2016 report of Dr. Penna established appellant's claim.

In his January 29, 2016 report, Dr. Penna noted that appellant reported that on December 1, 2014 she was "lifting a heavy [pallet] of mail and packages" and felt a sharp pain in the back of her right knee. He provided a description of appellant's visits to his office since March 2, 2015 and detailed her postsurgery treatment. Following surgery, Dr. Penna noted that appellant continued to complain of right knee pain. He referenced an October 19, 2015 right knee MRI scan which revealed no new meniscal tear. However, Dr. Penna noted evidence of

[3] In the findings portion of the form, Dr. Reinhardt indicated that x-rays showed moderate degenerative narrowing of the right knee medial compartment and that he was waiting for MRI scan results to rule out right medial meniscus tear.

medial compartment degenerative changes that had progressed to full-thickness cartilage loss. Dr. Penna began a series (3) of right knee injections on November 30, 2015. He advised that appellant was unable to perform the duties of her clerk position due to her right knee injury. Dr. Penna indicated that she had atrophy of her right quadriceps muscle due to the chronic swelling in her right knee and that she had muscle weakness, which caused her to quickly become fatigued. He reported that appellant's right knee condition had reached maximum medical improvement (MMI) by her last visit on December 14, 2015 and posited that she demonstrated a significant permanent partial disability. Dr. Penna noted, "Her disability is directly causally related to [her] injury on December 1, 2014." He indicated that it was likely that appellant would require a total right knee replacement or reconstructive procedure of similar magnitude in the future. Dr. Penna recommended that appellant not return to work given the risk of further damage to her right knee.

Effective September 19, 2016, appellant retired on disability.

By decision dated November 18, 2016, OWCP denied modification of the July 22, 2015 decision. It found that the medical evidence of record was insufficient to show that appellant sustained an injury causally related to the December 1, 2014 work incident.

LEGAL PRECEDENT

A claimant 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 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.[4]

To determine whether 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.[5] The second component is whether the employment incident caused a personal injury.[6] 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.[7]

[4] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

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

[6] *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.*

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

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[8] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[9] A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician.[10]

ANALYSIS

Appellant filed a claim (Form CA-1) for a right knee injury that allegedly occurred on December 1, 2014 when she was "lifting [a] heavy box of books" at work. OWCP accepted that the December 1, 2014 lifting incident occurred as alleged; however, it repeatedly denied appellant's traumatic injury claim because the medical evidence failed to establish a right knee diagnosis in connection with the December 1, 2014 employment incident.[11] The Board finds that appellant has failed to establish a knee condition causally related to the accepted December 1, 2014 employment incident.

On December 2, 2014 appellant was seen by Mr. Wharton, the physician assistant. Mr. Wharton also saw her in follow up on December 8, 2014. Neither of his reports included a history of injury or a specific diagnosis. Moreover, a physician assistant is not considered a "physician" as defined under FECA.[12] Consequently, the above-noted reports provided by Mr. Wharton and the postsurgical treatment records from Ms. Castelli, also a physician assistant, are insufficient to satisfy appellant's burden of proof under FECA.[13]

When Dr. Reinhardt initially examined appellant on December 11, 2014, he noted that she was leaning over while holding a box at work on December 1, 2014 and felt a pulling sensation in the back of her right knee. He indicated that x-rays of the right knee revealed moderate degenerative narrowing of the medial compartment, but did not demonstrate any acute fractures. Dr. Reinhardt noted appellant's reported pain, swelling, and difficulty standing for prolonged periods and indicated, "She likely has an exacerbation of underlying arthritis with a degenerative meniscus tear." Dr. Reinhardt further commented that, due to her arthritis exacerbation, appellant was 100 percent temporarily disabled from her job.

The submission of this report would not establish appellant's claim for a work-related December 1, 2014 injury because Dr. Reinhardt failed to provide a rationalized medical opinion explaining how the diagnosed condition was causally related to the accepted employment incident.

[8] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

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

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

[11] Appellant indicated that she lifted a heavy box and felt pain in the back of her right knee when she was leaning over with the box in her hands.

[12] *See supra* notes 9, 10, and 11.

[13] The March 30 through June 3, 2015 physical therapy treatment records are similarly insufficient to establish appellant's burden of proof. *Id.*

The 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 which is unsupported by medical rationale.[14] Dr. Reinhardt did not describe the December 1, 2014 employment incident in any detail or detail the mechanism through which it could have caused aggravation of appellant's preexisting right knee condition, nor did he describe the specific type of aggravation of the preexisting degenerative right knee condition which he felt had occurred. Although Dr. Reinhardt noted that appellant had moderate degenerative narrowing of the right knee medial compartment, he did not provide a complete account of appellant's prior medical history with respect to the right knee and this lack of an adequate medical history further diminishes his opinion on causal relationship.[15] Dr. Reinhardt did not explain why the observed right knee condition was not entirely due to the nonwork-related preexisting degenerative condition. Appellant submitted several other reports in which Dr. Reinhardt detailed various periods of total disability, but these reports did not contain any clear opinion that the noted periods of disability were due to the accepted December 1, 2014 employment incident.

Appellant also submitted her February 9, 2015 right knee MRI scan, which contained an impression of several conditions including tri-compartment degenerative changes and large radial tear involving the posterior root ligament medial meniscus. However, this diagnostic study does not, by itself, establish a causal link between the noted conditions and the December 1, 2014 employment incident.[16]

Dr. Penna initially examined appellant on March 2, 2015 and on March 20, 2015 he performed right knee arthroscopic partial medial meniscectomy. His initial March 2, 2015 treatment notes did not include a history of injury on December 1, 2014. Similarly, the March 20, 2015 operative report does not include a specific history of a work-related injury on December 1, 2014.

In a January 29, 2016 report, Dr. Penna provided a description of appellant's visits to his office since March 2, 2015. He noted that appellant was unable to perform the duties of her clerk position due to her right knee injury and that her right knee condition had reached MMI by her last visit on December 14, 2015.[17] Dr. Penna indicated, "[appellant's] disability is directly causally related to [her] injury on December 1, 2014," which he described as "lifting a heavy palette (sic) of mail and packages…." On her Form CA-1 appellant attributed her right knee condition to "lifting [a] heavy box of books."

The Board notes that Dr. Penna's January 29, 2016 report is of limited probative on the relevant issue of the present case because he did not provide any explanation for his opinion on

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

[15] *E.R.*, Docket No. 15-1046 (issued November 12, 2015).

[16] *See T.C.*, Docket No. 16-1652 (issued May 9, 2017) (where the Board found that the diagnostic studies of record, including MRI scans, that did not offer an opinion regarding the cause of an employee's condition were of limited probative value on the issue of causal relationship).

[17] Dr. Penna suggested that this disability was due to the fact that appellant had atrophy of her right quadriceps muscle and muscle weakness which caused her to quickly become fatigued.

causal relationship.[18] Dr. Penna suggested that appellant's disability was due to the fact that she had atrophy of her right quadriceps muscle and muscle weakness, which caused her to quickly become fatigued, but he did not provide a clear description of what particular condition or conditions he felt were caused or aggravated by the December 1, 2014 employment incident. He did not describe the employment incident in any detail or explain how it could have caused a specific diagnosed condition or disability from work. The opinion of Dr. Penna does not establish that appellant sustained an injury on December 1, 2014 due to the accepted employment incident, either in the form of a new injury or aggravation of a preexisting condition.

For these reasons, appellant failed to submit sufficient medical evidence to establish a work-related traumatic injury on December 1, 2014 and OWCP properly denied her claim.

On appeal counsel argues that the medical evidence of record establishes appellant's claim for a work-related traumatic injury on December 1, 2014. However, the Board has explained the deficiencies in the reports.

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 failed to meet her burden of proof to establish an injury causally related to the accepted December 1, 2014 employment incident, as alleged.

[18] *See supra* note 15.

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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