United States Department of Labor
Employees' Compensation Appeals Board

K.P., Appellant	)	
and	)	**Docket No. 17-1145**
	)	**Issued: November 15, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Saint Louis, MO, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 2, 2017 appellant filed a timely appeal from a March 9, 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 over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish a right knee injury causally related to an accepted February 20, 2016 employment incident.

FACTUAL HISTORY

On March 31, 2016 appellant, then a 54-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 20, 2016 she fractured her right knee when she

[1] 5 U.S.C. § 8101 *et seq.*

tripped on broken concrete in a customer's driveway. The claim form did not indicate whether she stopped work.

Appellant was treated by Dr. Karsten B. Slater, a Board-certified family practitioner. In a March 24, 2016 report, Dr. Slater related appellant's complaints of right knee pain onset about two months ago after she stepped wrong on a curb. He indicated that appellant had not been able to fully extend her knee for two weeks. Dr. Slater reviewed appellant's history and noted that a March 2, 2016 x-ray scan of the right knee showed degenerative changes. Upon physical examination, he reported tenderness along the lateral, popliteal, and medial joint line of appellant's right knee. Dr. Slater also noted posterior knee pain with McMurray's test. He diagnosed right knee pain and right knee osteoarthritis.

In work status notes dated March 24 to 31, 2016, Dr. Slater indicated that appellant was seen in his office and requested that she be excused from work from March 21 through 31, 2016. He related that appellant was being treated for fracture and meniscus tear of the right knee.

Appellant underwent a right knee magnetic resonance imaging (MRI) scan by Dr. H.T. Youssef, a Board-certified internist. In a March 29, 2016 report, Dr. Youssef noted a complex tear of the posterior horn of the medial meniscus, acute nondepressed subcondylar fracture along the weight bearing surface of the medial femoral condyle, small post-traumatic bone contusions, grade 1 medial collateral ligament sprain, moderate joint effusion without synovitis, and severe arthrosis about the patellofemoral and medial compartments along with mild arthrosis.

Appellant continued to receive medical treatment from Dr. Slater. In a March 31, 2016 examination note, Dr. Slater noted appellant's complaints of right knee pain. He related that a recent right knee MRI scan report showed a complex tear posterior horn of the medial meniscus along with minimal radial tear and acute nondepressed subcondylar fracture along the weight bearing surface of the medial femoral condyle. Dr. Slater reviewed appellant's history and conducted an examination. He reported tenderness along the medial femoral condyle of appellant's right knee. Dr. Slater diagnosed fracture of medial condyle of right femur and complex tear of the medial meniscus of the right knee.

Dr. Slater provided an April 1, 2016 attending physician's report (Form CA-20), which noted a history of injury of "right knee pain after stepping wrong on the curb." He indicated examination findings of right femoral subcondylar fracture of the medial meniscus. Dr. Slater diagnosed femoral subcondylar fracture and medial meniscus tear. He checked a box marked "yes" indicating that appellant's condition was caused or aggravated by the described injury. Dr. Slater reported that appellant was totally disabled beginning March 21, 2016 and that she had not been advised to return to work.

In a letter dated April 1, 2016, a health and resource management specialist for the employing establishment controverted appellant's claim. She asserted that appellant's employment injury did not occur as appellant did not report the injury in a timely manner and that there were no witnesses to the February 20, 2016 incident. The health and resource management specialist also claimed that it seemed unlikely that such severe medical findings could have been caused by stepping wrong on a curb.

Appellant was treated by Dr. Justin Miller, a Board-certified orthopedic surgeon. In an April 5, 2016 report, he noted appellant's complaints of right knee pain. Dr. Miller related that appellant was a mail carrier and in approximately January 2016 appellant had stepped down off a curb and fell into a driveway. Appellant indicated that her pain had worsened since March 20, 2016 and that she had significant swelling in her knee. Dr. Miller reviewed appellant's history and conducted an examination. He noted active range of motion of appellant's right knee and normal neurovascular examination. Dr. Miller also reported tenderness along the medial joint line and mild crepitation of appellant's right patella. He diagnosed complex tear of medial meniscus of the right knee and primary osteoarthritis of the right knee.

Dr. Slater continued to treat appellant. In an April 8, 2016 report, he related appellant's complaints of right knee pain and conducted an examination. Dr. Slater reported tenderness along the medial femoral condyle of appellant's right knee. He diagnosed nondisplaced fracture of appellant's right femur and complex tear of right knee medial meniscus.

In a letter dated April 13, 2016, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she respond to an attached questionnaire in order to substantiate that the February 20, 2016 incident occurred as alleged and that she provide additional medical evidence to establish a diagnosed condition causally related to the alleged employment incident. Appellant was afforded 30 days to submit additional evidence.

On April 28, 2016 OWCP received appellant's response to its questionnaire form. Appellant explained that she did not file a Form CA-1 within 30 days because she did not realize the severity of her injury. Appellant also described the February 20, 2016 incident as "fell on driveway in need of repair." She indicated that she did not sustain any other injuries between the date of injury and the date she first reported it to the employing establishment. Appellant noted that she was previously diagnosed with rheumatoid arthritis.

OWCP denied appellant's claim in a decision dated May 16, 2016. It accepted that the February 20, 2016 employment incident occurred as alleged and that appellant was diagnosed with a right knee condition. However, OWCP denied appellant's claim because the medical evidence of record failed to establish a causal relationship between her right knee condition and the accepted February 20, 2016 employment incident. Thus appellant did not establish fact of injury.

On June 6, 2016 appellant requested reconsideration.

Appellant submitted a May 24, 2016 letter from Dr. Miller. Dr. Miller indicated that he had treated appellant for a right knee injury that she sustained approximately in January when she stepped off of a curb at work. He related that x-ray scans showed mild osteoarthritic changes in appellant's right knee and that a right knee MRI scan showed a tear of the medial meniscus and osteochondral lesion of the medial femoral condyle. Dr. Miller opined that "based on the patient's prior pain free knee that her current injury is likely related to her work-related injury."

By decision dated July 22, 2016, OWCP denied modification of the May 16, 2016 decision because the medical evidence of record failed to establish that appellant's right knee condition was causally related to the accepted February 20, 2016 employment incident. It

determined that the new medical evidence was of diminished probative value and failed to establish appellant's traumatic injury claim.

On December 16, 2016 appellant again requested reconsideration. She submitted various hospital records dated November 2 to 21, 2016, which indicated that she underwent right knee surgery on November 11, 2016.

In a November 2, 2016 preoperative examination note, Chelsea A. Horn, a physician assistant, related that appellant had a history of ongoing right knee pain since a fall at work in March 2016. She noted that a March 29, 2016 right knee MRI scan showed a complex degenerative tear of the posterior horn of the medial meniscus. Examination of appellant's right knee showed mild effusion and tenderness along the medial joint line.

Appellant also provided a November 21, 2016 postoperative examination note from Gail Greathouse, a nurse practitioner, who indicated that appellant returned for follow up of right knee surgery.

By decision dated March 9, 2017, OWCP denied modification of the July 22, 2016 decision. It found that the medical evidence of record did not contain a well-rationalized medical opinion from a physician explaining how appellant's right knee condition was causally related to the February 20, 2016 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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[3] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.[5] There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[6] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[7] An employee may establish that the employment incident

[2] *Id.*

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[6] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[7] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.[8]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[9] 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.[10] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[11]

ANALYSIS

Appellant alleged that on February 20, 2016 she sustained a right knee fracture when she tripped on broken concrete in a customer's driveway at work. OWCP accepted that the February 20, 2016 incident occurred as alleged and that she was diagnosed with a right knee condition. However, it denied appellant's claim finding insufficient medical evidence to establish that her diagnosed right knee condition was causally related to the accepted employment incident.

The Board finds that appellant failed to meet her burden of proof to establish a right knee injury causally related to the accepted February 20, 2016 employment incident.

Dr. Slater initially treated appellant and provided reports from March 24 to April 8, 2016. He related appellant's complaints of "right knee pain, which began about two months ago when she stepped wrong on a curb." Dr. Slater reported physical examination findings of tenderness along the lateral, popliteal, and medial joint line of appellant's right knee and posterior knee pain with McMurray's test. He further noted that a March 2, 2016 right knee x-ray scan showed degenerative changes. Dr. Slater diagnosed right knee pain, right knee osteoarthritis, nondisplaced fracture of the right femur, and complex tear of the right knee medial meniscus. In an April 1, 2016 Form CA-20, he checked a box marked "yes" indicating that appellant's condition was caused or aggravated by the described injury. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[12] Because Dr. Slater has not provided medical rationale or explanation for his opinion on causal relationship, his medical opinion is insufficient to establish appellant's claim. To be of probative value the medical evidence must contain a sufficient

[8] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[9] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

[10] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[11] *James Mack*, 43 ECAB 321 (1991).

[12] *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

explanation of the process through which the accepted employment incident physiologically caused or aggravated appellant's diagnosed condition.[13] Medical conclusions unsupported by rationale are of little probative value.[14]

Appellant was also treated by Dr. Miller. In reports dated April 5 and May 24, 2016, Dr. Miller related that appellant was a mail carrier and that in approximately January 2016 she experienced right knee pain after she stepped off a curb and fell down in a driveway. Upon physical examination, he reported tenderness along the medial joint line and mild crepitation of appellant's right patella. Dr. Miller noted that diagnostic scans of appellant's right knee showed mild osteoarthritic changes, a tear of the medial meniscus, and osteochondral lesion of the medial femoral condyle. He diagnosed complex tear of medial meniscus of the right knee and primary osteoarthritis of the right knee. Dr. Miller opined that because of appellant's prior pain free knee her current injury was "likely related" to her work-related injury. The Board finds that Dr. Miller's opinion that appellant's right knee injury was "likely" work related is speculative in nature. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.[15] An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.[16] Furthermore, Dr. Miller's opinion on causal relationship was also based on the fact that appellant was "pain free" prior to her work injury. The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without sufficient rationale, to establish causal relationship.[17]

Dr. Youssef's March 29, 2016 right knee MRI scan report is also insufficient to establish causal relationship. Although he provided several diagnosed conditions, Dr. Youssef did not provide any opinion on the cause of appellant's right knee condition. The Board has held that 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.[18] Diagnostic tests are of limited probative value as they fail to provide an opinion as to the causal relationship between appellant's accepted employment incident and her diagnosed right knee condition. For this reason, this evidence is insufficient to meet appellant's burden of proof.[19]

Appellant also provided a November 2, 2016 preoperative examination note by Ms. Horn, a physician assistant, and a November 21, 2016 postoperative examination note by

[13] *M.S.*, Docket No. 16-1497 (issued December 20, 2016).

[14] *K.N.*, Docket No. 16-1900 (issued March 9, 2017).

[15] *Id.*; *Kathy A. Kelley*, 55 ECAB 206 (2004).

[16] *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[17] *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[18] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[19] *See A.B.*, Docket No. 17-0301 (issued May 19, 2017).

Ms. Greathouse, a nurse practitioner. Evidence from a physician assistant or nurse practitioner does not constitute competent medical evidence under FECA as neither is considered as a physician as defined under section 8102(2) of FECA.[20]

In order to obtain benefits under FECA an employee 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.[21] Because appellant has failed to provide such evidence demonstrating that her right knee condition was causally related to the accepted February 20, 2016 employment incident, she has failed to meet her burden of proof to establish her claim.

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 right knee injury causally related to the accepted February 20, 2016 employment incident.

[20] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *V.C.*, Docket No. 16-0642 (issued April 19, 2016); *Allen C. Hundley*, 53 ECAB 551, 554 (2002) (physician assistant).

[21] *Supra* note 1.

ORDER

IT IS HEREBY ORDERED THAT the March 9, 2017 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 2017
Washington, DC

Christopher J. Godfrey, 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