United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 17-1647**
	)	**Issued: April 2, 2018**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Ann Arbor, MI, 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:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 25, 2017 appellant, through counsel, filed a timely appeal from a May 18, 2017 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 has met her burden of proof to establish left knee and lumbar conditions causally related to the accepted April 7, 2014 employment incident.

FACTUAL HISTORY

On April 8, 2014 appellant, then a 53-year-old practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on, April 7, 2014, she sustained left shoulder, leg, abdomen, cervical, and lumbar injuries when she was involved in a motor vehicle accident while driving in the performance of duty. She notified her supervisor, stopped work, and sought emergency medical treatment on the date of the claimed injury.[3] That same date, the employing establishment issued appellant a properly completed authorization for examination and/or treatment, Form CA-16, which authorized medical treatment for her April 7, 2014 motor vehicle accident.

In an April 7, 2014 emergency room (ER) report, Dr. Myles Jan Kin, a doctor of osteopathic medicine, reported that appellant was driving approximately 70 miles per hour and did not notice that traffic in front of her was stopped, causing her to rear end the vehicle in front of her. Appellant complained of neck, back, and left knee pain. Dr. Kin noted mild diffuse cervical spine tenderness and some tenderness in the right shoulder. He reviewed diagnostic testing and noted normal findings. Dr. Kin reported that appellant had some mild right and left para spinal lumbar pain and spasm. He discharged appellant from care.

In an April 7, 2014 diagnostic report, Dr. Lawrence Ashker, a doctor of osteopathic medicine, reported that an x-ray of the left knee revealed no fracture, joint effusion, osseous lesion, or abnormal joint space narrowing. He further noted that surrounding soft tissues were unremarkable.

In an April 7, 2014 diagnostic report, Dr. Robert Yochim, a treating physician, reported that an x-ray of the pelvis revealed no fractures. He reported that an x-ray of the chest revealed no acute cardiopulmonary disease.

In medical reports dated April 10 through May 6, 2014, Dr. Maria Adela Cordoba-Naguit, Board-certified in family medicine, reported that appellant was involved in a car accident on April 7, 2014. The impact caused her to hit her left side. She did not lose consciousness. Dr. Cordoba-Naguit reported that appellant was wearing a seatbelt, but the airbag did not deploy. Appellant was transported to the hospital for emergency medical treatment and released that same day. Dr. Cordoba-Naguit noted that x-rays of the entire body revealed no fractures and a CT scan of the brain revealed no abnormalities. She also noted a medical history of chronic back and left knee pain. Dr. Cordoba-Naguit diagnosed motor vehicle accident with pain in multiple areas and

[3] In a July 7, 2014 narrative statement, appellant reported that she was traveling during her normal duty hours when she was injured. She explained that her normal workstation was at Ann Arbor Veterans Administration (VA) Medical Center, but that on April 7, 2014 she was detailed to work at the Flint Clinic. Appellant had to stop at the Ann Arbor VA hospital to pick up work-related equipment and was on her way to the Flint Clinic when the accident occurred. She reported her normal hours of duty as 7:30 a.m. to 4:00 p.m. and that the accident occurred a few minutes before 8:00 a.m. The employing establishment confirmed that appellant was travelling between the Ann Arbor VA Medical Center and the Flint Clinic, in the performance of duty, at the time the accident occurred.

restricted appellant from returning to work. She noted that appellant underwent left knee surgery on April 17, 2014 for a meniscal tear.

In a May 7, 2014 diagnostic report, Dr. George Arnold, a Board-certified diagnostic radiologist, reported that a computer tomography (CT) angiography of the neck revealed normal findings and some degenerative changes to the cervical spine. A CT scan of the brain revealed no evidence for acute intracranial process. Dr. Arnold reported that a CT scan of the chest revealed no significant trauma of the chest or abdomen. He further reported that a CT scan of the cervical spine revealed no fracture, minimal anterolisthesis of C3-4 and C4-5 presumably degenerative, and mild kyphosis centered at moderate degenerative change at C5-6 and C6-7 contributing to bilateral bony foraminal narrowing, worse at C6-7 on the left.

In a development letter dated June 20, 2014, OWCP informed appellant that the evidence of record was insufficient to establish her traumatic injury claim. Appellant was advised of the medical and factual evidence needed and afforded her 30 days to submit the additional evidence. OWCP provided a factual development questionnaire for completion requesting further information pertaining to the April 7, 2014 motor vehicle accident.

By decision dated September 17, 2014, OWCP denied appellant's claim, finding that the evidence of record failed to establish a diagnosed condition causally related to the accepted April 7, 2014 employment incident. It noted that the only diagnosis provided was pain which was considered a symptom and not a definitive diagnosis.

On September 29, 2014 appellant requested an oral hearing before an OWCP hearing representative. In support of her claim, she submitted an April 7, 2014 police report documenting her motor vehicle accident. Appellant also submitted additional medical evidence.

In an April 11, 2014 medical report, Dr. Alan Snider, a doctor of osteopathic medicine, reported that appellant was scheduled to undergo a series of left knee injections, but presented for evaluation following a motor vehicle accident. He noted that x-rays of the left knee revealed that she continued to have grade II medial osteoarthritis of the knee. Dr. Snider reported clicking within the knee on examination which he opined was consistent with a meniscal tear, but was uncertain if this was caused by the motor vehicle accident. He noted a moderate amount of left knee swelling present from the impact of the auto injury and recommended left knee arthroscopy.

In an April 17, 2014 operative report, Dr. Snider noted a preoperative diagnosis of possible torn meniscus with degenerative joint disease (DJD) of the left knee. Operative findings noted no acute tears of the medial or lateral menisci and intact anterior cruciate ligament (ACL) and posterior cruciate ligament (PCL). Dr. Snider provided a postoperative diagnosis of left knee DJD, grade II to grade III medial osteoarthritis, and medial patellofemoral osteoarthritis of the left knee.

In an April 30, 2014 medical report, Dr. Snider reported that appellant was doing well two weeks post left knee arthroscopy for DJD with a meniscal tear. He noted that her primary complaints involved her lower back with spasms, including some left buttock and leg pain.

In a May 30, 2014 medical report, Dr. Snider reported that appellant was happy with her left knee arthroscopy for DJD cleanout. He noted that she also had arthritis in her left knee which was not going away.

In a September 23, 2014 medical report, Dr. Cordoba-Naguit reported that she initially examined appellant on April 10, 2014 following her motor vehicle accident. She noted tenderness of the left knee, causing her to refer her to Dr. Snider, who believed that she had a meniscal tear and performed arthroscopic surgery. Dr. Cordoba-Naguit explained that she could not accurately say for sure that the left knee pain and/or the meniscal tear was caused from the accident.

In a February 5, 2015 medical report, Dr. Cordoba-Naguit reported that appellant's left knee was very tender following her motor vehicle accident. There was no ligament testing done at the time, but active range of motion examination which was normal. Dr. Cordoba-Naguit reported that she could not say that appellant's left knee pain was directly secondary to the motor vehicle accident.

A hearing was held before an OWCP hearing representative on April 20, 2015, during which appellant described the circumstances surrounding the April 7, 2014 motor vehicle accident and her subsequent course of treatment. She alleged that her conditions were caused by the motor vehicle accident.

Following the hearing, appellant submitted diagnostic reports dated April 23, 2014 which provided normal pelvic, sacrum, and coccyx findings. In another April 23, 2014 diagnostic report, Dr. Joshua Rubin, a Board-certified radiologist, reported that a CT scan of the lumbar spine revealed five lumbar-type vertebral bodies, mild straightening of the lumbar lordosis, mild disc space height loss at L2-3 and L3-4, mild osteophytosis, and mild lower lumbar facet osteoarthritis.

In an April 24, 2015 diagnostic report, Dr. James Landi, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of the lumbar spine revealed mild-to-moderate lumbar spondylosis which had worsened since an October 15, 2008 study, mild lumbar facet hypertrophy contributed to neural foraminal narrowing, and mild-to-moderate discogenic degenerative changes within the lumbar vertebral column.

By decision dated June 23, 2015, an OWCP hearing representative affirmed the September 17, 2014 decision, finding that the evidence of record failed to establish that her diagnosed knee condition was causally related to the accepted April 7, 2014 employment incident.

On May 24, 2016 appellant, through counsel, requested reconsideration. Appellant provided a summary of the medical reports submitted in support of her traumatic injury claim. She also submitted additional medical evidence.

In an April 14, 2015 report, Dr. Cordoba-Naguit reported that she last evaluated appellant on March 16, 2015 for worsening radiculopathy and weakness due to her back pain.

In medical reports dated June 1, 2015 through March 24, 2016, Dr. Louis Bojrab, Board-certified in pain medicine, reported that appellant complained of constant lumbar spine pain and bilateral lower extremity radiculopathy since her April 7, 2014 motor vehicle accident.[4] Dr. Bojrab noted foraminal stenosis mild-to-moderate right L3-4, moderate left L3-4, mild-to-moderate right L4-5, moderate left L4-5, and facet hypotrophy causing the majority of the

[4] Dr. Bojrab incorrectly noted the date of the employment injury as April 4, 2014, rather than April 7, 2014.

foraminal narrowing. He diagnosed low back pain, depression, migraine, bulge of lumbar disc without myelopathy, lumbosacral spondylosis, spondylosis without myelopathy or radiculopathy lumbar region, and spinal stenosis lumbar region. Dr. Bojrab administered treatment *via* epidural steroid injections to the lumbar spine and radiofrequency ablations. Accompanying his reports were treatment notes from his physician assistants.

In a March 31, 2016 medical report, Dr. Luke Y. Kim, Board-certified in physical medicine and rehabilitation, reported that he had been treating appellant since August 17, 2015. He reported that she was involved in a motor vehicle accident on April 7, 2014 and sustained significant low back problems. Dr. Kim noted treatment with Dr. Bojrab *via* epidural steroid injections, radiofrequency ablations, and a spinal column stimulator. He reported that appellant could not lift anything heavier than a gallon of milk, and standing and walking for any length of time increased her pain. Dr. Kim noted treatment including physical therapy and injections to the sacroiliac joints, trochanteric bursitis, and myofascial trigger points. He evaluated appellant on March 29, 2016 and released her to return to work on April 4, 2016 with permanent restrictions.

By decision dated May 18, 2017, OWCP denied modification of its June 23, 2015 decision, finding that the evidence of record failed to establish that appellant's diagnosed conditions were causally related to the accepted April 7, 2014 employment incident.

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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[6] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[7]

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.[8] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical

[5] *Supra* note 2.

[6] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[7] *Michael E. Smith*, 50 ECAB 313 (1999).

[8] *Elaine Pendleton*, *supra* note 6.

opinion evidence supporting such causal relationship.[9] 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of 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.[10]

ANALYSIS

OWCP accepted that the April 7, 2014 motor vehicle accident occurred in the performance of duty, as alleged. The issue is whether appellant has established that the incident caused her diagnosed lumbar spine and left knee conditions. The Board finds that she has not submitted sufficient medical evidence to establish that her diagnosed conditions were causally related to the April 7, 2014 employment incident.[11]

On the date of injury, appellant sought emergency medical treatment with Dr. Kin due to complaints of back, neck, and left knee pain. While Dr. Kin's report documents immediate treatment for her injury, he failed to provide a firm medical diagnosis as he only diagnosed neck and back pain. The Board has consistently held that pain is a symptom, not a compensable medical diagnosis.[12] Moreover, Dr. Kin reported that CT scans from the head to the pelvis revealed normal findings, as did appellant's knee films. As he explained that appellant's diagnostic test results revealed normal findings, his reports do not provide support that appellant sustained traumatic injury.[13]

In medical reports dated April 10 through May 6, 2014, Dr. Cordoba-Naguit reported that she evaluated appellant following an April 7, 2014 motor vehicle accident. She noted a medical history of chronic back and left knee pain. As noted above, the Board has held that pain is not a compensable medical diagnosis.[14] Dr. Cordoba-Naguit's September 23, 2014 and February 5, 2015 medical reports are also insufficient to establish appellant's claim. While she noted left knee tenderness on examination following the motor vehicle accident, she referred appellant to Dr. Snider and failed to provide any medical diagnosis based on her own examination. Dr. Cordoba-Naguit's reports fail to provide support for a work-related traumatic injury as they contain no diagnosis which could be related to the April 7, 2014 motor vehicle accident. Her April 14, 2015 report also fails to provide any opinion regarding the cause of appellant's injury, only generally noting that she had worsening radiculopathy and weakness due to back pain.

[9] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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

[11] *See Robert Broome*, 55 ECAB 339 (2004).

[12] *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[13] *J.P.*, Docket No. 14-0087 (issued March 14, 2014).

[14] *Supra* note 12.

Dr. Cordoba-Naguit generally repeated appellant's allegations pertaining to the employment incident and noted examination findings. Such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate rationale explaining how the motor vehicle accident actually caused a diagnosed injury.[15] 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.[16] Thus, Dr. Cordoba-Naguit's reports are of limited probative value and insufficient to meet appellant's burden of proof.[17]

Dr. Snider's medical reports dated April 11 through May 30, 2014 are also insufficient to establish appellant's claim. In his April 11, 2014 report, Dr. Snider reported that appellant had previously been under his care for left knee grade II medial osteoarthritis, noted swelling of the left knee following her motor vehicle accident, and speculated that appellant had a possible left knee meniscal tear. The Board notes that his report fails to provide support for a work-related left knee injury as he reported that he did not know the cause of appellant's potential meniscal tear. Moreover, Dr. Snider's diagnosis was incorrect as his April 17, 2014 operative report found no tear of the medial or lateral meniscus. Rather, he provided a postoperative diagnosis of left knee DJD, grade II to grade III medial osteoarthritis, and medial patellofemoral osteoarthritis of the left knee, explaining that the operation cleaned up issues related to appellant's preexisting left knee DJD. The Board notes that given Dr. Snider's operative findings, it appears that appellant's left knee injury and surgery was a result of a preexisting condition unrelated to the April 7, 2014 motor vehicle accident. Dr. Snider failed to provide an opinion on causal relationship sufficient to establish that appellant's left knee injury was caused or aggravated by the April 7, 2014 motor vehicle accident. A well-rationalized opinion is particularly warranted when there is a history of preexisting condition.[18] Without explaining how, physiologically, the employment incident caused or contributed to the diagnosed conditions, Dr. Snider's opinion on causal relationship is insufficiently rationalized and of limited probative value.[19]

The remaining medical evidence of record is also insufficient to establish appellant's claim. While Dr. Bojrab's medical reports dated June 1, 2015 through March 24, 2016 provided multiple diagnoses, the physician failed to discuss appellant's preexisting medical history or provide any opinion on the cause of appellant's injury.[20] Dr. Kim's March 31, 2016 report is also insufficient

[15] *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

[16] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[17] *John W. Montoya*, 54 ECAB 306 (2003).

[18] *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[19] *See L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

[20] *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

to establish appellant's claim as the physician failed to provide a firm medical diagnosis, only noting that he was treating appellant for low back problems.[21]

The Board also notes that the record reflects diagnostic reports dated April 7, 2014 through April 24, 2015. Diagnostic reports are of limited probative value as they do not provide an opinion regarding the cause of the diagnosed conditions.[22]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[23] An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.[24] Appellant's honest belief that the April 7, 2014 employment incident caused injury, however sincerely held, does not constitute medical evidence sufficient to establish causal relationship.[25]

Herein, the record lacks rationalized medical evidence establishing causal relationship between the accepted April 7, 2014 employment incident and her left knee and lumbar conditions. Thus, appellant has failed to meet her burden of proof.[26]

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's 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 left knee and lumbar conditions causally related to the accepted April 7, 2014 employment incident.

[21] *See B.P.*, Docket No. 12-1345 (issued November 13, 2012) (regarding pain); *C.F.*, *supra* note 12 (regarding pain); *J.S.*, Docket No. 07-0881 (issued August 1, 2007) (regarding spasm).

[22] *S.H.*, Docket No. 17-1447 (issued January 11, 2018).

[23] *Daniel O. Vasquez*, 57 ECAB 559 (2006).

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

[25] *H.H.*, Docket No. 16-0897 (issued September 21, 2016).

[26] The record contains a Form CA-16 signed by the employing establishment official on April 7, 2014. When the 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, the CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003). The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated May 18, 2017 is affirmed.

Issued: April 2, 2018
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