United States Department of Labor
Employees' Compensation Appeals Board

J.L., Appellant	)	
and	)	**Docket No. 18-0028**
	)	**Issued: April 13, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Summit, NJ, 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 October 3, 2017 appellant filed a timely appeal from a June 13, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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 has established that the acceptance of his claim should be expanded to include additional right knee conditions causally related to his February 9, 2017 employment injury.

[1] The Board notes that appellant submitted additional evidence after OWCP rendered its June 13, 2017 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 16, 2017 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 9, 2017 he injured his right knee and both shoulders when he slipped going down stairs while in the performance of duty. He stopped work the next day, on February 10, 2017, and resumed full-time limited-duty employment on February 28, 2017. OWCP accepted the claim for a right knee contusion and right knee sprain.

A February 9, 2017 emergency room discharge summary indicated that appellant received treatment on that date for right knee sprain and a bilateral shoulder injury.

In a February 17, 2017 duty status report (Form CA-17), an internal medicine physician diagnosed a contusion of the shoulders and knee.[3] He indicated that appellant could not work.

Dr. Clifford Schob, a Board-certified orthopedic surgeon, evaluated appellant on February 27, 2017 for right knee pain that began after he slipped in snow going down stairs on February 9, 2017, striking the lateral aspect of his right knee. He received treatment at the emergency room on February 9, 2017 and was placed in a knee immobilizer and given a sling. Dr. Schob noted that appellant had a history of preexisting right shoulder problems and currently experienced constant right shoulder pain. He reviewed right knee x-rays obtained at the emergency room that were negative for fractures. Dr. Schob diagnosed right knee pain, a contusion of the right knee, and per anserinus and prepatellar bursitis of the right knee. He referred appellant for a magnetic resonance imaging (MRI) scan study of the right knee.

A March 16, 2017 right knee MRI scan study revealed an irregular degenerative tear of the lateral meniscus with lateral compartmental osteoarthritis, a horizontal tear of the medial meniscus with a radial component and slight medial compartmental arthritis, a popliteal cyst, and small joint effusion.

On March 21, 2017 Dr. Schob reviewed the results of the MRI scan study and discussed appellant's complaints of continued right knee pain. On examination he found no effusion or instability, but tenderness to palpation at the prepatella bursae and lateral joint line. For the right knee, Dr. Schob diagnosed pain, a contusion, a lateral meniscus tear, osteoarthritis, resolving prepatellar bursitis, and resolving pes anserinus bursitis. He noted that the MRI scan study confirmed "preexisting lateral compartment arthrosis with degenerative lateral meniscal tear (posterior horn and body)" and medial compartment degenerative changes. Dr. Schob further indicated that appellant had a preexisting right shoulder injury treated with surgery with apparently no "significant shoulder injury as a result of his fall."

An unsigned February 9, 2017 emergency room report, received by OWCP on March 21, 2017, indicated that appellant received treatment on that date from Dr. Helmi Saud, an osteopath. The emergency room report provided a history of him falling onto his right side and hitting his right shoulder and right knee against the railing when he slipped on stairs. Appellant was discharged with a diagnosis of a right knee sprain and bilateral shoulder injury.

[3] The name of the physician is illegible.

Dr. Schob, in an April 17, 2017 progress report, evaluated appellant for continued right knee pain. On examination he found tenderness at the lateral joint line and a trace of effusion with good stability and normal lower extremity sensation. Dr. Schob diagnosed right knee pain, a right knee contusion, right knee osteoarthritis, and tears of the right lateral and medial meniscus. He recommended a right knee partial medial and lateral meniscectomy.

On May 10, 2017 Dr. James Lee, Sr., an orthopedic surgeon, evaluated appellant for pain in the right shoulder and right knee for which he claimed he suffered for the last month. He obtained a history of appellant falling and twisting his right knee around February 9, 2017. Dr. Lee diagnosed a current injury of a bucket-handle tear of the lateral meniscus of the right knee, a current injury of a complex medial meniscus tear of the left knee,[4] and right knee chondromalacia patellae. He recommended surgery.

By decision dated June 13, 2017, OWCP denied expansion of the acceptance of appellant's claim to include the additional right knee conditions of a bucket-handle tear of the lateral meniscus, chondromalacia patellae, pes anserinus bursitis, prepatellar bursitis, a lateral meniscus tear, osteoarthritis, a medial meniscus tear, and a complex tear of the medial meniscus.[5] It found that he had not submitted rationalized medical evidence addressing how the February 9, 2017 employment injury caused or contributed to the diagnosed conditions.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.[6]

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[7] 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.[8] 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.[9]

[4] It appears based on a review of his report that Dr. Lee meant a complex tear of the lateral meniscus of the right rather than left knee.

[5] OWCP referred to the complex tear as a left medial meniscus tear rather than a right medial meniscus tear.

[6] *See V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[7] *See M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

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

[9] *See H.H.*, Docket No. 16-0897 (issued September 21, 2016); *James Mack*, 43 ECAB 321 (1991).

Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravate by employment factors or incidents is sufficient to establish causal relationship.[10]

ANALYSIS

OWCP accepted that appellant sustained a contusion and sprain of the right knee due to a February 9, 2017 slip and fall employment injury. It denied expansion of the acceptance of his claim to include the right knee conditions of a bucket-handle tear of the lateral meniscus, chondromalacia patellae, pes anserinus bursitis, prepatellar bursitis, a lateral meniscus tear, osteoarthritis, a medial meniscus tear, and a complex tear of the medial meniscus. The Board finds that appellant has not met his burden of proof to establish that the additional claimed conditions were causally related to the accepted employment injury.

The opinion of a physician supporting causal relationship must be based on a complete factual and medical background, contain affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the nature of the relationship between the diagnosed condition and the established work incident or factor of employment.[11]

A February 9, 2017 emergency room report provided the history of the February 9, 2017 employment injury and listed diagnoses of a right knee sprain and a bilateral shoulder injury. The report, however, failed to relate any additional right knee condition to the accepted work injury, and thus is of diminished probative value.

A physician of internal medicine, in a February 17, 2017 CA-17 form, diagnosed a contusion of the shoulders and knee and found that appellant was disabled. However, as the report contained an illegible signature, it is of no probative value as the author cannot be identified as a physician.[12]

On February 27, 2017 Dr. Schob obtained a history of appellant slipping on stairs on February 9, 2017 striking his right knee. He noted that he also had a history of prior right shoulder surgeries. Dr. Schob diagnosed right knee pain, a right knee contusion, and per anserinus bursitis and prepatellar bursitis of the right knee. He did not, however, specifically relate the diagnosed conditions to the February 9, 2017 employment injury. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[13]

Dr. Schob, on March 21, 2017, reviewed the results of the MRI scan study and diagnosed right knee pain, a right knee contusion, a right lateral meniscus tear, right osteoarthritis, and resolving right prepatellar and pes anserinus bursitis. He noted that the MRI scan study showed

[10] *See V.W.*, 58 ECAB 428 (2007); *Ernest St. Pierre*, 51 ECABA 623 (2000).

[11] *See M.R.*, Docket No. 17-1154 (issued January 10, 2018); *Robert Broome*, 55 ECAB 339 (2004).

[12] *See L.D.*, Docket No. 17-1808 (issued December 28, 2017); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[13] *See M.S.*, Docket No. 17-0105 (issued December 7, 2017); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

preexisting lateral compartment arthrosis and a degenerative lateral meniscal tear and degenerative changes in the medial compartment. Dr. Schob also indicated that appellant had a preexisting history of a right shoulder injury and opined that he did not believe that he appreciably injured his shoulder when he fell. On April 17, 2017 he diagnosed right knee pain, a contusion, osteoarthritis, a lateral meniscus tear, and a medial meniscus tear and recommended a partial medial and lateral meniscectomy. Dr. Schob did not, however, address the causal nature of the diagnosed right knee conditions. Without a specific causation finding and an explanation regarding how the February 9, 2017 employment-related fall caused or aggravated the additional diagnosed right knee conditions, his opinion is of little probative value.[14]

On May 10, 2017 Dr. Lee discussed appellant's history of twisting his right knee on February 9, 2017 after a fall with complaints of locking and swelling of the right knee. He diagnosed a bucket-handle tear of the right lateral meniscus, a complex medial meniscus tear, and right knee chondromalacia patellae. Dr. Lee, while providing a history of the February 9, 2017 work injury, did not address the cause of the right knee conditions he had diagnosed, and thus his opinion is insufficient to meet appellant's burden of proof.[15]

On appeal appellant contends that both Dr. Schob and Dr. Lee found that he needed surgery, and that he sent additional evidence from these physicians to the Board. As noted, however, the Board cannot consider new evidence for the first time on appeal.[16] 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that the acceptance of his claim should be expanded to include additional right knee conditions causally related to his February 9, 2017 employment injury.

[14] *See M.R., supra* note 11.

[15] *See Willie M. Miller*, 53 ECAB 697 (2002).

[16] *See* 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 13, 2018
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