

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
J.L., Appellant)	
)	
and)	Docket No. 17-0572
)	Issued: August 6, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Detroit, MI, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 17, 2017 appellant filed a timely appeal from a November 23, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a left knee condition causally related to the accepted January 31, 2014 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² After OWCP issued its November 23, 2016 decision appellant provided additional evidence. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On October 3, 2016 appellant, a 42-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a posterior root medial meniscal tear on January 31, 2014 when she was attacked by dogs while working her mail route. She stated that she fell down and was bitten four times while twisting and turning to avoid more dog bites. Appellant alleged that she had been experiencing left leg and knee pain ever since her fall. She did not stop work.

In a narrative statement, appellant further indicated that she was attacked by two German Shepherds and, during the attack, she was thrown/fell into a ditch near the road where the bites occurred. She reiterated that she sustained four dog bites to her left leg, around her knee and calf area. Appellant further indicated that she was nine weeks pregnant at the time of the attack and her treatment was altered because of her pregnancy. Shortly, after the claimed incident, she suffered a miscarriage. Appellant advised that her left knee condition would heal over time, but her pain lingered. She sought treatment from a family physician and discovered two months later that she was pregnant again. This again slowed down her diagnosis and medical treatment, but the pain remained. Appellant stated that she sought treatment from her family physician and was referred to three different specialists when she was eventually diagnosed with a torn meniscus of the left knee. She believed that her torn meniscus was caused by the dog bite incident on January 31, 2014 and denied any prior injuries or preexisting conditions. Appellant stated that she continued to suffer from pain and swelling on a daily basis and requested authorization of surgical intervention.

A magnetic resonance imaging (MRI) scan of the left knee dated June 14, 2016 revealed posterior root medial meniscal tear with mild-to-moderate extrusion of the body, mild medial collateral ligament (MCL) sprain, and minimal effusion with minimal synovitis.

In a May 19, 2016 report Dr. Alice Mendelson, a Board-certified orthopedic surgeon, noted that appellant presented with pain and swelling in the left lower extremity starting just above the knee two years after she had multiple dog bites at the right superolateral aspect of the knee, the back of the knee, and in the lower leg. She noted that she was not sure of the reason for appellant's pain and swelling. Dr. Mendelson did not sense that appellant had a neuroma, although the possibility had not been ruled out. She used an ultrasound to evaluate the knee and found no pocket fluids in the thigh or around the swelling where a scar was located. The patella medial and lateral menisci were evaluated, as well as the patellar tendon. No intra-articular fluid was noted. X-rays of the left tibia and fibula showed bony alignment and x-rays of the left knee demonstrated mild medial joint narrowing, bilaterally. Dr. Mendelson found that the remaining scars from the dog bites were in the distal leg area on the lateral aspect and were barely noticeable since the skin had healed well. She noted that appellant's wounds had healed and she did not have infections after the dog bites, but a week later appellant suffered a miscarriage and her left leg had been achy ever since. Dr. Mendelson reported that appellant saw a surgeon who told her he did not know why she was experiencing pain and swelling and informed her that he could not help her.

On June 6, 2016 Dr. Mendelson found puffiness around the knee, mostly in the superolateral aspect. She noted that appellant's range of motion was full and the knee was stable.

In a June 30, 2016 report, Dr. Mendelson reviewed a June 14, 2016 MRI scan of the left knee, found a marker on appellant's skin, and examined the area where the dog bite was located to see if there was any foreign body in the soft tissue or swelling in that area. She found no foreign body in the soft tissue and no focal swelling of the soft tissues on that area. Dr. Mendelson concluded that appellant sustained a medial meniscal tear after a dog attack two years prior. She opined that this incident could explain some of the swelling in appellant's knee and leg, but concluded that it could not explain "the whole picture."

On September 8, 2016 Dr. Mendelson reported, "I am not sure that the medial meniscal tear is the reason for [appellant's] pain, but it may very well be." She further indicated that since appellant has had longstanding pain and swelling, she recommended arthroscopic evaluation of the knee and treatment of the meniscal tear.

In an October 19, 2016 letter, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted a November 10, 2016 narrative statement indicating that, on January 31, 2014 she was bitten four times by two dogs while in the performance of duty. In a second narrative statement dated November 10, 2016, she reiterated the factual history of her claim and alleged that the January 31, 2014 incident caused her medial meniscus tear.

In a patient disability statement dated November 17, 2016, Dr. Mendelson diagnosed medial meniscus tear and indicated that appellant had a physician's appointment scheduled for November 21, 2016.

On November 21, 2016 Dr. Mendelson indicated that x-rays were taken of appellant's left knee and they showed good alignment, as well as maintained joint spaces. No sclerosis or osteophyte formation was noted. Upon physical examination, Dr. Mendelson found that appellant's left knee was swollen. Appellant was tender on the medial joint line, but the knee was stable to anterior-posterior and mediolateral stresses. She complained that her knee had been more swollen than before and she felt popping and clicking occasionally. There was no deformity and range of motion exhibited full extension to 120 degrees of flexion. Dr. Mendelson injected the left knee with a steroid and indicated her intent to proceed with surgery.

By decision dated November 23, 2016, OWCP found that appellant was claiming a traumatic injury and accepted that the January 31, 2014 employment incident occurred as alleged. It denied the claim, however, the medical evidence of record failed to establish causal relationship between her diagnosed condition and the accepted January 31, 2014 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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

³ *Supra* note 1.

time limitation period of FECA, that an injury⁴ was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition is causally related to the employment incident.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion 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.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left knee condition causally related to the accepted January 31, 2014 employment incident.

In her reports, Dr. Mendelson noted that appellant presented with pain and swelling in the left lower extremity starting just above the knee two years after appellant had multiple dog bites at the right superolateral aspect of the knee, the back of the knee, and in the lower leg. She reported that she was not sure of the reason for appellant's pain and swelling. Dr. Mendelson opined that appellant's dog attack two years prior could explain some of the swelling in her left knee and leg, but concluded that it would not explain "the whole picture."

In a report of September 8, 2016 Dr. Mendelson concluded, "I am not sure that the medial meniscal tear is the reason for [appellant's] pain but it may very well be." The Board finds that appellant failed to provide medical rationale explaining how being bitten by dogs, falling down, and twisting and turning to avoid more dog bites at work on January 31, 2014 caused or aggravated her left knee condition. Appellant noted that her condition occurred while she was at work, but

⁴ OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁵ See *T.H.*, 59 ECAB 388 (2008).

⁶ *Id.*

⁷ *Id.*

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 condition.⁸ The Board further finds that Dr. Mendelson's opinion regarding the cause appellant's current pain and swelling is speculative and equivocal in nature.⁹ Dr. Mendelson did not otherwise sufficiently explain the reasons why diagnostic testing and examination findings led her to conclude that the January 31, 2014 incident at work caused or contributed to the diagnosed condition. Thus, the Board finds that her reports fail to establish that appellant sustained a left knee condition causally related to the January 31, 2014 employment incident.

Other medical evidence of record, including diagnostic test reports, is of limited probative value as it does not specifically address whether appellant's diagnosed conditions are causally related to the January 31, 2014 work incident.¹⁰

The Board finds that, as appellant has not submitted rationalized medical evidence sufficient to establish a left knee condition causally related to the accepted January 31, 2014 employment incident, she has not met 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 left knee condition causally related to the accepted January 31, 2014 employment incident.

⁸ See *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

⁹ Medical opinions that are speculative or equivocal in character are of little probative value. See *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹⁰ 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 November 23, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 6, 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