United States Department of Labor
Employees' Compensation Appeals Board

S.O., Appellant	)	
and	)	**Docket No. 18-0246**
	)	**Issued: August 2, 2018**
U.S. POSTAL SERVICE, LONG ISLAND PERFORMANCE CLUSTER, Melville, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 14, 2017 appellant, through counsel, filed a timely appeal from a September 26, 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 to consider the merits of the 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 his burden of proof to establish a left knee condition causally related to an accepted September 17, 2016 employment incident.

FACTUAL HISTORY

On July 23, 2014 appellant, then a 25-year-old city carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he twisted his left knee while entering a truck in the performance of duty. He stopped work that same day. OWCP assigned this claim OWCP File No. xxxxxx139, and on August 11, 2014 accepted it for left knee sprain. Appellant received compensation benefits until he returned to full-time, limited-duty work on November 28, 2014.

On September 30, 2016 appellant filed a notice of recurrence (Form CA- 2a), alleging a recurrence of disability causally related to the July 23, 2014 employment injury commencing on September 17, 2016. He noted that he had returned to light-duty work, but that after working his shift on September 17, 2016 he experienced soreness and pain in his injured knee. In an accompanying statement, appellant related that he believed that his pain was due to the original injury which never healed properly. He alleged that his doctor confirmed it was a recurrence of the original injury.

By development letter dated October 7, 2016, OWCP informed appellant that additional medical evidence was necessary to support his claim for a recurrence, and afforded him 30 days to submit evidence. In a response received by OWCP on November 2, 2016, appellant indicated that even a light-duty letter carrier position was physical in nature. He related that his recurrence happened throughout the day on September 17, 2016 while he was hopping out of the truck and delivering mail. Appellant noted that these activities required that he twist and turn his knee. He also noted that he started his day by casing mail on his feet for roughly 90 minutes and he then performed his delivery route. Appellant related that his injury occurred throughout the day. He alleged that being on his feet all day put strain on the knee.

By letter dated November 7, 2016, OWCP informed appellant that his recurrence claim would be handled as a new traumatic injury claim, that a new claim would be administratively created using the Form CA-2a that appellant filed, and that a new case number would be assigned. It thereafter assigned the new claim OWCP File No. xxxxxx533.

In a September 19, 2016 report, Dr. Steven A. Simonsen, appellant's treating Board-certified orthopedic surgeon, indicated that appellant was partially disabled.

In a September 26, 2016 report, Dr. Michael Setton, a Board-certified radiologist, interpreted an x-ray of the same date and found subacute sprain and high-grade partial tear of the distal fibular collateral ligament, no meniscal tear, articular cartilage, abnormality, occult osseous injury, or other ligament injury identified, and minimal joint effusion.

By report dated September 30, 2016, Dr. Simonsen noted that appellant had pain on varus stress to the lateral aspect of the knee. He also noted stiffness on palpitation to the distal fibular collateral ligament. In an attending physician's report (Form CA-20) dated October 3, 2016,

Dr. Simonsen related that appellant was temporarily totally disabled from September 19, 2016 until present. He noted that appellant gave a history of entering a truck at work and twisting his knee. Dr. Simonsen opined that appellant suffered a sprain of the left knee and plica syndrome, and indicated by checking a box marked "yes" that this injury was caused or aggravated by the employment activity described by appellant.

By development letter dated November 17, 2016, OWCP informed appellant that additional medical evidence was necessary to support his claim, and afforded him 30 days to submit the necessary information.

OWCP continued to receive medical evidence. In a September 19, 2016 treatment note, Dr. James L. Marzec, a Board-certified orthopedic surgeon, stated that appellant reported a left knee exacerbation. He stated that he planned to get a magnetic resonance imaging (MRI) scan of appellant's left knee, and that appellant would be out of work until the results were interpreted.

In an October 14, 2016 treatment note, Dr. Simonsen noted that appellant's prior MRI scan in June 2015 showed a suggestion of red marrow hyperplasia. He listed diagnoses of high-grade partial tear of distal fibular collateral ligament of left knee/subacute sprain minimal joint effusion. In a November 4, 2016 report, Dr. Simonsen stated that appellant could return to sedentary work. In a progress report of the same date, he noted reinjury to lateral collateral ligament complex, first-degree, no plica symptoms. Dr. Simonsen noted that this appeared to be related to appellant's 2014 injury. He diagnosed a high-grade partial tear of distal fibular collateral ligament of the left knee/subacute sprain minimal joint effusion. In a December 5, 2016 report, Dr. Simonsen noted that appellant continued to complain of left knee pain. He diagnosed chronic pain secondary to lateral collateral ligament complex tear.

By decision dated December 22, 2016, OWCP denied appellant's claim as it determined that the medical evidence was insufficient to establish that the claimed medical condition was causally related to the accepted September 17, 2016 work incident. Specifically, it noted that the medical evidence submitted did not contain a well-reasoned medical opinion supported by objective medical findings as to exactly how the diagnosed medical conditions of left knee sprain, high-grade partial tear of the fibular collateral ligament of the left knee, left knee plica syndrome, left knee severe patella tilt, and left knee lateral collateral ligament complex tear were either directly caused or aggravated by the accepted work incident of September 17, 2016.

Appellant continued to submit progress reports from Dr. Simonsen. In reports dated January 18, February 23, and March 30, 2017, Dr. Simonsen noted that appellant continued to complain of pain in his left knee. He continued to diagnose work-related lateral collateral ligament complex tear with scarring and persistent pain, and continued to opine that appellant remained disabled.

On May 9, 2017 appellant, through counsel, requested reconsideration. Counsel argued that the medical evidence already submitted sufficiently proved a causal relationship. He noted that Dr. Simonsen diagnosed a left knee sprain, high-grade partial tear of distal fibular collateral ligament of the left knee, and a left knee lateral collateral ligament complex tear. Counsel contended that Dr. Simonsen found objective findings of left knee pain, left knee effusion, sharp aches, stiffness, swelling, and limited range of motion. He noted that Dr. Simonsen clearly stated

that appellant immediately developed knee pain as a result from his federal employment duties. Counsel also argued that appellant's claim was credible because his specific injuries could have been caused by landing awkwardly after exiting a high-seated vehicle such as the mail truck. He contended that it would be reasonable for OWCP to accept such as probable, or in the alternative, inquire of Dr. Simonsen directly as to his specific view on appellant's injuries and causal relationship between his work-related accident and his diagnosed medical condition. Counsel also submitted new medical evidence which he contended was firmly supportive of appellant's claim as causally related to the September 17, 2016 employment incident. He requested that OWCP vacate its decision and award wage loss and other compensation.

In a February 24, 2017 report, Dr. Simonsen stated that appellant was injured while working for the employing establishment on September 17, 2016. He stated that appellant apparently incurred his injury with a twisting knee motion and felt pain in the posterolateral aspect of his left knee. Dr. Simonsen summarized his treatment of appellant. He noted that appellant was initially seen by his physician assistant, Bonnie Greene, who noted pain over appellant's lateral collateral ligament complex, but no instability, no fractures on plain x-ray, and patellar tilt. An MRI scan was obtained which showed a lateral collateral ligament complex tear. Dr. Simonsen noted that he first saw appellant on November 4, 2016 and that, at this time, appellant's left knee was consistent with his lateral collateral ligament complex tear. He opined that this was not a new injury, but an exacerbation of an injury that occurred to appellant's left knee on July 23, 2014 when he slipped getting into a mail truck while delivering mail. Dr. Simonsen noted that, for his prior injury, he saw appellant for the same symptomatology and had an MRI scan done, which confirmed a tear of his lateral collateral ligament complex. He noted that appellant had no interval injury between his first incident and the September 17, 2016 employment incident. Dr. Simonsen noted that on appellant's last examination of January 18, 2017 he continued to have pain in the posterolateral corner of his left knee, consistent with a lateral collateral ligament complex tear. He noted no laxity, but did note pain with a McMurray's test and stress with palpitation, and that a review of his MRI scan confirmed this diagnosis. Dr. Simonsen indicated that appellant required prolonged physical therapy, bracing, and limited work until his symptoms clear. He diagnosed recurring sprain of a lateral collateral ligament complex tear of the left knee, work related. Dr. Simonsen opined that appellant was, at best, capable of desk work. In a progress note dated May 8, 2017, he listed the date of injury as September 17, 2016, and diagnosed work-related left injury, tear of lateral collateral ligament complex with persistent pain.

By decision dated September 26, 2017, OWCP determined that the evidence submitted by appellant was of insufficient probative value to alter the decision of December 22, 2016. It determined that Dr. Simonsen's letter of February 24, 2017 did not provide a rationalized opinion which explained how the work incident of September 17, 2016 contributed to, further aggravated, or materially worsened the preexisting left knee condition. OWCP stated that it was noteworthy that, upon review of the medical evidence, there were no notable change on the MRI scan reports and; therefore, it remained unclear exactly how the employment incident of September 27, 2016 exacerbated or retore appellant's lateral collateral ligament. It further noted that Dr. Simonsen did not provide an opinion which differentiated the effects and symptoms of the preexisting condition and the work incident of September 17, 2016.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 time limitation period of FECA, that an injury was sustained in the performance of duty, as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

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

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 clamant, must be one of reasonable 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]

ANALYSIS

The Board finds that the medical evidence of record is insufficient to establish a left knee condition causally related to his accepted employment incident on September 17, 2016.

Initially, the Board finds that OWCP properly adjudicated appellant's claim as a claim for a new injury rather than a recurrence of his prior claim under OWCP File No. xxxxxx139. A recurrence of disability means an inability to work after an employee has returned to work caused by a spontaneous change in a medical condition resulting from a previous injury or illness without

[3] *Id*.

[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift, whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

[6] *Julie B. Hawkins*, 38 ECAB 393 (1987).

[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] *See I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

a new or intervening injury.[9] Appellant's prior July 23, 2014 claim was accepted for left knee sprain. He returned to work following his July 23, 2014 employment injury on November 28, 2014. Appellant alleged that his work activities and, particularly, the activities of September 17, 2016 caused a recurrence of his previously accepted injury to his left knee. He then alleged that new work activities, specifically working on his feet all day casing and delivering mail, caused an aggravation of the previously accepted left knee condition. Accordingly, as properly determined by OWCP, appellant's claim is for a new traumatic injury.[10]

The reports of appellant's treating physician, Dr. Simonsen, failed to establish causal relationship. In his September 30, 2016 examination note, Dr. Simonsen indicated by check mark that appellant left knee sprain and plica syndrome were caused or aggravated by his September 17, 2016 employment activity. It is well established that a physician's opinion on causal relationship that consists of checking a box marked "yes" to a form question is of diminished probative value.[11] In his February 24, 2017 report, Dr. Simonsen diagnosed lateral collateral ligament complex tear. He first opined that this was an exacerbation of appellant's July 23, 2014 employment injury, noting that it had the same symptomatology. However, in a progress note dated May 8, 2017, Dr. Simonsen listed appellant's date of injury as September 17, 2016, and diagnosed work-related left injury, tear of lateral collateral ligament complex with persistent pain. In this report, he does not explain his reasoning as to why he believed that appellant's diagnosed conditions were caused by his federal employment duties on September 17, 2016. A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident or work factors were sufficient to result in the diagnosed medical condition is insufficient to meet a claimant's burden of proof to establish a claim.[12] Therefore, this evidence is insufficient to meet appellant's burden of proof.

The other medical evidence of record is also insufficient to establish causal relationship. Dr. Setton interpreted an x-ray, but did not give an opinion on causal relationship. The Board has found that diagnostic studies are of limited probative medical value as they do not specifically address whether the diagnosed conditions are attributable to accepted employment factors.[13] Accordingly, Dr. Setton's report is of limited probative value.[14]

Furthermore, Dr. Marzec did not address causation in his September 19, 2016 treatment note. The Board has held that medical evidence that does not offer any opinion regarding the cause of the employee's condition is of diminished probative value on the issue of causal relationship.[15]

[9] *See Irene St. John*, 50 ECAB 521 (1999); *see also L.D.*, Docket No 17-1407 (issued January 19, 2018).

[10] *See L.D., id.*

[11] *Cecelia M. Corley*, 56 ECAB 662 (2005).

[12] *See P.T.*, Docket No. 17-0374 (issued April 19, 2018).

[13] *See S.F.*, Docket No. 17-0463 (issued September 8, 2017).

[14] *Id.*

[15] *T.W.*, Docket No. 11-0560 (issued December 21, 2011).

An award of compensation may not be based on surmise, conjecture, speculation, on appellant's own belief of a causal relationship.[16] Appellant's belief that the duties of his federal employment caused his injury, however, sincerely held, do not constitute medical evidence sufficient to establish causal relationship.[17]

The Board thus finds that appellant has not established a left knee condition causally related to his September 17, 2016 employment incident.

On appeal counsel contends that the medical evidence establishes that appellant was injured on September 17, 2016 while in the performance of his federal employment duties. He contends that OWCP unjustifiably denied appellant's claim by adopting an adversarial posture and requiring appellant to establish causal relationship beyond all reasonable doubt. For the reasons explained above, appellant has not met his 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 established a left knee condition causally related to his accepted September 17, 2016 employment incident.

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

[17] *P.S.*, Docket No. 17-0598 (issued June 23, 2017).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 26, 2017 is affirmed.

Issued: August 2, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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