United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 18-0429**
	)	**Issued: August 27, 2018**
U.S. POSTAL SERVICE, POST OFFICE, White Plains, NY, Employer	)	

Appearances:
Thomas S. Harkins, 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 December 26, 2017 appellant, through counsel, filed a timely appeal from a July 24, 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 met his burden of proof to establish a left knee injury causally related to the accepted September 19, 2016 employment incident.

FACTUAL HISTORY

On September 20, 2016 appellant, then a 56-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that, while working on September 19, 2016, he sustained a left knee injury when he caught his left leg on a mail strap left on the workroom floor. He notified his supervisor on the date of injury and sought medical treatment the following day. Appellant's supervisor provided a statement corroborating the events of the September 19, 2016 employment incident.

On September 20, 2016 the employing establishment issued a properly completed, authorization for examination and/or treatment, Form CA-16, which indicated that appellant was authorized to seek medical treatment with Dr. Sergai Delamora, a Board-certified orthopedic surgeon, for his claimed September 19, 2016 injury. Dr. Delamora noted in the attending physician's portion of the Form CA-16 that appellant almost fell at work and diagnosed a meniscal tear.

In medical notes dated September 20 and 22, 2016, Dr. Delamora noted a September 19, 2016 date of injury and discussed x-ray findings. He provided findings on physical examination of the left knee and diagnosed tear of right knee meniscus.

By development letter dated September 30, 2016, OWCP informed appellant that the evidence of record was insufficient to establish his alleged traumatic injury claim. It advised appellant of the medical and factual evidence needed and provided a questionnaire for completion requesting further information pertaining to the employment incident. OWCP afforded appellant 30 days to submit the necessary evidence.

In medical notes dated October 6 and November 1, 2016, Dr. Delamora provided physical examination findings and diagnosed peripheral tear of medial meniscus, right knee. Return to work notes dated October 6 and 27, 2016 indicated that appellant could not work pending a magnetic resonance imaging (MRI) scan.

In a November 1, 2016 attending physician's report (Form CA-20), Dr. Delamora noted that x-rays revealed mild osteoarthritis and that appellant sustained a left knee injury on September 19, 2016 while at work.

In a November 2, 2016 note, Steven Gross, a physician assistant, reported that appellant injured his left knee on September 19, 2016 when he was at work and his foot got tangled in a nylon mail strap, causing him to twist his knee.

By decision dated November 16, 2016, OWCP denied appellant's claim finding that the evidence of record failed to establish that his left knee injury was causally related to the accepted September 19, 2016 employment incident.

On April 25, 2017 appellant, through counsel, requested reconsideration of the November 16, 2016 OWCP decision. Counsel argued that a November 16, 2016 report of Dr. Delamora, along with the MRI scan reports, established a work-related September 19, 2016 injury.

In the November 16, 2016 narrative report, Dr. Delamora reported that appellant injured his left knee on September 19, 2016 when he was at work and his foot got caught in a nylon mail strap, causing him to twist his left knee. He opined that appellant's injury caused him chronic left knee pain, swelling, locking/popping, buckling, and difficulty bearing weight. Physical examination revealed a positive McMurray test findings, limited range of motion, and left knee instability. Dr. Delamora reported that, due to appellant's symptoms, it was medically necessary that he undergo an MRI scan of the left knee to rule out a meniscal tear.

In medical notes dated November 17, 2016 through January 24, 2017, Dr. Delamora provided left knee examination findings for a tear of the medial meniscus. On December 19, 2016 appellant underwent a left knee meniscectomy. In a December 27, 2016 report, Dr. Delamora related that appellant complained of right knee pain since his left knee surgery one-week postoperative. In a January 24, 2017 report, he diagnosed right and left knee tear of the medial meniscus. A November 17, 2016 note restricted appellant from returning to work.

In a December 5, 2016 diagnostic report, Dr. Louis Eisen, a Board-certified radiologist, reported that an MRI scan of the left knee revealed prominent grade 3 to 4 chondromalacia of the weight bearing articular cartilage of the medial femoral condyle, additional mild-to-moderate degenerative thinning of the articular cartilage of the medial tibial plateau, degenerative tear of the posterior horn of the medial meniscus and inner margin of the junction of the posterior body portion and posterior horn, questionable small vertical peripheral tear involving the mid-body portion of the medial meniscus, possible grade 1 to 2 sprain of the medial collateral ligament (MCL) *versus* related to chronic degenerative changes, chondromalacia of the lateral tibial plateau, and patellofemoral chondromalacia.

In a January 25, 2017 diagnostic report, Dr. Sanjay Gupta, a Board-certified diagnostic radiologist, reported that a right knee MRI scan revealed complex tear at medial meniscus body segment extended through posterior horn-body junction, small joint effusion, distal quadriceps tendinosis, partially separated ganglion cyst along the popliteus tendon sheath, Baker's cyst, and small tricompartmental osteoarthritic changes with small osteophytes and chondromalacia, most notably at the medial compartment.

By decision dated July 24, 2017, OWCP denied modification of its November 16, 2016 decision, finding that the evidence of record failed to establish that appellant's diagnosed left knee condition was causally related to the accepted September 19, 2016 employment incident.

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

[3] *Supra* note 2.

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.[4] 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.[5]

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

Rationalized medical opinion evidence is generally required to establish 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. 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.[8]

ANALYSIS

The Board finds that appellant did not submit sufficient medical evidence to establish that his left knee condition was causally related to the accepted September 19, 2016 employment incident.[9]

Dr. Delamora first treated appellant on September 20, 2016 following the September 19, 2016 employment incident. In progress reports dated September 20 through November 1, 2016, he documented physical examinations findings pertaining to the left knee based on appellant's complaints of left knee pain. While Dr. Delamora provided left knee examination findings, the very same reports only diagnosed a right knee meniscus tear. He did not diagnose a left knee meniscus tear until his November 17, 2016 progress note. The Board notes that appellant did not complain of right knee pain following his claimed September 19, 2016 injury as his Form CA-1

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

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

[6] *Elaine Pendleton*, *supra* note 4.

[7] *S.F.*, Docket No. 18-0296 (issued July 26, 2018).

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

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

alleged a left knee injury. Given that appellant reported a left knee injury and underwent a left knee menisectomy on December 19, 2016, it appears that Dr. Delamora did not have an accurate and clear understanding of his findings and diagnosis, or failed to provide the proper level of attention to accurately document his diagnosis. As such, his opinion is of diminished probative value.[10]

The Board notes that, while Dr. Delamora eventually provided a diagnosis of left knee meniscus tear as evidenced by diagnostic testing, he failed to provide any opinion on the cause of appellant's injury. 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.[11] In his November 16, 2016 narrative report, Dr. Delamora only generally repeated appellant's allegations pertaining to the employment incident. Such generalized statements are insufficient to establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how this physical activity actually caused the diagnosed conditions.[12] While Dr. Delamora described appellant's symptoms and examination findings, the Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury, without adequate rationale, is insufficient to establish causal relationship.[13]

The Board also notes that diagnostic testing revealed degenerative changes in the left and right knee. Dr. Delamora failed to discuss appellant's medical history, did not address why his complaints were not caused by his preexisting degenerative condition, or discuss whether his preexisting injury had progressed beyond what might be expected from the natural progression of that condition.[14] It is unclear whether appellant's injury was caused by the September 19, 2016 employment incident, a result of a preexisting condition, or due to degenerative changes. A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.[15] Without explaining how physiologically the movements involved in the September 19, 2016 employment incident caused or contributed to the diagnosed condition, his opinion is equivocal in nature and of limited probative value.[16] As Dr. Delamora failed to provide any opinion that appellant's left knee meniscal tear was caused or aggravated by the September 19, 2016 employment incident, his medical reports are insufficient to establish a work-related injury.[17]

[10] *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

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

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

[13] *M.R.*, Docket No. 14-0011 (issued August 27, 2014).

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

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

[16] *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).

[17] *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

The remaining medical evidence of record is also insufficient to establish causal relationship between appellant's left knee injury and the September 19, 2016 employment incident. Dr. Eisen and Dr. Gupta's reports simply interpret diagnostic studies with no firm medical diagnosis or opinion on the cause of appellant's injury.[18] The Board has previously explained that diagnostic testing is not probative to the issue of causal relationship as it does not offer any opinion regarding the cause of an employee's condition.[19]

The physician assistant report is also insufficient to establish appellant's claim as it was not signed by a physician. Registered nurses, physical therapists, and physicians assistants, are not physicians as defined under FECA, their opinions are of no probative value.[20]

On appeal counsel for appellant argues that the medical reports establish appellant's traumatic injury claim and at the very least, warrant further development of the medical evidence by OWCP. An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[21] Appellant's honest belief that his accepted employment incident caused his left knee injury, however sincerely held, do not constitute medical evidence sufficient to establish causal relationship.[22] In the instant case, the record lacks rationalized medical evidence establishing causal relationship between the September 19, 2016 employment incident and his diagnosed left knee condition. Thus, appellant has not met his burden of proof.[23]

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 his burden of proof to establish a left knee injury causally related to the accepted September 19, 2016 employment incident.

[18] It is not possible to establish the cause of a medical condition, if the physician has not stated a firm medical diagnosis. *T.G.*, Docket No. 13-0076 (issued March 22, 2013).

[19] *See E.F.*, Docket No. 17-2005 (issued June 15, 2018).

[20] *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physicians assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); *Charley V.B. Harley*, 2 ECAB 208 (1949) (the Board held that medical opinion, in general, can only be given by a qualified physician). *See also* 5 U.S.C. § 8101(2).

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

[22] *See J.S.*, Docket No. 17-0967 (issued August 23, 2017).

[23] The record contains a Form CA-16 dated September 20, 2016 and signed by the employing establishment. A properly executed CA-16 form can be the basis of a contractual agreement for payment of medical expense, even if the claim is not accepted. Upon return of the case record, OWCP should address this issue. *See* 20 C.F.R. § 10.300; *Val D. Wynn*, 40 ECAB 666 (1989); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (February 2012).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated July 24, 2017 is affirmed.

Issued: August 27, 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