United States Department of Labor
Employees' Compensation Appeals Board

Y.P., Appellant	)	
and	)	**Docket No. 17-0859**
	)	**Issued: December 4, 2018**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Buffalo, NY, 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 March 9, 2017 appellant filed a timely appeal from a December 13, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 recurrence of disability on October 7, 2015, causally related to her accepted March 18, 2014 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. However. the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id*.

FACTUAL HISTORY

On April 19, 2014 appellant, then a 47-year-old practical nurse, filed a traumatic injury claim (Form CA-1) alleging that she injured her left knee on March 18, 2014 as a result of attempting to sit in a chair while in the performance of duty. She stated that the chair slipped from behind her, which caused her to fall to the floor, injuring her left knee. OWCP initially denied the claim by decision dated August 8, 2014, because it found that the medical evidence was insufficient to establish causal relationship. Subsequently, by decision dated February 19, 2015, an OWCP hearing representative reversed the decision and returned the case for acceptance of left knee medial meniscus tear. By decision dated March 6, 2015, OWCP accepted appellant's claim for left knee medial meniscus tear. It also authorized two left knee surgeries which appellant underwent on September 29, 2014 and January 20, 2015.

In a June 9, 2015 report, Dr. Michael A. Rauh, a Board-certified orthopedic surgeon, released appellant to light-duty work with the following restrictions: walking and standing up to eight (8) hours per day, no bending/stooping, pushing, pulling, and lifting no more than 10 pounds, and no squatting, kneeling, or climbing with occasional stair use.

On June 10, 2015 appellant accepted a light-duty job offer from the employing establishment as a modified licensed practical nurse. The position required scheduled six 12-hour shifts and one 8-hour shift per pay period. The physical requirements included occasional stair climbing, standing, or walking limited to 12 hours, no bending, stooping, squatting, or kneeling, lifting limited to less than 10 pounds, pushing or pulling less than 10 pounds, and sedentary work only.

Subsequently, on September 8, 2015 appellant accepted a job as a modified procedure scheduler. The tour of duty was Monday through Friday (two shifts) from 7:00 a.m. to 3:30 p.m. and 8:00 a.m. to 4:30 p.m. The physical requirements included standing or walking limited to 12 hours, lifting limited to less than 10 pounds, and pushing or pulling less than 10 pounds.

An x-ray dated October 7, 2015 demonstrated an L4-5 anterolisthesis and decreased disc height at L5-S1.

In an October 7, 2015 report, Dr. Lindsey Clark, an orthopedic surgeon, diagnosed other intervertebral disc degeneration, lumbar region, and noted that appellant presented with low back pain and bilateral leg pain. He indicated that appellant had a work-related injury to her left knee on March 18, 2014, which had caused her to compensate on the right side exacerbating her low back pain. Appellant reported 75 percent low back pain and 25 percent leg pain.

On October 21, 2015 Dr. Rauh diagnosed status post left knee anterior cruciate ligament (ACL) reconstruction with continued left knee pain in the setting of degenerative changes. He opined that appellant would benefit from receiving viscosupplementation injections to help alleviate her symptoms and possibly allow for improved function and return to daily activities, as well as occupational activities.

In two reports dated October 23, 2015, Dr. Clark diagnosed cervicalgia and took appellant off of work until further notice.

On October 29, 2015 appellant filed a claim for wage-loss compensation (Form CA-7) for the period October 19 to 21, 2015.

In a November 2, 2015 letter, OWCP advised appellant that it appeared that she was claiming a recurrence of disability and found that it was unclear why she stopped work on October 19, 2015. It requested additional medical evidence in support of her claim.

In a November 13, 2015 duty status report (Form CA-17), Dr. Clark diagnosed intervertebral disc degeneration and provided work restrictions.

On November 20, 2015 appellant filed a notice of recurrence (Form CA-2a). She stated that, when returning back to work, she continued to have left knee pain and burning/popping back pain which worsened on October 21, 2015. Appellant indicated that she compensated her weight to the right side of her body and not being able to put full pressure on her left leg caused her back and hip issues.

In a November 4, 2015 report, Dr. Sridhar Rachala, a Board-certified orthopedic surgeon, diagnosed left knee pain, status post ACL reconstruction, mild left knee arthritis, and morbid obesity. He checked a box marked "yes" indicating his support for causal relationship, noting that the injury occurred while appellant was on duty.

On December 4, 2015 Meghan McNichol, a physician assistant, diagnosed other intervertebral disc degeneration, lumbar region, and checked a box marked "yes" indicating her support for causal relationship, noting that the injury occurred while appellant was on duty.

In a December 11, 2015 letter, OWCP advised appellant of the deficiencies of her recurrence claim. It requested additional evidence in support of the claim and afforded appellant 30 days to respond to its inquiries.

In response, appellant submitted a narrative statement dated December 15, 2015, indicating that she returned to work on June 6, 2015.

An October 23, 2015 x-ray of the cervical spine was normal and showed no evidence of fracture, subluxation, or degenerative change.

On December 16, 2015 Dr. Rauh diagnosed pain in the left knee and unilateral primary osteoarthritis of the left knee. He noted that appellant continued treatment with his spine specialist colleague for her lower back and right hip conditions.

In a December 21, 2015 report, Dr. Clark noted that appellant sustained a work injury on March 18, 2014 to her left knee and since that injury she had difficulty putting full weight on her left lower extremity. Appellant was compensating her weight to her right side, which Dr. Clark opined had caused a consequential injury to her lumbar spine. Dr. Clark noted that appellant was diagnosed with intervertebral disc degeneration of the lumbar spine and on October 23, 2015 she reported worsening of her low back and lateral hip pain. She reported that appellant had been working light duty, but was no longer able to tolerate even those duties. Dr. Clark took appellant off of work as she was not able to sit, stand, or walk for any prolonged period and advised that she was unable to lift, bend, or twist.

By decision dated February 10, 2016, OWCP denied appellant's recurrence claim, finding that the medical evidence of record was insufficient to establish a recurrence of her medical condition causally related to her March 18, 2014 employment injury. It found that the evidence of record was insufficient to establish a return or increase of disability due to a consequential injury or condition stemming from appellant's accepted left knee condition.

Appellant submitted physical therapy reports dated February 15 and 17, 2015 and a March 1, 2016 report from a physician assistant in support of her claim.

In a February 12, 2016 report, Dr. Clark continued to diagnose other intervertebral disc degeneration, lumbar region, and opined that appellant's condition was causally related to her accepted employment injury.

On March 7, 2016 appellant requested reconsideration and submitted a narrative statement dated February 24, 2016.

In a December 22, 2015 report, Dr. Rauh asserted that appellant experienced low back pain, which was felt to be causally related to her knee secondary to favoring the left knee postoperatively. Appellant continued to have knee pain and subsequently began to experience low back discomfort and was referred to Dr. Clark for evaluation and consultation. She did not have any complaints of low back pain prior to her left knee surgery and Dr. Rauh concluded that her low back condition was causally related to her work-related injury.

An x-ray dated March 1, 2016 revealed moderate degenerative changes of the medial compartment of the knees bilaterally.

In a March 10, 2016 report, Dr. Elizabeth D. Ditonto, a Board-certified anesthesiologist and pain medicine specialist, diagnosed possible lumbar radiculopathy with known disc disease and foraminal stenosis, possible facet syndrome, and ongoing knee pain status post trauma and surgery. She asserted that appellant's accepted left knee injury and surgery affected her gait and made her low back pain on the right worse.

On April 5, 2016 Dr. Rauh reported that appellant had a recent fall at work on April 5, 2016 and diagnosed ACL sprain of the left knee.

In a March 21, 2016 report, Ms. McNichol released appellant to work without restrictions on April 4, 2016 and indicated that she would be "doing light duty for her knee."

By decision dated May 19, 2016, OWCP denied modification of its prior decision.

In response, appellant submitted a physical therapy report dated June 10, 2016 and a July 5, 2016 narrative statement indicating that she was presently on light duty working four hours per day.

On June 20, 2016 Dr. Ditonto administered a lumbar epidural steroid injection with epiduragram.

On July 26, 2016 appellant requested reconsideration and argued that she could not perform her job duties because of her consequential injuries to her back that came from her knee.

In an April 22, 2016 report, Dr. Rauh diagnosed left knee exacerbation of preexisting arthritis, no clear evidence of interval ACL tear, possible new posterior horn lateral meniscus tear, and medial compartment arthritis due to a new history of injury to her left knee.

Appellant further submitted a physical therapy report dated May 20, 2016.

By decision dated November 21, 2016, OWCP denied modification of its prior decision.

On November 28, 2016 appellant requested reconsideration and submitted a November 2, 2016 report from Dr. Rauh who continued to diagnose left knee status post ACL reconstruction with new onset pain and locking.

By decision dated December 13, 2016, OWCP denied modification of its prior decision, finding that appellant has not met her burden of proof to establish a recurrence of disability due to her accepted work-related injury on March 18, 2014.

LEGAL PRECEDENT

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 which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[3] Recurrence of disability also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his established physical limitations.[4] Generally, a withdrawal of a light-duty assignment would constitute a recurrence of disability where the evidence established continuing injury-related disability for regular duty.[5] A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties or other downsizing, or where a loss of wage-earning capacity determination is in place.[6]

Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.[7]

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of proof to establish that the recurrence is causally related

[3] 20 C.F.R. § 10.5(x).

[4] *Id.*

[5] *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6a(4) (June 2013).

[6] 20 C.F.R. §§ 10.5(x), 10.104(c) and 10.509; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b.

[7] *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

to the original injury.[8] This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the condition is causally related to the employment injury.[9] The physician's opinion must be based on a complete and accurate factual and medical history and supported by sound medical reasoning.[10]

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to claimant's own intentional misconduct.[11] Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[12]

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[13]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability on October 7, 2015, causally related to her accepted March 18, 2014 employment injury.

Appellant argued that she could not perform her limited job duties because of consequential injuries to her back that resulted from her accepted knee condition. An x-ray dated October 7, 2015 demonstrated an L4-5 anterolisthesis and decreased disc height at L5-S1. However, this diagnostic study does not address the etiology of appellant's back conditions. Appellant also submitted evidence from physician's assistants and physical therapists. These reports do not constitute competent medical evidence because these medical care providers are not considered "physician[s]" as defined under FECA.[14] Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as

[8] 20 C.F.R. § 10.104(b); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 and 2.1500.6.

[9] *See S.S.*, 59 ECAB 315, 318-19 (2008).

[10] *Id.* at 319.

[11] *Mary Poller*, 55 ECAB 483, 487 (2004); 1 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* 10-1 (2006).

[12] *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

[13] *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

[14] 5 U.S.C. § 8101(2); *Sean O'Connell*, 56 ECAB 195 (2004) (physician's assistants); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

defined under FECA.[15] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[16]

Dr. Ditonto diagnosed possible lumbar radiculopathy with known disc disease and foraminal stenosis, possible facet syndrome, and ongoing knee pain status post trauma and surgery. However, his report does not provide an opinion regarding the cause of appellant's current disability. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[17] For these reasons, the Board finds that this evidence is insufficient to establish that appellant sustained a consequential injury.

In a December 22, 2015 report, Dr. Rauh noted that appellant experienced low back pain, which he felt to be causally related to her knee secondary to favoring the left knee postoperatively. Similarly, Dr. Clark diagnosed cervicalgia, other intervertebral disc degeneration, lumbar region, and noted that appellant presented with low back pain and bilateral leg pain. She indicated that appellant had a work-related injury to her left knee on March 18, 2014 which had caused her to compensate on the right side and caused a consequential injury to her lumbar spine. Although disability resulting from surgery or treatment authorized by OWCP is compensable,[18] Drs. Rauh and Clark have failed to provide sufficient medical rationale explaining how appellant's accepted left knee condition caused or aggravated her back conditions. Therefore, the Board finds that this evidence is insufficient to establish appellant's claim for a consequential back injury.

Appellant alleged that her recurrence of total disability was caused by an inability to perform her light-duty job requirements. However, the record shows that the modified licensed practical nurse position she accepted on June 10, 2015 indicated that the duties required "occasional stair climbing, standing, or walking limited to 12 hours, no bending, stooping, squatting, or kneeling, lifting limited to less than 10 pounds, pushing or pulling less than 10 pounds, and sedentary work only."

Further, appellant did not submit sufficient medical evidence to establish that her assigned duties had changed such that she was not medically able to perform them. She did not submit adequate medical evidence to support that her assigned duties exceeded her medical limitations or that she otherwise had a spontaneous change in her accepted left knee condition in the present claim. In his reports, Dr. Rauh released appellant to light-duty work with the following restrictions: walking and standing up to eight hours per day, no bending/stooping, pushing, pulling, and lifting no more than 10 pounds, and no squatting, kneeling, or climbing with occasional stair use. He failed to provide a rationalized medical opinion explaining how appellant's assigned duties exceeded her physical limitations or caused or aggravated her accepted left knee condition. Dr. Rauh reported that appellant had a recent fall at work on April 5, 2016

[15] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[16] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[17] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[18] *See R.S.*, Docket No. 15-0576 (issued June 9, 2015).

and diagnosed ACL sprain of the left knee and on April 22, 2016 he diagnosed left knee exacerbation of preexisting arthritis, no clear evidence of interval ACL tear, possible new posterior horn lateral meniscus tear, and medial compartment arthritis due to a new history of injury to her left knee. However, OWCP has not accepted an April 5, 2016 employment incident in this case. The Board finds there is insufficient evidence to establish that appellant's light-duty job requirements changed such that the job requirements were no longer within the restrictions provided by Dr. Rauh and appellant was unable to perform her limited-duty position.[19]

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 recurrence of disability on October 7, 2015 causally related to her accepted March 18, 2014 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 13, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 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

[19] *See J.F.*, 58 ECAB 124 (2006); *see also Terry R. Hedman*, 38 ECAB 222 (1986).