United States Department of Labor
Employees' Compensation Appeals Board

V.J., Appellant	)	
	)	
and	)	**Docket No. 18-0452**
	)	**Issued: July 3, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Carol Stream, IL, 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 January 2, 2018 appellant filed a timely appeal from a December 14, 2017 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 traumatic injury causally related to the accepted October 21, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record provided to the Board includes evidence received after OWCP issued its December 14, 2017 decision. 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 considering this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On October 24, 2017 appellant, then a 56-year-old general expeditor, filed a traumatic injury claim (Form CA-1) alleging that on October 21, 2017 she sustained a left knee injury at work. She indicated that, when she was pushing a mail cart over a divet in the floor, she stepped into the divet, causing her left knee "to go out." Appellant reported that "her left knee was swollen and she was unable to bend it all the way." She stopped work on October 27, 2017 and claimed entitlement to continuation of pay.

In an attached October 24, 2017 statement, appellant provided further details regarding her claimed October 21, 2017 employment injury. She noted that she twisted her left knee and caught herself with her right foot when she stepped into the divet, which was about two inches deep with a footprint of about nine by nine inches. Appellant described her left knee symptoms after her claimed October 21, 2017 employment injury, including pain and swelling. She indicated that, several days later, after she walked up stairs at work on October 23, 2017, her left knee "gave out again."

In an October 25, 2017 statement, appellant's immediate supervisor advised that the employing establishment was controverting appellant's traumatic injury claim. She indicated that she investigated the area where appellant alleged that the October 21, 2017 injury occurred and expressed her belief that her injury was not the result of her "stepping in/on the uneven floor."

In an October 24, 2017 report, Sherrie Fernandes, an attending physician assistant, indicated that appellant reported that she twisted her left knee while pushing a cart at work on October 21, 2017.[3] Ms. Fernandes detailed the findings upon physical examination of appellant's left knee, noting mild tenderness of the popliteal fossa. She diagnosed "sprain of other specified part of left knee, initial encounter" and advised that appellant was fit for duty with work restrictions including no prolonged kneeling or squatting. In an October 24, 2017 work status note, Ms. Fernandes provided the same diagnosis and work restrictions.

In a November 8, 2017 development letter, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion supported by a medical explanation as to how the reported employment incident caused or aggravated a medical condition. It requested that appellant complete and return an attached questionnaire which posed a question about whether she had experienced any similar symptoms or disability prior to the claimed October 21, 2017 injury. OWCP afforded appellant 30 days to submit a response.

On December 7, 2017 OWCP received appellant's response to its questionnaire attached to its November 8, 2017 development letter. Appellant advised that she had not experienced any similar symptoms or disability prior to the claimed October 21, 2017 injury.

Appellant submitted a November 2, 2017 report from Ms. Fernandes who provided physical examination findings upon examination. Ms. Fernandes indicated that appellant could continue to work with restrictions including no prolonged kneeling or squatting.

[3] Appellant also reported that she twisted her left knee while ascending stairs at work on October 23, 2017.

The results of a November 3, 2017 magnetic resonance imaging (MRI) scan of appellant's left knee contained an impression of moderate-to-severe patellofemoral compartment degenerative changes with prominent subchondral bone marrow edema at the patellar median ridge and medial facet.

In reports dated November 10, 16, and 24, 2017, Ms. Fernandes noted physical examination findings which were similar to those she detailed in her prior reports. She continued to note that appellant could work with restrictions.

In a November 24, 2017 report, Dr. Shaheen F. Misbah, an attending Board-certified family practitioner, indicated that appellant reported sustaining an injury on October 21, 2017 due to twisting her left knee while pushing a cart. Appellant also reported twisting her left knee again a few days later while ascending stairs at work. Dr. Misbah noted that appellant had been treated for her injury on October 24, and November 2, 10, 16, and 24, 2017. She advised that appellant was seen by Ms. Fernandes under her supervision, and noted that she was placed on light duty and treated with oral prednisone and anti-inflammatories. X-ray testing of appellant's left knee only showed moderate degenerative joint disease and a left knee MRI scan showed moderate-to-severe patellofemoral compartment syndrome, intact ligaments, and intact menisci. Dr. Misbah noted, "The twisting motion of the knee aggravated the arthritis in her knee causing pain." She further advised that steroid injections and physical therapy had been recommended.

In a duty status report (Form CA-17) dated November 2, 2017, a person with an illegible signature listed the date of injury as October 21, 2017, identified "left sprain -- knee" as the diagnosis due to injury, and recommended work restrictions. In a duty status report dated November 24, 2017, another person with an illegible signature listed the date of injury as October 21, 2017, identified "[illegible] left knee" as the diagnosis due to injury, and recommended work restrictions.

By decision dated December 14, 2017, OWCP denied appellant's claim for an October 21, 2017 employment injury. It accepted that appellant established the occurrence of the employment incident on October 21, 2017, as alleged, but further found that she failed to establish a diagnosed medical condition causally related to the accepted October 21, 2017 employment incident. OWCP determined that Dr. Misbah's opinion on causal relationship lacked adequate medical rationale.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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

[4] *See supra* note 1.

related to the employment injury.[5] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged.[7] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

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 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.[9]

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof to establish a traumatic injury causally related to the accepted October 21, 2017 employment incident.

Appellant filed a traumatic injury claim alleging that on October 21, 2017 she sustained a left knee injury at work. She indicated that, when she was pushing a mail cart over a divet in the floor, she stepped into the divet, causing her left knee "to go out." OWCP accepted that appellant established the occurrence of the employment incident on October 21, 2017, as alleged, but further found that she failed to establish a diagnosed medical condition causally related to the accepted October 21, 2017 employment incident.

Appellant submitted a November 24, 2017 report of Dr. Misbah who indicated that appellant reported sustaining an injury on October 21, 2017 due to twisting her left knee while pushing a cart.[10] Dr. Misbah noted that appellant had been treated for this injury on October 24, November 2, 10, 16, and 24, 2017. She advised that x-ray testing of appellant's left knee only

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

[6] *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 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).

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

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

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

[10] Dr. Misbah noted that appellant also reported twisting her left knee a few days later while ascending stairs at work.

showed moderate degenerative joint disease and an MRI scan of her left knee showed moderate-to-severe patellofemoral compartment syndrome, intact ligaments, and intact menisci. Dr. Misbah noted, "The twisting motion of the knee aggravated the arthritis in her knee causing pain."

The Board finds that Dr. Misbah's November 24, 2017 report is insufficient to establish appellant's claim for an October 21, 2017 employment injury because she did not provide adequate medical rationale in support of her opinion on causal relationship. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.[11] Dr. Misbah did not describe the accepted October 21, 2017 employment incident in any detail or explain the medical process through which it could have caused or aggravated appellant's underlying left knee condition. She did not explain how specific, objective medical findings supported her opinion on causal relationship and her opinion appears to be based primarily on appellant's recitation of left knee symptoms, which she associated with the October 21, 2017 work activity.[12] The Board has held that the fact that a condition manifests itself or worsens during a period of employment[13] or that work activities produce symptoms revelatory of an underlying condition[14] does not raise an inference of causal relationship between a claimed condition and employment factors. Dr. Misbah's November 24, 2017 report is of limited probative value on the relevant issue of this case for the further reason that it is not based on a complete factual and medical history. She did not adequately discuss appellant's prior left knee condition or explain why her current problems were not solely due to her nonwork-related degenerative condition. The Board has held that an opinion on a given medical question is of limited probative value if it is not based on a complete and accurate factual and medical history.[15]

In a November 2, 2017 duty status report, a person with an illegible signature listed the date of injury as October 21, 2017, identified "left sprain -- knee" as the diagnosis due to injury, and recommended work restrictions. In a November 24, 2017 duty status report, another person with an illegible signature listed the date of injury as October 21, 2017, identified "[illegible] left knee" as the diagnosis due to injury, and recommended work restrictions. However, these reports with illegible signatures are of no probative value regarding appellant's claim for an October 21, 2017 employment injury as the authors cannot be identified as physicians within the meaning of FECA.[16]

[11] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[12] The Board notes that appellant also advised that she experienced left knee symptoms while walking up stairs at work on October 23, 2017. However, appellant did not clearly allege that this constituted a second claimed employment injury. Rather, she appears to have mentioned the symptoms as revelatory of her claimed October 21, 2017 employment injury.

[13] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[14] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

[15] *See supra* note 9; *see also E.R.*, Docket No. 15-1046 (issued November 12, 2015).

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

Appellant also submitted reports from October and November 2017 of Ms. Fernandes, an attending physician assistant. However, these reports are of no probative value regarding appellant's claim for an October 21, 2017 employment injury because they do not constitute probative medical evidence from a physician. Under FECA, the report of a nonphysician, including a physician assistant, does not constitute probative medical evidence.[17]

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 failed to meet her burden of proof to establish a traumatic injury causally related to the accepted October 21, 2017 employment incident.

[17] *R.S.*, Docket No. 16-1303 (issued December 2, 2016); *L.L.*, Docket No. 13-0829 (issued August 20, 2013). *See* 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). In her November 24, 2017 report, Dr. Misbah indicated that she supervised Ms. Fernandes' treatment of appellant, but she did not countersign Ms. Fernandes' reports such that they would constitute probative medical evidence within the meaning of FECA. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.P.*, Docket No. 17-1221 (issued August 21, 2017).

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2017 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 3, 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