United States Department of Labor
Employees' Compensation Appeals Board

S.Y., Appellant	)	
	)	
and	)	**Docket No. 17-0585**
	)	**Issued: June 13, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Hammonton, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 24, 2017 appellant, through counsel, filed a timely appeal from a September 15, 2016 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 has established a right knee injury causally related to an accepted September 4, 2015 employment incident.

FACTUAL HISTORY

On September 4, 2015 appellant, then a 38-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, on that date, her right knee "popped and gave out" while in the performance of duty. She stopped work on September 4, 2015. The employing establishment did not controvert the claim.

Dr. Mitesh K. Patel, Board-certified in family practice, evaluated appellant on September 10, 2015 for right knee pain that began on September 4, 2015 when she turned while loading mail in a truck at work and experienced a "pop followed by excruciating pain." He noted that x-rays obtained on that date at the emergency room were negative for fractures and showed a right knee arthroplasty with "good anatomic alignment." Dr. Patel diagnosed right knee pain and a medial meniscal tear.[3]

By letter dated September 22, 2015, OWCP requested that appellant submit additional factual and medical information in support of her claim, including a detailed report from her attending physician addressing the cause of any diagnosed condition and its relationship to the identified work incident.

In an emergency room report dated September 4, 2015, received by OWCP on September 24, 2015, Dr. Reva Dubin, Board-certified in emergency medicine, evaluated appellant for right knee pain. She noted that the pain began after she pivoted with her foot planted and her knee popped. Dr. Dubin advised that appellant had a history of a right knee replacement 15 years earlier. On examination she found mild edema and pain with motion. Dr. Dubin diagnosed no apparent fracture or dislocation, status post knee replacement with an intact prosthesis and good alignment, and mid joint effusion.

In a September 29, 2015 report, Dr. Jess H. Lonner, a Board-certified orthopedic surgeon, discussed appellant's history of a total right knee arthroplasty in 2002 following a return to work without restrictions. On September 4, 2015 she twisted while sorting mail and her right knee locked. Dr. Lonner related that appellant had been unable to unlock her knee. He noted that x-rays did not demonstrate loosening or wear of the arthroplasty. Dr. Lonner diagnosed other mechanical complication of a prosthetic joint implant and acute knee pain. He related: "[Appellant] seems to have a locked knee. She might have disassociated or fractured polyethylene versus loosening."[4]

[3] In a work status report, Dr. Patel opined that appellant could not work from September 10 to 24, 2015. On September 16, 2015 he advised that she could not work until October 1, 2015 due to an injury to her knee.

[4] In a February 29, 2015 workers' compensation quick note form, Dr. Lonner found that appellant was totally disabled and required a right knee exploration and possible revision.

Dr. Lonner, on October 6, 2015, diagnosed mechanical complication of an internal orthopedic device, noting that appellant had "mechanical dissociation of the knee, possibly polyethylene fracture versus dissociation versus wear causing the knee to be locked and painful and swollen."[5] He recommended surgical reconstruction.

By decision dated November 2, 2015, OWCP denied appellant's traumatic injury claim. It found that she had established the occurrence of the September 4, 2015 work incident, but had not submitted medical evidence from a physician supporting that the incident caused an injury.

Counsel, on November 11, 2015, requested an oral hearing before an OWCP hearing representative.

On November 6, 2015 Dr. Lonner related that he began treating appellant on September 29, 2015 for a "painful and locked right knee" subsequent to a previous 2002 right knee arthroplasty. He noted that following the arthroplasty she worked without limitation until September 4, 2015, when she twisted her right knee and experienced pain and swelling. Appellant sought treatment at the emergency room and received crutches. Dr. Lonner recommended surgery to determine the cause of her locked knee. He related, "This injury occurred at work; [appellant's] locked knee and the need for this surgery are directly related to her work injury. The knee was perfectly fine and functioning well before this work injury."

Dr. Lonner, on November 23, 2015, performed a revision of a tibial insert, right total knee arthroplasty.[6]

During a video hearing, held on February 3, 2016, appellant described the September 4, 2015 work incident and her subsequent medical treatment.

By decision dated March 17, 2016, OWCP's hearing representative affirmed the November 2, 2015 decision. He found that appellant had not submitted rationalized medical evidence establishing a diagnosed condition as a result of the accepted employment incident.

In a March 8, 2016 report, received by OWCP on June 20, 2016, Dr. Lonner reviewed appellant's history of a 2002 arthroplasty of the right knee and the September 4, 2015 work incident.[7] On examination he found minimal swelling and reasonable stability with guarding on motion. Dr. Lonner advised that he performed a right knee exploration because he believed that she might have mechanical dissociation due to her work injury, noting that she had no problems subsequent to her 2002 arthroplasty. Surgery revealed findings of polyethylene wear and he performed a revision. Dr. Lonner related:

[5] Dr. Lonner performed a preoperative examination on October 6, 2015 and provided a workers' compensation quick note form, indicating that appellant was totally disabled.

[6] In a February 2, 2016 worker compensation quick note form, Dr. Lonner advised that appellant was totally disabled.

[7] Dr. Lonner provided progress reports dated March 8 and April 5, 2016.

"It is my opinion within a reasonable degree of medical certainty that, during the course of work as a result of a twisting injury, [appellant] sustained a mechanical dissociation of her right knee. [She] came to me with a locked knee which was a direct result of a twisting injury that she had at work. There was no way that we could unlock this without surgical intervention. [Appellant] had a locked knee which is in fact a surgical emergency and in her case, due to a clear description of a work injury that occurred on the job, this injury was clearly related to her work injury and surgery to correct this and to unlock her knee was necessary. Again, the September 4, 2015 injury was the direct cause of her knee to lock up representing a surgical emergency and requiring synovectomy to free up the joint followed by polyethylene exchange to get her knee bending and functioning better."

On June 20, 2016 appellant, through counsel, requested reconsideration.

By decision dated September 15, 2016, OWCP denied modification of its March 17, 2016 decision. It found that the submitted medical evidence failed to explain how the September 4, 2015 work incident resulted in a diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA[8] 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 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.[9] 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.[10]

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.[11] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[12]

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation,

[8] 5 U.S.C. § 8101 *et seq.*

[9] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[10] *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[11] *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[12] *See T.H.*, 59 ECAB 388 (2008); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

OWCP shares responsibility to see that justice is done.[13] The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.[14]

ANALYSIS

Appellant alleged that on September 4, 2015 she injured her right knee in the performance of duty. OWCP accepted that the employment incident occurred as alleged, but denied her claim after finding that the medical evidence was insufficient to show that she sustained a diagnosed right knee condition causally related to the September 4, 2015 employment incident.

The Board finds that this case is not in posture for decision. In a September 29, 2015 report, Dr. Lonner noted that on September 4, 2015 appellant's knee locked when she twisted while sorting mail. Dr. Lonner reviewed her history of a 2002 total right knee arthroplasty and diagnosed acute knee pain and other mechanical complications of a prosthetic joint implant. On October 6, 2015 he recommended a surgical reconstruction of the right knee.

On November 23, 2015 Dr. Lonner performed a revision of a tibial insert, right total knee arthroplasty. In a March 8, 2016 report, he again reviewed the September 4, 2015 work incident. Dr. Lonner related that, due to appellant's twisting injury at work, she experienced a right knee mechanical dissociation that could be treated only through surgery. He advised that her locked knee constituted a surgical emergency requiring a synovectomy and a polyethylene exchange. Dr. Lonner directly attributed appellant's locked knee to her twisting at work, noting that she provided a clear history of injury.

Dr. Lonner's reports contain a history of the work incident, a diagnosis, a review of the mechanism of injury, and he provided an opinion that appellant's locked right knee was causally related to the September 4, 2015 employment incident. The Board finds that, although Dr. Lonner's opinion is insufficiently rationalized to meet appellant's burden of proof in establishing causal relationship, it is uncontroverted and of sufficient probative quality to warrant additional development.[15] Dr. Lonner's opinion is based on a proper history of injury and supported by findings on examination. His opinion is of convincing probative quality. OWCP, however, did not undertake further development of the medical record, such as referring the record to an OWCP medical adviser, or referring appellant for a second opinion examination.[16]

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[17] On remand OWCP should prepare a statement and accepted facts and further

[13] *Jimmy A. Hammons*, 51 ECAB 219 (1999).

[14] 20 C.F.R. § 10.121.

[15] *See J.S.*, Docket No. 16-0777 (issued January 3, 2017); *V.B.*, Docket No. 16-0883 (issued October 17, 2016).

[16] *See R.N.*, Docket No. 17-0497 (issued May 19, 2017).

[17] *See Jimmy A. Hammons, supra* note 13; *Marco A. Padilla*, 51 ECAB 202 (1999).

develop the medical evidence. Following this and any further development deemed necessary, it should issue a *de novo* decision on the case.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: June 13, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board