United States Department of Labor
Employees' Compensation Appeals Board

L.B., Appellant	)	
and	)	**Docket No. 17-1600**
	)	**Issued: March 9, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, 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 July 17, 2017 appellant filed a timely appeal from an April 13, 2017 merit decision and a July 10, 2017 nonmerit 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]

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish right lower extremity conditions causally related to the accepted February 18, 2016 employment incident; and (2) whether OWCP properly denied her request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its July 10, 2017 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

FACTUAL HISTORY

On July 6, 2016 appellant, then a 56-year-old mail processor, filed a traumatic injury claim (Form CA-1) alleging that, on February 18, 2016, she sustained a right lower extremity injury when taking mail out of a post con, including buckets of flats and magazines, to place on her work ledge. She notified her supervisor on June 23, 2016. On the reverse side of the claim form, appellant's supervisor reported that appellant had originally filed a notice of recurrence (Form CA-2a) on February 18, 2016 under OWCP File No. xxxxxx379.[3]

By letter dated July 18, 2016, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of medical and factual evidence needed and afforded her 30 days to submit the requested information.

In an August 2, 2016 narrative statement, appellant reported that, on February 18, 2016, she was lifting buckets of mail weighing over 25 pounds to put on her work ledge. As she turned to place them on the ledge, she twisted her right foot which resulted in a right foot ligament tear. Appellant underwent foot surgery on March 11, 2016. Following the incident she notified her supervisor of the injury and they advised her to file a Form CA-2a recurrence claim under File No. xxxxxx379. Appellant reported that her claimed February 18, 2016 injury was not a recurrence of her previously accepted conditions and contended that this wrong direction resulted in her case being denied. She noted that she did not untimely file her Form CA-1 as she was incorrectly advised of which form to file. Appellant noted that a coworker had to drive her home following the claimed February 18, 2016 employment incident because she was unable to walk.

In an August 2, 2016 witness statement, a coworker reported that he saw appellant limping on February 18, 2016 following her work injury and that he drove her home.

In a February 29, 2016 medical report, Dr. Jose Loor, a Board-certified podiatrist, reported that appellant presented with a new injury to the right ankle which occurred at work on February 18, 2016, when she was carrying about 15 pounds of weight. He noted that appellant was in distress with an antalgic gait. Dr. Loor diagnosed right foot and ankle pain, bilateral heel spur, and tinea ungum.

In a March 11, 2016 operative report, Dr. Loor diagnosed partial tear of the right tibio-fibular ligament and provided findings pertaining to appellant's right ankle arthroscopy and repair of the tibio-fibular ligament.

By decision dated August 18, 2016, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish right lower extremity conditions causally related to the accepted February 18, 2016 employment incident.

[3] Appellant's prior traumatic injury claim under OWCP File No. xxxxxx379 pertained to a December 26, 2004 employment incident. OWCP accepted the claim for sprain/strain of the neck (cervical sprain), sprain/strain of the right shoulder/arm (unspecified), and unspecified neuralgia neuritis/radiculitis (cervicolumbar radiculopathy). Neither that claim, nor appellant's other prior claims, are currently before the Board.

On August 22, 2016 appellant requested an oral hearing before an OWCP hearing representative.

In an August 30, 2016 witness statement, another coworker described the circumstances surrounding the February 18, 2016 employment incident when appellant complained of right foot pain. She noted that appellant informed their manager that she was in pain and needed to go to the hospital, but the supervisor failed to follow protocol by providing her the proper paper work and told her to go home rather than sending her to the hospital.

In an undated narrative medical report received on December 13, 2016, Dr. Loor reported that appellant was under his care for ankle and foot conditions. He noted that she was first seen on August 17, 2015 for bilateral plantar heel spurs and plantar fasciitis. Appellant was treated conservatively through December 7, 2015. On her follow-up visit on February 29, 2016, she complained of an injury sustained at work on February 18, 2016. Physical evaluation revealed a right subtalar and ankle joint injury. Dr. Loor recommended diagnostic arthroscopy of the subtalar joint and right ankle to help evaluate and prevent traumatic arthritis. The procedure was performed on March 11, 2016, at which time the joint was found to have inflammation and cartilage damage consistent with an acute injury. Appellant was treated and evaluated through October 10, 2016. Dr. Loor opined that the procedure performed supported her acute injury claim, reporting that appellant could require further surgery as she sustained pain requiring treatment from her weakened joints and ligaments due to trauma resulting from her work injury.

During the hearing, held on March 13, 2017, appellant testified regarding the circumstances surrounding the employment incident and subsequent course of treatment. Following the hearing, she submitted additional medical evidence in support of her claim.

In an October 19, 2016 diagnostic report, Dr. Carolyn Boltin, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of appellant's right knee revealed horizontal oblique and undersurface tears at the posterior horn of the medial meniscus with medial extrusion and two millimeters associated parameniscal cyst, moderate cartilage loss within the medial compartment, mild cartilage loss within the lateral and patellofemoral compartments, attenuation of the anterior cruciate ligament suspicious for a chronic partial tear, and moderate joint effusion.

In a March 16, 2017 medical report, Dr. Raisa Mitelman, Board-certified in internal medicine, reported that appellant was under her care for a right knee and foot injury sustained at work in February 2016. She noted that appellant underwent right foot surgery for a torn ligament on March 11, 2016 and presented to her office for evaluation on October 10, 2016 due to complaints of right knee pain and swelling. Appellant was then referred for a right knee MRI scan. The MRI scan was performed on October 19, 2016 and demonstrated horizontal oblique and undersurface tears at the posterior horn of the medial meniscus and parameniscal cyst, moderate cartilage loss within the medial compartment, mild cartilage loss within the lateral and patellofemoral compartments, attenuation of the anterior cruciate ligament suspicious for a chronic partial tear, and moderate joint effusion.

By decision dated April 13, 2017, an OWCP hearing representative affirmed the August 18, 2016 decision, finding that the medical evidence of record failed to establish that her

diagnosed right lower extremity conditions were causally related to the accepted February 18, 2016 employment incident.

On July 6, 2017 appellant requested reconsideration. She submitted an accompanying narrative statement describing the February 18, 2016 employment incident and subsequent treatment, noting that she was given the wrong form to file following her injury. Appellant resubmitted her claim forms and medical evidence previously of record. OWCP received a copy of Dr. Loor's March 11, 2016 operative report, and Dr. Boltin's October 19, 2016 diagnostic report.

By decision dated July 10, 2017, OWCP denied appellant's request for reconsideration, finding that she neither raised substantive legal questions, nor included relevant and pertinent new evidence.

LEGAL PRECEDENT -- ISSUE 1

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 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.[5] 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.[6]

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

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.[8] 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

[4] *Supra* note 1.

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

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

[7] *Elaine Pendleton*, *supra* note 5.

[8] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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.[9]

ANALYSIS -- ISSUE 1

OWCP accepted that the February 18, 2016 employment incident occurred as alleged. The issue is whether appellant has established that the accepted incident caused her right lower extremity conditions.

The Board finds that the medical evidence of record is insufficient to establish that appellant's right lower extremity conditions are causally related to the accepted February 18, 2016 employment incident.[10]

In a February 29, 2016 medical report, Dr. Loor reported that appellant presented with a new injury to the right ankle which occurred at work on February 18, 2016 when she was carrying approximately 15 pounds of weights. In a March 11, 2016 operative report, he diagnosed partial tear of the right tibio-fibular ligament and provided findings pertaining to a right ankle arthroscopy and repair of the tibio-fibular ligament. In a December 13, 2016 medical report, Dr. Loor reported that on February 29, 2016 appellant complained of an injury sustained at work on February 18, 2016 with physical evaluation findings of a right subtalar and ankle joint injury. He opined that the March 11, 2016 arthroscopy of the subtalar joint and right ankle performed supported appellant's acute injury claim.

The Board finds that the opinion of Dr. Loor is not well rationalized. Dr. Loor's February 29, 2016 report only generally repeated appellant's allegations pertaining to the employment incident. While he provided a history of the February 18, 2016 employment incident, such generalized statements do not 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.[11] Dr. Loor's March 11, 2016 report is also insufficient to establish appellant's claim as he provided operative findings with no opinion on the cause of appellant's conditions. 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.[12]

Dr. Loor's December 13, 2016 medical report is similarly insufficient to establish appellant's claim. While he referenced the February 18, 2016 employment incident, he failed to discuss the circumstances surrounding the incident, only generally stating that the March 11,

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

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

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

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

2016 arthroscopy of the subtalar joint and right ankle performed supported appellant's acute injury claim. Dr. Loor's opinion on causal relationship did not adequately explain how the February 18, 2016 employment incident would have caused or aggravated appellant's right ankle condition, other than generally noting the development of pain. His statement on causation fails to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how lifting mail weighing approximately 15 to 25 pounds would cause or aggravate appellant's tear of the right tibio-fibular ligament.[13] Medical reports without adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.[14] The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.[15] Without explaining how, physiologically, the movements involved in the employment incident caused or contributed to the diagnosed condition, Dr. Loor's opinion on causal relationship is equivocal in nature and of limited probative value.[16]

The remaining medical evidence of record is also insufficient to establish appellant's claim. Dr. Boltin's October 19, 2016 report interpreted diagnostic imaging studies pertaining to the right knee and provided no opinion on the cause of appellant's conditions. Dr. Mitelman's March 16, 2017 report also failed to establish appellant's traumatic injury claim as the physician merely repeated the findings of the right knee MRI scan. The Board has held that reports of diagnostic tests are of limited probative value as they fail to provide an opinion on causal relationship between appellant's employment incident and the diagnosed conditions. For this reason, this evidence is insufficient to meet her burden of proof.[17]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relationship.[18] An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[19] Appellant's honest belief that the February 18, 2016 employment incident caused her medical injury, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship.[20] In the instant case, the record lacks rationalized medical evidence

[13] *S.W.*, Docket 08-2538 (issued May 21, 2009).

[14] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[15] *See Lee R. Haywood*, 48 ECAB 145 (1996).

[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] *M.L.*, Docket No. 17-0487 (issued December 8, 2017).

[18] *Daniel O. Vasquez*, 57 ECAB 559 (2006).

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

[20] *E.V.*, Docket No. 17-0037 (issued November 3, 2017).

establishing a causal relationship between the February 18, 2016 employment incident and her right lower extremity injury. Thus, appellant has failed to meet her burden of proof.

Appellant may submit additional evidence, together 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.

LEGAL PRECEDENT -- ISSUE 2

To reopen a case for merit review under FECA section 8128(a), OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.[21] Section 10.608(b) of OWCP's regulations provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.[22]

ANALYSIS -- ISSUE 2

The Board finds that OWCP's denial of reconsideration of the merits of appellant's claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim. In her application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument. Appellant argued that her injury was employment related and described the February 18, 2016 employment incident and subsequent medical treatment.[23] The underlying issue in this case was whether appellant sustained right knee and ankle conditions causally related to the accepted September 13, 2016 employment incident. That is a medical issue which must be addressed by pertinent and relevant medical evidence.[24] Appellant, however, failed to submit new and relevant medical evidence in support of her claim.[25]

In support of her claim, appellant resubmitted medical reports previously of record. Material which is duplicative of that already contained in the case record does not constitute a basis for reopening a case.[26] A claimant may obtain a merit review of an OWCP decision by

[21] 20 C.F.R. § 10.606(b)(3); *see also D.K.*, 59 ECAB 141 (2007).

[22] *Id.* at § 10.608; *see also K.H.*, 59 ECAB 495 (2008).

[23] *Sherry A. Hunt*, 49 ECAB 467 (1998).

[24] *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

[25] *See id.*

[26] *See Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

submitting relevant and pertinent new evidence. In this case, appellant did not submit any relevant and pertinent new medical evidence.[27]

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or constitute relevant and pertinent new evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish right lower extremity conditions causally related to the accepted February 18, 2016 employment incident. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated July 10 and April 13, 2017 are affirmed.

Issued: March 9, 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

[27] *M.H.*, Docket No. 13-2051 (issued February 21, 2014); *M.C.*, Docket No. 14-0021 (issued March 11, 2014).