United States Department of Labor
Employees' Compensation Appeals Board

A.L., Appellant	)	
and	)	**Docket No. 17-2002**
	)	**Issued: March 23, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Warwick, RI, Employer	)	

Appearances:
Benjamin R. Zimmermann, 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 September 26, 2017 appellant, through counsel, filed a timely appeal from an August 18, 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.[3]

[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.*

[3] Appellant timely requested oral argument before the Board pursuant to section 501.5(b) of the Board's *Rules of Procedure*, 20 C.F.R. § 501.5(b). After exercising its discretion, by order dated January 29, 2018, the Board denied the request for oral argument as the issue on appeal could be fully addressed on the record. *Order Denying Request for Oral Argument*, Docket No. 17-2002 (issued January 29, 2018).

ISSUE

The issue is whether appellant has established a right knee condition causally related to the accepted April 21, 2015 employment incident.

FACTUAL HISTORY

On April 27, 2015 appellant, then a 61-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on April 21, 2015, she was descending steps, while in the performance of duty, when she felt a pain in her right knee. In an accompanying statement, she indicated that she injured her right knee when descending a step at Bay Vista Place at approximately 3:00 p.m. on April 21, 2015. Appellant did not stop work.

The employing establishment controverted the claim. In a May 4, 2015 letter, the postmaster indicated that appellant did not inform management of the injury until six days after it allegedly occurred. He argued that appellant was not at the location as stated in her original claim form, and an onsite investigation did not show any obvious defects to the walkway. The postmaster also alleged that a prior claim for a right knee injury in 2012 was denied.[4]

Appellant had a prior history of injury regarding her right knee. In a May 19, 2012 report, Dr. Matthew Plante, a Board-certified orthopedic surgeon, noted that appellant had a right knee medial meniscal tear and some patellofemoral chondromalacia. He noted that given the severity of her symptoms along with her diagnostic findings, it was likely that she would not experience significant long-term relief with nonsurgical treatments. Dr. Plante noted that appellant reported sustaining an injury at work on May 31, 2012.

In a June 15, 2012 magnetic resonance imaging (MRI) scan of the right knee, Dr. Krishanu B. Gupta, a Board-certified radiologist, diagnosed: (1) tear of the posterior root of the medial meniscus with associated flap tear of the body of the meniscus; (2) moderate patellofemoral compartment osteoarthritis; and (3) joint effusion.

The employing establishment issued a Form CA-16 on April 27, 2015 authorizing medical treatment at the Warwick Medical Walk-in Room.

In an April 27, 2015 note from Warwick Medical Walk-in Room, Nurse J. Coleman related that on April 21, 2015 appellant was stepping off a step and felt a "crack." She diagnosed right anterior knee pain. Additional notes indicate that appellant was treated at Warwick Medical Walk-In Room for follow-up appointments from May 4 through October 19, 2015.

In an April 28, 2015 attending physician's report (Form CA-20), Dr. Ricky McCullough, Board-certified in emergency medicine, related that appellant reported stepping off a step delivering mail and felt a pop in her anterior right knee. He diagnosed internal knee injury. Dr. McCullough noted that appellant's x-rays showed degenerative joint disease and possible

[4] Under OWCP File No. xxxxxx905 appellant alleged that she sustained a traumatic right knee injury while ascending stairs on June 1, 2012. OWCP denied that claim on August 23, 2012. File No. xxxxxx905 is not presently before the Board.

osteochrondral fracture of medial and tibial plateau. He checked a box marked "yes" indicating that he believed that the condition was caused or aggravated by the employment incident.

In a May 8, 2015 MRI scan report, Dr. Gupta diagnosed diminutive medial meniscus which may relate to prior meniscal debridement. He noted a tear/re-tear of the meniscus. Dr. Gupta found that appellant had severe patellofemoral and moderate medial compartment osteoarthritis and moderate volume joint effusion.

By development letter to appellant dated October 29, 2015, OWCP informed her that her claim initially appeared to be a minor injury that resulted in minimal or no lost time from work, and that the merits were not addressed. However, as the employing establishment had now submitted a challenge, further factual and medical information was necessary to support her claim. OWCP afforded appellant 30 days to submit further evidence.

In a November 17, 2015 report, Dr. Brett D. Owens, a Board-certified orthopedic surgeon, noted that appellant presented with right knee pain associated with an injury that occurred on the job in April 2015. He reviewed her MRI scan and noted that she had a truncated posterior horn of the medial meniscus. Dr. Owens also noted wear in appellant's patellofemoral compartment as well as the medial compartment. He diagnosed right knee medial meniscus tear and osteoarthritis.

In answers to questions by OWCP, appellant noted that although she had pain when she descended a step on April 21, 2015, she was not extremely concerned at first. She noted that she was afraid to report the injury due to prior experiences. Appellant noted that she had prior employment injuries in May 2012 and the winter of 2013, but neither significantly limited her ability to work.

By decision dated December 9, 2015, OWCP denied appellant's claim, finding that the medical evidence of record did not demonstrate that the claimed medical condition was causally related to the accepted employment incident.

On February 1, 2016 appellant requested reconsideration.

In support of her reconsideration request, appellant submitted a December 1, 2015 report, wherein Dr. Owens noted that appellant first presented to him with regard to right knee pain on November 17, 2015. He opined that appellant's pain was associated with an injury that occurred on the job as a mail carrier in April 2015. Dr. Owens noted that since that time appellant indicated that her pain had not subsided. He noted that on her right side her knee had mostly full range of motion and stable ligamentous examination. Dr. Owens noted that her most recent MRI scan indicated that she had a truncation posterior horn of the medial meniscus. He stated that, while it was certainly torn, it was unclear how long it had been that way. Dr. Owens indicated that appellant had worked as a mail carrier for 32 years and had a very physically demanding job which required loading her truck with weight up to 70 pounds, driving long distances, and walking while carrying a bag that weighed up to 35 pounds. He noted that mounting and dismounting her truck and walking steep driveways and stairs exacerbated, and most likely permanently accelerated, her meniscus tear as well as her osteoarthritis. In a December 24, 2015

report, Dr. Owens again diagnosed right knee medial meniscus tear and osteoarthritis. He related that appellant would be able to return to work as of December 26, 2015.

By decision dated March 30, 2016, OWCP denied modification of is prior decisions as it determined that the evidence of record failed to establish that appellant's right knee condition was causally related to the accepted employment incident of April 21, 2015.

On March 23, 2017 appellant, through counsel, requested reconsideration, alleging that the medical evidence submitted established that the claim should be accepted for meniscal tear and for permanent aggravation and acceleration of left knee arthritis.

In support of her request for reconsideration, appellant submitted a March 13, 2017 report wherein Dr. Byron V. Hartunian, an orthopedic surgeon, reviewed appellant's employment history, medical history, and the results of his physical examination. Dr. Hartunian diagnosed torn medial meniscus, right knee; and osteoarthritis right knee with patellofemoral and medial compartment cartilage degeneration. He opined that appellant's work duties caused and contributed to both of these conditions, as clearly reflected in her medical records and the reports of Dr. Owens. Dr. Hartunian stated that it was clear that appellant suffered a right medial meniscus tear/re-tear directly as a result of her job duties on April 21, 2015. He noted that her history of pain while going down stairs at work on April 21, 2015, the failure of that pain to improve with time, and her subsequent presentation with swelling and tenderness in the weeks that followed, were classic presentations of a meniscus tear. Dr. Hartunian also noted that the mechanism of injury -- a downward force going down stairs, was also a classic mechanism of injury. He explained that appellant's MRI scan taken less than three weeks after her injury objectively showed a tear/re-tear of the meniscus. Dr. Hartunian concluded that, given appellant's history and presentation, he could say with a great degree of medical certainty that her meniscal tear/re-tear was caused by descending stairs at work on April 21, 2015. He explained that appellant experienced acute pain on April 21, 2015 while descending stairs at work, her knee was described in records as going into hyperextension, she reported the injury in less than a week when the pain did not subside, internal derangement of the knee was suspected, and her radiology studies and examinations confirmed the injury. Dr. Hartunian opined that appellant's history left very little doubt, but that her meniscus was torn as a result of descending stairs at work, as reported. Finally, he concluded that appellant's work as a letter carrier over the years contributed to both her meniscal tear and her osteoarthritis which was identified in her knee during work-up for the April 21, 2015 injury.

By decision dated August 18, 2017, OWCP denied modification of its prior decision, finding that the evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the April 21, 2015 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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

[5] *Supra* note 2.

time limitation period of FECA, that an injury was caused 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.[6] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[8] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[9]

The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[10] The weight of the 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.[11]

ANALYSIS

OWCP accepted that appellant had established that the claimed incident occurred as alleged on April 21, 2015. However, it denied her claim, finding that she failed to submit medical evidence sufficient to establish that her medical diagnoses were causally related to the accepted employment incident.

The Board finds that appellant has not established that her right knee condition was caused by descending stairs on April 21, 2015 in the performance of her federal employment duties.

Following the April 21, 2015 incident appellant was treated by Dr. McCullough. In his report dated April 28, 2015, Dr. McCullough checked a box marked "yes" indicating that he believed that appellant's degenerative joint disease and possible osteochondral fracture of medial and tibial plateau was caused by the employment incident. However, the Board has held that when a physician's opinion on causal relationship consists of only checking a box marked "yes"

[6] *Joe D. Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

[9] *Id.*

[10] *I.J.*, 59 ECAB 408 (2008); *supra* note 8.

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

to a form question, without the addition of adequate medical rationale, the opinion has little probative value and is insufficient to establish causal relationship.[12]

Similarly, the reports of Dr. Owens are insufficient to establish causal relationship between the April 21, 2015 employment incident and the diagnosed conditions of right knee medial meniscus tear and arthritis. In his December 1, 2015 report, Dr. Owens stated that appellant's pain in her right knee occurred on the job as a mail carrier in April 2015. However, he admitted that it was unclear how long appellant's meniscus was torn. The Board has held that an opinion which is equivocal in nature is of limited probative value regarding the issue of causal relationship.[13] Dr. Owens' opinion was equivocal as he admitted that he did not know when appellant's meniscus tear occurred. The Board also finds that he did not adequately explain how the accepted April 21, 2015 employment incident would have medically caused appellant's right knee conditions, nor did he explain why the conditions were not related to preexisting conditions. Dr. Owens did not explain the process by which appellant's particular work duties would cause or contribute to the diagnosed condition or why such condition would not be due to any other factors. His reports are, therefore, insufficient to meet appellant's burden of proof.[14]

Dr. Hartunian addressed appellant's medical history, his findings upon physical examination of appellant, and her employment history. He opined that her employment duties as of April 21, 2015 caused her right medial meniscus tear/re-tear. Dr. Hartunian noted that the acute pain appellant experienced on April 21, 2015 while descending stairs at work, the fact that the pain did not subside within a week, the fact that internal derangement of the knee was suspected, and her radiological studies and examinations, confirmed the injury. He related that a downward force, descending stairs, was a classic mechanism of injury. However, Dr. Hartunian noted that appellant initially developed pain in her right knee in 2012 and that an MRI scan of that time was suspicious of a meniscus tear. The Board finds that the MRI scan of June 15, 2012 was clearly interpreted by Dr. Gupta as showing a tear of the posterior root of the medial meniscus with associated flap tear of the body of the meniscus. Dr. Hartunian never explained why appellant's current right knee conditions were not preexisting or caused by some other factor. As discussed above, the medical evidence submitted must include proper medical and factual histories and an opinion explaining the causal relationship between the diagnosed condition and the April 21, 2015 employment incident.[15]

None of the other evidence is sufficient to establish causal relationship. Dr. Gupta's interpretations of diagnostic studies are of limited probative value as he did not discuss causal relationship.[16] The Board has held that reports of diagnostic tests are of limited probative value

[12] *See D.D.*, 57 ECAB 734, 739 (2006).

[13] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956).

[14] *J.S.*, Docket No. 14-0818 (issued August 7, 2014).

[15] *J.F.*, Docket No. 17-1075 (issued January 8, 2018). In so far as Dr. Hartunian supports an occupational disease caused by appellant's employment duties over years of employment, appellant may file an occupational disease claim.

[16] *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

as they fail to provide an opinion on the causal relationship between appellant's employment duties and the diagnosed conditions.[17]

Finally, the Board notes that the nursing notes from appellant's treatment at Warwick Medical Walk-In Room are of no probative value. Reports from nurses do not constitute competent medical evidence under FECA as nurses are not considered physicians as defined under section 8102(2) of FECA.[18]

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.[19] Because appellant has not provided a rationalized opinion supporting causal relationship, she has not met her burden of proof.[20]

On appeal appellant, through counsel, argues that the claims examiners substituted their opinions for those of appellant's physicians. Counsel contends that the medical evidence established that appellant sustained a meniscal injury directly related to an April 21, 2015 employment incident. He concludes that appellant's claim must be accepted for acute meniscal tear and permanent aggravation and acceleration of arthritis. As explained above, the Board finds that the medical evidence of record is insufficient to establish appellant's traumatic injury claim.

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.[21]

CONCLUSION

The Board finds that appellant has not established a right knee condition causally related to the accepted April 21, 2015 employment incident.

[17] *S.G.*, Docket No. 17-1054 (issued September 14, 2017).

[18] 5 U.S.C. § 8101(2) provides that a physician includes, surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *V.C.*, Docket No. 16-0642 (issued April 19, 2016); *Allen C. Hundley*, 53 ECAB 551 (2002).

[19] *Supra* note 13.

[20] *See J.E.*, Docket No. 16-0509 (issued September 16, 2016).

[21] When an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 18, 2017 is affirmed.

Issued: March 23, 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