United States Department of Labor
Employees' Compensation Appeals Board

S.W., Appellant	)	
and	)	**Docket No. 18-0721**
	)	**Issued: November 6, 2018**
U.S. POSTAL SERVICE, DR. MARTIN LUTHER KING, JR, POST OFFICE, Milwaukee, WI, Employer	)	

Appearances:
Alan J. Shapiro, 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 February 20, 2018 appellant, through counsel, filed a timely appeal from a January 8, 2018 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 met her burden of proof to establish a right knee condition causally related to the accepted January 21, 2017 employment incident.

FACTUAL HISTORY

On February 7, 2017 appellant, then a 42-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that, on January 21, 2017, she developed excessive fluid, effusion, and a flare-up of arthritis in her right knee as a result of climbing stairs at work. She stopped work on January 24, 2017 and has not returned.

In a January 26, 2017 note, Dr. Dale E. Bauwens, an attending Board-certified orthopedic surgeon, provided a diagnosis of right knee effusion and listed a series of work restrictions.

In a February 13, 2017 letter, the employing establishment controverted appellant's compensation and continuation of pay claims. It noted that she began her employment with its agency on December 24, 2016 and had only worked 122.06 hours over four weeks. The employing establishment contended that it was difficult to imagine how appellant developed right knee arthritis and effusion within a short period of her employment. It maintained that appellant's claim should be treated as an occupational disease claim rather than a traumatic injury claim as both arthritis and effusion occur over a period of time. The employing establishment concluded that appellant failed to establish fact of injury.

By development letter dated February 21, 2017, OWCP advised appellant of the deficiencies in her claim. It requested additional factual and medical evidence to support her claim, including a report from a physician explaining how the reported work incident caused or aggravated a medical condition. OWCP afforded appellant 30 days to submit the requested evidence.

OWCP received several reports and progress notes from Dr. Bauwens dated January 26 and 28, February 9 and 21, and March 20, 2017. Dr. Bauwens provided a history of injury and treatment. He also related findings upon examination, a diagnosis, work restrictions, and a plan for treatment. Appellant's diagnoses included effusion and internal derangement of the right knee.

In a January 24, 2017 report, Dr. Nishant A. Pillai, an emergency medicine physician from Wheaton Franciscan Healthcare, related x-ray findings and diagnosed effusion of the right knee and referred appellant to Dr. Jacqueline Mlsna, a Board-certified orthopedic surgeon.

A January 24, 2017 letter with an illegible signature of a provider also from Wheaton Franciscan Healthcare indicated that appellant was seen in the emergency department/urgent care on that day. She was released to return to work on January 26, 2017 with restrictions for a week until further evaluation from a referral specialist.

In a January 26, 2017 report, Dr. Bauwens again diagnosed right knee effusion. He checked a box marked "yes" indicating that the diagnosed condition was caused by work activities.

On April 17, 2017 appellant responded to OWCP's development questionnaire. She noted that at the time of injury she was delivering mail/packages. Appellant further noted that there was a lot of stair climbing required on her route and that was when her knee began to swell and tighten up. When she returned to the station at the end of the day, she had really bad knee pain and walked with a limp. Appellant treated her pain by soaking in Epsom salt and applying ice for the swelling. When she returned to work on January 23, 2017 there was no change in her knee condition. On January 24, 2017 a manager gave appellant permission to see a physician. Appellant claimed that she had no prior disabilities. She maintained that she sustained a traumatic injury as a result of her job demands.

Appellant submitted additional reports from Dr. Bauwens. In a March 28, 2017 operative note, Dr. Bauwens performed an open reduction internal fixation on a right humerus fracture. He noted a preoperative diagnosis of a displaced comminuted mid-shaft humerus fracture and a postoperative diagnosis of preoperative radial nerve palsy.

In a report dated March 29, 2017, Dr. Bauwens noted that he discussed the findings of a March 24, 2017 right knee magnetic resonance imagining (MRI) scan with appellant. He advised her that the MRI scan showed significant patellofemoral arthritic changes with chondromalacia. Dr. Bauwens addressed treatment options, noting that appellant was trying to work as a letter carrier and she found that standing, walking, and taking stairs were quite painful.

By decision dated May 2, 2017, OWCP denied appellant's traumatic injury claim. It found that Dr. Bauwens did not provide a rationalized medical opinion sufficient to establish causal relationship between appellant's diagnosed right knee conditions and the accepted January 21, 2017 employment incident.

In a January 26, 2017 progress note, Dr. Bauwens examined appellant and reiterated his diagnosis of right knee effusion and her work restrictions.

On May 30, 2017 appellant requested reconsideration of the May 2, 2017 decision and submitted additional medical evidence from Dr. Bauwens. In a May 11, 2017 progress note, Dr. Bauwens noted appellant's complaints of continuing knee pain and crepitation. He again examined her and reviewed the results of a knee MRI scan. Dr. Bauwens advised appellant that he did not believe that appellant's arthritis directly resulted from an on-the-job injury, but that it was clearly aggravated by the activities of her job. He related that, prior to her injury, she claimed that she had no knee symptoms and that stair walking aggravated a previously asymptomatic condition. Dr. Bauwens concluded that, within a medical degree of certainty, appellant's condition qualified as a work-related injury.

On July 10, 2017 Dr. Bauwens ordered physical therapy to treat appellant's diagnoses of unspecified osteoarthritis and chondromalacia of the right knee.

In a July 31, 2017 report, Mindy A. Benz, a physical therapist, examined appellant, reviewed right knee MRI scan results, and diagnosed lateral meniscus strain. She recommended skilled physical therapy two times a week for an estimated six weeks.

By decision dated August 4, 2017, OWCP vacated the May 2, 2017 decision, finding that Dr. Bauwens did not provide a rationalized medical opinion sufficient to establish causal relationship.

OWCP, in an amended decision dated January 8, 2018, corrected the error in its August 4, 2017 decision. It denied modification of the May 2, 2017 denial decision, rather than vacating the decision. OWCP again found that Dr. Bauwens did not provide a rationalized medical opinion sufficient to establish causal relationship.

On January 8, 2018 OWCP issued an amended decision. It noted that the August 4, 2017 decision improperly vacated the May 2, 2017 denial decision. OWCP corrected this error to reflect its denial of modification of the May 2, 2017 decision. It again found that Dr. Bauwens did not provide a rationalized medical opinion sufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.[5]

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.[6] 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, place, and in the manner alleged.[7]

The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[8] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and

[3] *Id.*

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[7] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[8] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

the identified incidents.[9] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right knee condition causally related to the accepted January 21, 2017 employment incident.

Appellant submitted a series of reports from her attending physician, Dr. Bauwens. In his January 26, 2017 work status report, Dr. Bauwens diagnosed right knee effusion. He placed a checkmark in the box marked "yes" indicating that the diagnosed condition was caused by appellant's work. Although the "yes" checkmark indicates support for causal relationship, the Board has held that when a physician's opinion on causal relationship consists only of a checkmark on a form, without more by way of medical rationale, the opinion is of diminished probative value.[11] Dr. Bauwens did not provide medical rationale explaining how climbing stairs on a route on January 21, 2017 caused or aggravated appellant's diagnosed condition. As such, the Board finds that Dr. Bauwens' January 26, 2017 report is of diminished probative value.

In his May 11, 2017 progress note, Dr. Bauwens found that appellant had work-related right knee arthritis. He noted that, while her condition was not directly caused by an on-the-job injury, it was clearly aggravated by the activities of her job. Dr. Bauwens indicated that appellant had no prior knee symptoms and that stair walking aggravated a previously asymptomatic condition. The Board has held, however, that a medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.[12] Dr. Bauwens did not explain how the January 21, 2017 employment incident aggravated the diagnosed condition and, thus, his opinion is of little probative value.[13] His remaining progress notes and reports addressed appellant's right knee conditions, March 28, 2017 surgery, and work capacity, but failed to offer a specific opinion as to whether her conditions, surgery, and work restrictions were caused or aggravated by the accepted work incident.[14] For the reasons provided, the Board finds that Dr. Bauwens' progress notes and reports are insufficient to establish appellant's burden of proof.

Similarly, the January 24, 2017 report from Dr. Pillai is insufficient to establish appellant's burden of proof. While this report addressed appellant's right knee conditions, it did not provide

[9] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[10] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[11] *See Gary J. Watling*, 52 ECAB 278 (2001).

[12] *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

[13] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

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

an opinion addressing whether the diagnosed conditions were caused or aggravated by the January 21, 2017 employment incident.[15]

The July 31, 2017 report from Ms. Benz, a physical therapist, has no probative medical value. A physical therapist is not considered a "physician" as defined under FECA.[16] As such, this evidence is also insufficient to meet appellant's burden of proof.

A January 24, 2017 report with an illegible signature from Wheaton Franciscan Healthcare indicated that appellant was treated on that day in its emergency department/urgent care and that she could return to work with restrictions on January 26, 2017. The Board has held that a report that bears an illegible signature cannot be considered probative medical evidence because it lacks proper identification.[17] Thus, this report is of no probative value.

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish a right knee condition causally related to her January 21, 2017 employment incident. Appellant therefore has not met her burden of proof.

On appeal, counsel contends that OWCP's decision is contrary to fact and law. For the foregoing reasons, the Board finds that the medical evidence of record is insufficient to establish that appellant sustained a right knee condition causally related to the accepted January 21, 2017 work incident.

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 right knee condition causally related to the accepted January 21, 2017 employment incident.

[15] *Id.*

[16] 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. *See Jennifer L. Sharp,* 48 ECAB 209 (1996) (physical therapist); *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).

[17] *See R.M.,* 59 ECAB 690 (2008); *D.D.,* 57 ECAB 734 (2006); *Richard J. Charot,* 43 ECAB 357 (1991).

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 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