

**United States Department of Labor
Employees' Compensation Appeals Board**

P.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Norwood, CO, Employer**

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**Docket No. 18-0737
Issued: November 2, 2018**

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 22, 2018 appellant filed a timely appeal from a November 7, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has met her burden of proof to establish a left knee condition causally related to the accepted February 16, 2017 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 7, 2017 appellant, then a 49-year-old sales and distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on February 16, 2017 she sprained her left knee when she stepped up on a bumper to use a scanner. She did not stop work.

The employing establishment provided an authorization for examination and/or treatment Form CA-16 dated March 8, 2017.

By development letter dated March 13, 2017, OWCP advised appellant that the evidence of record was insufficient to establish her claim. It advised her that she should submit a medical report from her physician with an explanation as to how the alleged work incident caused or aggravated the claimed condition. OWCP afforded appellant 30 days to submit the necessary evidence.

In a March 6, 2017 report, Dr. David Olson, Board-certified in preventative medicine, noted that appellant injured her left knee at work on February 15, 2017.² He related that she had a probable bucket handle tear of her left knee meniscus.

In a March 7, 2017 handwritten note, Kenneth Jenks, a physician assistant, indicated that appellant was to limit her work to four hours daily with no extensive standing/walking. He noted that he anticipated that she would have surgery in three weeks. In an attending physician's report portion of Form CA-16 Authorization for Examination and/or Treatment dated March 31, 2017, Mr. Jenks noted that appellant sustained a tear of her medial meniscus when she stepped on a bumper. He checked a box marked "yes" indicating that he believed that her injury was related to the described employment activity.

In a March 9, 2017 report of a magnetic resonance imaging (MRI) scan of appellant's left knee, Dr. Patrick Messeril, a Board-certified radiologist, found a full thickness radial tear of the root attachment of the posterior horn of the medial meniscus, with associated moderate sized bone contusion of the media tibial plateau. He also noted a small joint effusion.

In a March 10, 2017 x-ray report, Dr. Thomas Sanders, a Board-certified orthopedic surgeon, noted a negative examination of appellant's left knee.

By decision dated April 13, 2017, OWCP denied appellant's claim. It determined that she had not submitted rationalized medical evidence establishing causal relationship between a diagnosed medical condition and the accepted employment incident.

In an April 13, 2017 report, Mr. Walker noted that appellant developed left knee pain approximately one month prior. He indicated that she worked for the employing establishment and was stepping into a mail truck to get some mail on February 15, 2017, when her left leg locked up, she felt a pop, and experienced pain. Mr. Walker assessed appellant with knee joint pain. He noted that she had a left knee medial meniscus tear with associated bone contusion of the media tibial plateau. Mr. Walker noted that appellant was unable to perform her activities of daily living

² Dr. Olson and physician assistant James Walker misidentify the date of injury on the report.

or work, and that surgery was indicated. He indicated that a left knee arthroscopic procedure with medial meniscectomy was scheduled for April 14, 2017.

On May 8, 2017 appellant requested a telephone hearing before an OWCP hearing representative.

On May 12, 2017 appellant submitted Mr. Jenks' full March 31, 2017 Form CA-16 which contained a countersignature of Dr. Olson as well as a copy of the March 6, 2017 report originally signed by Dr. Olson.

On April 14, 2017 Dr. Edwin Wyman, a Board-certified orthopedic surgeon, listed appellant's diagnoses as medial meniscus tear of left knee and degenerative joint disease left knee. He performed a left knee arthroscopy with partial medial meniscectomy with debridement.

On July 25, 2017 OWCP received hospital records dated March 3, 2017. These records noted appellant's history of injury. Dr. Randall H. Gehl, a Board-certified radiologist, interpreted an x-ray of her left knee as showing no joint effusion, no fracture, and moderate osteopenia.

During the hearing held on September 26, 2017, appellant testified that she lived in rural Colorado and she was usually only able to seek treatment from a physician assistant. The hearing representative indicated that she was keeping the record open for 30 days so that appellant could submit relevant medical evidence. Appellant resubmitted the operative report dated April 14, 2017 and a light-duty activity restriction form dated May 25, 2017 which noted incapacity from April 13 to May 24, 2017.

By decision dated November 7, 2017, the hearing representative affirmed the denial of appellant's claim. She determined that although appellant established that the incident occurred as alleged and that she had been diagnosed with a medical condition, she failed to establish causal relationship between the accepted employment incident and the medical diagnosis.

LEGAL PRECEDENT

A claimant seeking benefits under FECA³ 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, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁴

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁵ The second component is whether the employment incident caused a personal

³ *Supra* note 1.

⁴ S.S., Docket No. 16-1760 (issued January 23, 2018).

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

injury.⁶ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.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

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left knee condition causally related to the accepted February 16, 2017 employment incident.

On March 6, 2017 Dr. Olson diagnosed a probable bucket handle tear of appellant's left knee meniscus and Dr. Wyman performed a left knee arthroscopy on April 14, 2017. However, neither of these physicians offered a rationalized opinion that the accepted employment incident caused appellant's left knee condition. Medical opinion evidence that does not offer an opinion regarding the cause of an employee's condition is of limited value on the issue of causal relationship.¹¹

Appellant also submitted diagnostic studies interpreted by Dr. Messeril, Dr. Sanders, and Dr. Gehl in support of her claim. The Board has held that diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹²

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Shirley Temple*, 48 ECAB 404, 407 (1997).

⁸ *E.J.*, Docket No. 18-0207 (issued July 13, 2018); *A.D.*, Docket No. 149 (2006).

⁹ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2008).

¹⁰ *I.J.*, 58 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *See C.L.*, Docket No. 17-0354 (issued July 10, 2018); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

In support of her claim, appellant also submitted notes from physician assistants and a nurse practitioner.¹³ Nurse practitioners¹⁴ and physician assistants¹⁵ are not considered physicians as defined under FECA, and their opinions are therefore of no probative medical value

The Board finds that medical evidence of record is insufficient to establish that appellant sustained a traumatic injury as a result of the February 16, 2017 employment incident. Causal relationship is a medical question that must be established by probative medical opinion from a physician.¹⁶ The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of the employment relation. Such a relationship must be shown by rationalized medical evidence which establishes a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.¹⁷

On appeal, appellant contends that she has submitted evidence of a medical diagnosis and that she was working at the time she injured her knee. However, as discussed, her claim was denied based on her failure to establish a causal relationship between the accepted employment incident and the medical diagnosis.¹⁸

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated, or aggravated by her employment is sufficient to establish causal relationship.¹⁹ No matter how sincere her belief that an injury was sustained as a result of her federal duties, causal relationship must be established by rationalized medical opinion evidence and she failed to submit such evidence.²⁰

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.

¹³ 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.

¹⁴ *D.C.*, Docket No. 16-1457 (issued May 18, 2017).

¹⁵ *V.C.*, Docket No. 16-0542 (issued April 19, 2016); *Allen C. Hundley*, 53 ECAB 551 (2002).

¹⁶ *M.B.*, Docket No. 16-1188 (issued January 10, 2017).

¹⁷ *Patricia J. Bolleter*, 40 ECAB 373 (1988).

¹⁸ Appellant submitted new evidence to the Board on appeal. 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 new 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).

¹⁹ *R.B.*, Docket No. 15-1652 (issued October 9, 2015).

²⁰ *Id.*

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury to her left knee casually related to the accepted February 16, 2017 employment incident.²¹

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 7, 2017 is affirmed.

Issued: November 2, 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

²¹ The Board notes that the employing establishment issued a Form CA-16 Authorization for Medical Treatment. A properly completed CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003).