United States Department of Labor
Employees' Compensation Appeals Board

L.C., Appellant	)	
and	)	**Docket No. 18-1707**
U.S. POSTAL SERVICE, GRAND CENTRAL STATION POST OFFICE, New York, NY, Employer	)	**Issued: April 3, 2019**

Appearances:
Thomas R. Uliase, 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 11, 2018 appellant, through counsel, filed a timely appeal from an April 10, 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.[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] The Board notes that, following the April 10, 2018 decision, OWCP received additional evidence. However, section 501.2(c)(1) of the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish knee and back conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On July 10, 2017 appellant, then a 60-year-old window clerk, filed an occupational disease claim (Form CA-2), assigned OWCP File No. xxxxxx319, alleging that her knees swelled from walking on the floors in the lobby while at work.[4] She related that, after her injury, she worked as a window clerk. Appellant further related that, as a lobby director, she was required to stand and walk around which caused swelling and pain in her knees. She noted that she returned to her physician and started treatment for her lower back injury. Appellant reported that her physician explained that it was "all related." She indicated that she first became aware of her condition and realized its relationship to her federal employment on May 1, 2017. Appellant stopped work on July 3, 2017. No additional evidence was submitted.

By development letter dated July 14, 2017, 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 she was asked to respond to a questionnaire, which sought clarification on whether she was claiming an occupational disease or traumatic injury based on the definitions provided. In a separate letter of even date, OWCP also requested that the employing establishment provide additional information in response to appellant's allegations.

In a June 21, 2017 attending physician's report, Dr. Ellen S. Ginsberg, an attending Board-certified anesthesiologist, noted a history that appellant was a window clerk at the employing establishment and that she presented for reevaluation. She recounted that appellant reported a history of low back pain radiating to her left hip and left leg, but recently she experienced increased pain. Appellant also experienced secondary pain in both knees, but mainly on the left side. Dr. Ginsberg noted a history of appellant's medical, family, and social background. She discussed findings on physical examination and assessed sprain of ligaments of the lumbar spine, subsequent encounter, unspecified internal derangement of unspecified knee, lumbar radiculopathy, and left side lumbago with sciatica. Dr. Ginsberg responded, "yes, see history" when asked whether she believed the condition was caused or aggravated by an employment activity. She determined that appellant was totally disabled from June 14 through August 2011. Dr. Ginsberg advised that she was permanently partially disabled, noting that she had performed light work from August 2011 through the present with restrictions.

In a July 10, 2017 narrative statement, appellant related that, in June 2011, she fell from a chair and injured her lower back. Thereafter, she experienced constant pain from her injury. Appellant returned to work with restrictions. She noted that on or about May 1, 2017 she was asked to work as a lobby director. Appellant contended that by the end of her workday she had

[4] Prior to the instant claim, appellant filed a traumatic injury claim (Form CA-1) for a back injury sustained on June 14, 2011 when she fell against boxes while at work. OWCP accepted her claim, assigned OWCP File No. xxxxxx061, for lumbar radiculopathy. By decision dated November 21, 2014, it also accepted that appellant sustained a recurrence of disability from March 14 through May 20, 2013 causally related to her accepted June 14, 2011 employment injury. By decision dated February 11, 2015, OWCP granted her a schedule award for 13 percent permanent impairment of the left lower extremity. The award covered a period of 37.44 weeks and ran from April 21, 2014 through January 8, 2015.

swelling in her knees and more pain than usual in her lower back. She resumed treatment from her physician who advised her to report this new injury to her employer, stop work, and obtain treatment for her injury.

Appellant submitted a July 5, 2017 disability certificate from Dr. Henry Hall, a chiropractor. Dr. Hall indicated that appellant could return to work on October 3, 2017. He noted that she had been unable to work since July 3, 2017. Appellant had a preexisting lower back injury and a new complaint of a left knee injury.

By letter dated July 18, 2017, an employing establishment customer services supervisor, controverted appellant's claim, contending that she had not established fact of injury.

Dr. Ginsberg, in an August 22, 2017 letter, reevaluated appellant on that date and verified that she had been treating appellant in her office due to injuries sustained from a "workmen's compensation" case. She opined that appellant was unable to engage in full-duty work.

By decision dated September 22, 2017, OWCP denied appellant's occupational disease claim, finding that she had failed to submit a rationalized medical opinion explaining how her diagnosed conditions were causally related to the accepted factors of her federal employment.

Reports dated September 6 through 18, 2017 from Dr. Hall were received. Dr. Hall provided objective findings on examination and assessed thoracic and lumbar subluxation and low back pain.

Additional reports dated September 6 through 18, 2017 from Dr. Ginsberg were also received. Dr. Ginsberg performed applications of high-frequency transcutaneous neurosimulator (TENS) therapy to treat appellant's cervical and lumbar pain.

In a letter received by OWCP on October 10, 2017, appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

Reports dated September 20, 2017 through March 5, 2018 from Dr. Ginsberg were received. Dr. Ginsberg performed further applications of high-frequency TENS therapy to treat appellant's cervical and lumbar pain. In attending physician's reports dated October 24, 2017 and January 10 and March 6, 2018, she listed June 14, 2011 as the date of injury. Dr. Ginsberg reexamined her and continued to assess sprain of ligaments of the lumbar spine, subsequent encounter, unspecified internal derangement of unspecified knee, lumbar radiculopathy, and lumbago with sciatica, unspecified side. She continued to respond "yes, see history" when asked whether she believed the condition was caused or aggravated by an employment activity. Dr. Ginsberg advised that appellant was totally disabled from all work. In a letter dated December 30, 2017, she noted that she first treated appellant for a work-related low back injury that occurred on June 14, 2011. Dr. Ginsberg related that she subsequently returned to modified duties as a window clerk where she sold stamps and money orders and received packages. She was able to sit on a stool and avoid excessive sitting, standing, walking, and heavy lifting. Dr. Ginsberg related that appellant was doing relatively well until around April/May 2017 when her job duties were increased to include working as a greeter and customer service representative in the lobby. Appellant was required to continuously stand for one hour or more per day. Dr. Ginsberg indicated that she reevaluated appellant for pain management on June 21, 2017. Appellant claimed that constant standing had not only caused an exacerbation of her low back injury, but also caused secondary pain in both knees, worse on the left side. Dr. Ginsberg

referenced the findings, lumbar and bilateral knee diagnoses, treatment plan, and work restrictions set forth in her June 21, August 22, and October 24, 2017 examinations. She related that, in her firm professional opinion, the exacerbation of appellant's low back injury and new injuries to her knees were caused by her new job as a greeter and customer service representative. Dr. Ginsberg opined that constant standing put undue strain on the lumbosacral disc and caused radiculopathy and sciatica to recur. She further opined that the change in mechanics of the lumbosacral spine from constant standing put undue pressure on both knees. Dr. Ginsberg indicated that the findings of bilateral knee magnetic resonance imaging (MRI) scan reports correlated with the positive physical findings in her evaluations. She advised appellant to refrain from all job activities, continue chiropractic and physical therapy, and see an orthopedist for treatment and possible surgery of the secondary injuries to her knees.

Dr. Hall, in reports dated September 20, 2017 through March 6, 2018, again provided objective findings on examination and reiterated his assessment of thoracic and lumbar subluxation and low back pain.

MRI scan reports dated November 13, 2017 from Dr. Michael Yuz, a diagnostic radiologist, revealed an impression of grade 1 degeneration of the posterior horn medial meniscus and lateral collateral ligament sprain of the right knee and a high-grade partial thickness acromioclavicular tear and marrow edema of the patella with grade 2 to 3 chondromalacia of the left knee.

In a report dated December 21, 2017, Dr. David R. Capiola, a Board-certified orthopedic surgeon, indicated that a left leg ultrasound was negative for deep venous thrombosis. He found a 2.5 centimeter popliteal cyst.

On March 20, 2018 appellant submitted March 3 and 8, 2018 letters from two coworkers, describing their lobby work duties.

Appellant also submitted a March 16, 2018 letter from Dr. Ginsberg. Dr. Ginsberg clarified her December 30, 2017 report by noting that the employing establishment had acknowledged that appellant was required to stand one hour each day as part of her increased work duties. She advised that, in her professional opinion, standing continuously for one hour a day was the direct precipitating cause of the exacerbation of appellant's low back pain, as well as, the cause of her bilateral knee derangement.

In subsequent reports dated March 13 through 30, 2018, Dr. Ginsberg performed additional applications of high-frequency TENS therapy to treat appellant's cervical and lumbar pain.

Dr. Hall, in reports dated March 13 through April 3, 2018, restated his thoracic and lumbar assessments.

By decision dated April 10, 2018, an OWCP hearing representative affirmed the September 22, 2017 decision, finding that Dr. Ginsberg had failed to provide a rationalized opinion explaining how the diagnosed conditions were caused or aggravated by appellant's federal employment factors. She further found that appellant's claims under OWCP File No. xxxxxx319 and OWCP File No. xxxxxx061 should be administratively combined as her prior work-related

back injury had been cross-referenced in the present claim for work-related knee and back conditions.[5]

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 time limitation period of FECA,[6] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[7] 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.[8] To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;[9] (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[10] and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[11]

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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.[12]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation,

[5] OWCP subsequently combined OWCP File Nos. xxxxxx061 and xxxxxx319 with OWCP File No. xxxxxx319 identified as the master file.

[6] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[8] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[9] *Michael R. Shaffer*, 55 ECAB 386 (2004).

[10] *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

[11] *Beverly A. Spencer*, 55 ECAB 501 (2004).

[12] *See J.R.*, Docket No. 17-1781 (issued January 16, 2018); *I.J.*, 59 ECAB 408 (2008).

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[13]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish knee and back conditions causally related to the accepted factors of her federal employment.

In support of her claim, appellant submitted medical evidence, including a series of reports from her physician, Dr. Ginsberg. In her reports, Dr. Ginsberg indicated that appellant reported a history that she was employed as a window clerk at the employing establishment and that she always suffered from low back pain radiating to her left hip and left leg, but recently she experienced increased pain. She also indicated that appellant reported having secondary pain in both knees, mainly on the left side. Dr. Ginsberg discussed findings on examination and diagnosed sprain of ligaments of the lumbar spine, subsequent encounter; unspecified internal derangement of unspecified knee; lumbar radiculopathy; and left side lumbago with sciatica. She performed high-frequency TENS therapy to treat appellant's lumbar and cervical pain and restricted appellant from a return to work.

Dr. Ginsberg, in her October 24, 2017 and January 10 and March 6, 2018 reports, responded "yes, see history" with regard to whether she believed that the condition was caused or aggravated by an employment activity. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[14]

In reports dated December 30, 2017 and March 16, 2018, Dr. Ginsberg opined that an exacerbation of appellant's June 14, 2011 employment-related back condition and her new knee injuries had been caused by her employment duties as a greeter and customer service representative. She noted that, following appellant's accepted June 14, 2011 employment-related back injury, appellant returned to work in a modified-duty window clerk position, which allowed her to perform her duties while sitting on a stool to avoid excessive sitting, standing, walking, and heavy lifting. Dr. Ginsberg further noted, however, that, in April/May 2017, appellant was assigned increased work duties as a greeter and customer service representative in the lobby, which required her to continuously stand for one hour or more a day. She explained that constant standing put undue strain on the lumbosacral disc and caused radiculopathy and sciatica to recur. Dr. Ginsberg further explained that the change in mechanics of the lumbosacral spine from constant standing put undue pressure on both knees. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.[15] While Dr. Ginsberg generally noted that standing for one hour or more per day caused strain resulting in radiculopathy and put pressure on both knees, this explanation does not provide sufficient rationale to explain

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[14] *See M.O.*, Docket No. 18-1056 (issued November 6, 2018); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[15] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

the specific mechanism of injury. A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident or work factors were sufficient to result in the diagnosed medical condition is insufficient to meet a claimant's burden of proof to establish a claim.[16]

Appellant also submitted a report dated December 21, 2017 by Dr. Capiola who indicated that a left leg ultrasound was negative for deep venous thrombosis and who found a 2.5 centimeter popliteal cyst. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[17] This report, therefore, is insufficient to establish appellant's claim.

Appellant also submitted a series of chiropractic treatment reports completed by Dr. Hall, who noted that she had a preexisting lower back injury and a new complaint of a left knee injury. Section 8101(2) of FECA provides that the term physician, as used therein, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation, as demonstrated by x-ray to exist and subject to regulation by the Secretary.[18] These reports of Dr. Henry are of no probative value on the relevant issue of causal relationship as he is not considered a physician as he did not diagnose a subluxation based on the results of an x-ray.[19]

The record also contains diagnostic testing reports including the results of a November 13, 2017 MRI scan. However, diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[20] Therefore, such reports are insufficient to establish appellants claim.

Finally, appellant submitted statements from coworkers as to her employment duties. These statements are irrelevant to the issue of causal relationship and, additionally, lay persons such as coworkers are not competent to render a medical opinion.[21]

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish knee and back conditions causally related to the accepted factors of her federal employment. Appellant therefore has not met her burden of proof.

On appeal counsel contends that appellant has submitted sufficient medical evidence to establish causal relationship and therefore her claim should be accepted. For the reasons explained

[16] *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

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

[18] *See* 20 C.F.R. § 10.311; *M.B.*, Docket No. 17-1378 (issued December 13, 2018).

[19] *See* 5 U.S.C. § 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary. *See M.B.*, Docket No. 17-1378 (issued December 17, 2018); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[20] *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[21] *See B.R.*, Docket No. 17-1661 (issued January 4, 2018); *James A. Long*, 40 ECAB 538 (1989).

above, the Board finds that the evidence of record is insufficient to meet appellant's burden of proof.

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 knee and back conditions causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2019
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