

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

I.C., Appellant

and

**U.S. POSTAL SERVICE, GRAVESEND POST
OFFICE, Brooklyn, NY, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 19-0804
Issued: August 23, 2019**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 4, 2019 appellant, through counsel, filed a timely appeal from a January 29, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 left knee condition causally related to the accepted February 9, 2017 employment incident.

FACTUAL HISTORY

On February 15, 2017 appellant, then a 41-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 9, 2017 she sustained a possible fracture of her bottom left leg while walking back and forth through a foot of snow while in the performance of duty. She noted that, at the end of the day, she experienced a lot of pain in her left knee. Appellant further noted that she also had left knee pain since an injury she sustained at work in 2009. She stopped work on February 10, 2017 and has not returned.

OWCP subsequently received a form letter dated February 13, 2017 by Dr. Natalie Arnoff, a family practitioner. Dr. Arnoff noted that appellant was being treated for leg and knee conditions. She released appellant to return to work on February 18, 2017. In an undated referral form, Dr. Arnoff ordered x-rays of appellant's left tibia/fibula.

OWCP, in a development letter dated February 22, 2017, informed appellant of the deficiencies of her claim. It requested that she submit a narrative medical report from her physician which contained a detailed description of findings and diagnoses, explaining how the reported incident caused or aggravated her medical condition. OWCP also provided a questionnaire for appellant's completion. It noted that it was not clear if she was filing an occupational disease or traumatic injury claim and requested clarification on her claim. OWCP afforded appellant 30 days to respond.

OWCP thereafter received a prescription note dated February 16, 2017 by Dr. Pushp R. Bhansali, an attending orthopedic surgeon, who noted that he evaluated appellant on that day for a "right knee injury." He placed her off work for two weeks.

In a statement dated February 17, 2017, appellant described the alleged employment incident and reiterated that it occurred on February 9, 2017. She noted that she walked back and forth for five hours in a foot of snow from the employing establishment station to a building where she was delivering mail. Appellant experienced pain in her leg and knee as she limped back on her last trip to the station. Upon her return, she informed her supervisor about her injury. On February 10, 2019 appellant still had pain and she called a second supervisor to report the alleged employment incident. She also called out of work on that day on the call-out system and requested continuation of pay.

On February 28, 2017 appellant responded to OWCP's development questionnaire. She reiterated the history of her claimed February 9, 2017 employment injury, the reporting of her injury to her supervisor on the following day, and her left leg and knee symptoms. Appellant indicated that 2009 and 2011 she developed work-related tendinitis in her left knee.

Appellant submitted additional prescription notes dated February 16, 2017 from Dr. Bhansali. Dr. Bhansali noted that appellant had a left torn meniscus. He ordered a left knee brace and medication.

OWCP received additional medical evidence from Dr. Bhansali. In a medical report dated February 16, 2017, Dr. Bhansali noted that appellant related a history that she was involved in a work-related accident on February 9, 2017 while working as a mail carrier. She was making her rounds while walking through heavily covered snowy streets. At the time of her last drop off, she began to develop progressive pain in her left knee and fibula area. Appellant became concerned because she had prior left knee injuries. She did not present to a local emergency room for evaluation of her pain. Dr. Bhansali indicated that appellant presented to him for evaluation of her persistent pain. He noted her medical and personal histories and discussed findings on physical and x-ray examination. Dr. Bhansali diagnosed left knee internal derangement with post-traumatic effusion. He recommended that appellant stay off work for two weeks and wear a left knee brace.

In a progress note dated March 2, 2017, Dr. Bhansali reiterated appellant's history that she sustained a work-related left knee injury on February 9, 2017. He reexamined her left knee and restated his prior diagnosis of left knee internal derangement with post-traumatic effusion. Dr. Bhansali recommended that appellant stay off work and undergo physical therapy. In a March 2, 2017 prescription, he reiterated his diagnosis of left knee internal derangement and that she was totally disabled from work. Dr. Bhansali ordered left knee orthotics. In a March 16, 2016 prescription, he reiterated that appellant had a left knee torn meniscus and placed her off work for three weeks.

OWCP also received reports dated February 21 and March 2, 16, and 20, 2017 from appellant's physical therapist.

By decision dated March 31, 2017, OWCP accepted that the February 9, 2017 employment incident occurred as alleged and that there was a diagnosed left knee condition. However, it denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed condition and the accepted February 9, 2017 employment incident.

Thereafter, OWCP continued to receive medical evidence from Dr. Bhansali. In a progress note dated March 16, 2017, Dr. Bhansali reiterated appellant's history of injury and noted her complaints of left knee pain and swelling. He also discussed physical examination findings and reviewed a magnetic resonance imaging (MRI) scan which revealed a partial tear of the medial meniscus, posterior horn. Dr. Bhansali addressed appellant's treatment plan, which included physical therapy three times a week, for three weeks, and use of a knee brace. He advised that she would be evaluated in three weeks for a possible return to work. In a prescription note dated April 5, 2017, Dr. Bhansali again diagnosed left knee torn meniscus. He ordered physical therapy and placed appellant off work for three weeks.

In a letter received on April 27, 2017 and an appeal request form received on May 2, 2017, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. She submitted a progress note dated April 6, 2017 in which Dr. Bhansali

diagnosed a left knee torn medial meniscus. Dr. Bhansali advised that appellant should be able to return to her regular work by the time of her reevaluation in about three weeks.

Appellant also submitted a left knee magnetic MRI scan report dated March 6, 2017 from Dr. Joseph Hanono, a radiologist. Dr. Hanono provided impressions of shallow vertical tear in the posterior horn of the medial meniscus and intact lateral meniscus. He found no evidence of fracture or acute osseous or ligamentous injury.

OWCP subsequently received additional reports dated March 27 and 30 and April 6 and 27, 2017 from appellant's physical therapist.

OWCP also received further progress notes dated April 27, May 18, June 22, and July 31, 2017 from Dr. Bhansali who continued to examine appellant's left knee, review diagnostic test results, and diagnose left knee internal derangement with torn meniscus and effusion. Dr. Bhansali recommended arthroscopic surgery and advised that appellant was unable to return to work.

On July 11, 2017 appellant underwent left knee arthroscopic surgery performed by Dr. Bhansali. The operative report noted a preoperative diagnosis of internal derangement of the left knee "with a posttraumatic -- in the left knee" and postoperative diagnoses of partial tear of the medial and lateral menisci and partial tear of the intrasubstance part of the anterior cruciate ligament (ACL) with laxity of the ligament, and synovitis of the left knee.

Dr. Bhansali, in a letter dated October 16, 2017, advised that appellant sustained a left knee injury due to the accepted February 9, 2017 work-related incident. He related that, although she reported having left knee injuries prior to the date of this incident, she was fully functional. Dr. Bhansali maintained that the February 9, 2017 employment incident caused appellant's knee pain. He noted that MRI scan results confirmed that she had a tear of the meniscus which required surgical repair on July 11, 2017.

In a progress note dated October 26, 2017, Dr. Bhansali noted that appellant had a prior left knee injury that was improving until an x-ray performed on February 9, 2017 revealed that it had been aggravated. He further noted that her pain worsened and she required a new left knee MRI scan, which was positive for a torn meniscus. Appellant required left knee arthroscopic surgery which was performed on September 15, 2017.

By decision dated December 8, 2017, an OWCP hearing representative affirmed OWCP's March 31, 2017 decision finding that the medical evidence of record was insufficient to establish appellant's claim as it did not contain a rationalized physician's opinion explaining how her left knee condition was caused or aggravated by the accepted February 9, 2017 employment incident.

Thereafter, OWCP continued to receive progress notes dated July 23 and September 20, 2018 from Dr. Bhansali who restated a history of the accepted February 9, 2017 employment incident. Dr. Bhansali also noted that appellant sustained left knee injuries in 2009 and 2011, but she did not seek medical treatment for those injuries. He further noted that she had been working to the full extent until her February 9, 2017 injury. Dr. Bhansali related that, possibly while appellant was walking in the snow, she could not keep her balance with her prior left knee injury and sustained a twisting injury to the left knee. He indicated that she did not fall on the ground and there was no direct trauma to the left knee. Dr. Bhansali again noted that a left knee MRI scan

revealed a meniscus tear and effusion. He also again discussed findings on physical examination. Dr. Bhansali reiterated his prior diagnoses of partial tear of the medial and lateral meniscus and partial tear of the ACL with synovitis in the left knee. He maintained that the present injury worsened appellant's prior injury and that she presently required left knee arthroscopic surgery.

On November 6, 2018 appellant, through counsel, requested reconsideration of OWCP's December 8, 2017 decision. She resubmitted Dr. Bhansali's September 20, 2018 progress note.

OWCP, by decision dated January 29, 2019, denied modification of the December 8, 2017 decision, finding that appellant had not provided rationalized medical opinion evidence sufficient to establish causal relationship between the diagnosed left knee conditions, aggravation of her preexisting conditions, and the accepted February 9, 2017 employment incident.

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,³ 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.⁴ 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.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. 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. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁶

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 the identified factors.⁷ The belief of the claimant that a

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *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).

⁶ *Id.*

⁷ *R.R.*, Docket No. 18-1093 (issued December 18, 2018); *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁸

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.⁹

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 9, 2017 employment incident.

In support of her claim, appellant submitted a series of reports from her physician, Dr. Bhansali. In a report dated October 16, 2017 and progress notes dated July 23 and September 20, 2018, Dr. Bhansali diagnosed partial tear of the medial and lateral meniscus and partial tear of the ACL with synovitis of the left knee. He reported that, although appellant had a history of left knee injuries, she was fully functional prior to the accepted February 9, 2017 employment incident. Dr. Bhansali opined that the accepted employment incident aggravated her prior left knee injuries for which she underwent arthroscopic surgery on September 15, 2017, but he did not provide medical reasoning or rationale explaining how the accepted employment incident caused or aggravated any diagnosed condition.¹⁰ Medical evidence that states a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹ The need for rationalized medical opinion based on medical rationale is especially important in this case as the evidence suggests that appellant had preexisting left knee conditions.¹² As Dr. Bhansali did not provide a rationalized medical opinion regarding causal relationship, his reports are of limited probative value.¹³

Dr. Bhansali's remaining prescription notes, reports, and progress notes are also of limited probative value. Within these additional reports, he diagnosed torn meniscus and internal derangement with post-traumatic effusion of the left knee, and addressed appellant's disability from work and medical treatment. However, Dr. Bhansali failed to provide an opinion as to

⁸ See *M.J.*, Docket No. 17-0725 (issued May 17, 2018); see also *Lee R. Haywood*, 48 ECAB 145 (1996); *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁹ *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 45 ECAB 345 (1989).

¹⁰ See *M.E.*, Docket No. 18-0940 (issued June 11, 2019); *A.M.*, Docket No. 10-0205 (issued October 5, 2010) (a physician's opinion must be independent from a claimant's belief regarding causal relationship).

¹¹ See *M.E.*, *id.*; *S.H.*, Docket No. 17-1447 (issued January 11, 2018).

¹² See *M.E.*, *supra* note 10; *E.V.*, Docket No. 17-0417 (issued September 13, 2017).

¹³ *Supra* note 10.

whether the accepted February 9, 2017 employment incident caused or aggravated appellant's diagnosed left knee conditions. 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.¹⁴ For this reason, these additional reports from Dr. Bhansali are insufficient to establish appellant's claim.

Appellant has submitted diagnostic imaging studies in the form of a March 6, 2017 MRI scan from Dr. Hanono in support of her claim. The Board has held that diagnostic studies lack probative value as they do not provide an opinion on causal relationship between the employment incident and appellant's diagnosed conditions.¹⁵ This report is therefore also insufficient to establish appellant's claim.

Appellant also submitted Dr. Arnoff's report and undated referral form which noted that appellant had leg and knee conditions and that x-rays of her left tibia/fibula were ordered. Dr. Arnoff did provide a history of injury, a firm diagnosis of a particular medical condition, or a rationalized opinion regarding causal relationship.¹⁶ For the stated reasons, the Board finds that her reports are insufficient to establish the claim.

Finally, the reports dated February 21 through April 6, 2017 signed by appellant's physical therapist have no probative medical value. A physical therapist is not considered a "physician" as defined under FECA. As such, this evidence is also insufficient to meet appellant's burden of proof.¹⁷

As there is no well-reasoned medical opinion establishing appellant's claim for compensation the Board finds that she has not met her burden of proof.

On appeal counsel contends that OWCP's January 29, 2019 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 left knee condition causally related to the accepted February 9, 2017 employment 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.

¹⁴ See *R.C.*, Docket No. 19-0376 (issued July 15, 2019); *S.Y.*, Docket No. 18-1814 (issued April 18, 2019); *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁵ *R.C.*, *id.*; *C.B.*, Docket No. 18-0071 (issued May 13, 2019).

¹⁶ See *A.A.*, Docket No. 18-0031 (issued April 5, 2018).

¹⁷ 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 5 U.S.C. § 8102(2); *R.C.*, *supra* note 14; *J.L.*, Docket No. 17-1207 (issued December 8, 2017) (a physical therapist is not a physician under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); see also *Gloria J. McPherson*, 51 ECAB 441 (2000); *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).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left knee condition causally related to the accepted February 9, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board