

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

_____)	
J.P., Appellant)	
)	
and)	Docket No. 18-0349
)	Issued: December 30, 2019
U.S. POSTAL SERVICE, OAKLAND STATION)	
POST OFFICE, Pittsburgh, PA, Employer)	
_____)	

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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On December 11, 2017 appellant, through counsel, filed a timely appeal from a September 18, 2017 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 to consider 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 met her burden of proof to establish a left knee condition causally related to the accepted September 9, 2015 employment incident.

FACTUAL HISTORY

On March 3, 2016 appellant, then a 47-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 9, 2015 she injured her left knee after stumbling on a broken sidewalk while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that she stopped work on October 22, 2015, and returned to work the following day. It controverted appellant's claim, noting that she waited more than a month before reporting the alleged accident.

In a February 23, 2016 report, Dr. David P. Fowler, a Board-certified orthopedist, reviewed the results of a computerized tomography (CT) arthrogram of appellant's knee. He noted that the CT scan revealed a vertical longitudinal tear involving the posterior horn of the medial meniscus and moderate patellofemoral compartment arthritis. Dr. Fowler indicated that appellant appeared to have a torn meniscus, some of which could be degenerative in nature as there was some arthritis in the area. He also discussed the possibility of undergoing arthroscopic surgery.

In a March 3, 2016 follow-up treatment report, Dr. Fowler diagnosed left medial meniscus tear. He indicated that appellant's left knee CT arthrogram revealed a medial meniscus tear. Dr. Fowler further indicated that, although there may be a degenerative component, it was primarily a vertical tear with a radial component. He noted that appellant still had pain and intermittent swelling, as well as episodes of instability.

In a separate March 3, 2016 note, Crawford W. Smith, a nurse practitioner, indicated that appellant had been seen earlier that day and advised that she should be permitted to work light duty.

In a development letter dated May 17, 2016, OWCP advised appellant of the type of evidence needed to establish her claim, particularly requesting that she submit a physician's reasoned opinion addressing the relationship between her claimed condition and specific employment factors. It also asked her to respond to a questionnaire to substantiate the factual elements of her claim.

In an undated statement received by OWCP on May 16, 2016, appellant indicated that while delivering mail on September 9, 2015 she stepped on an area of uneven sidewalk and she injured her left knee. She reported finishing her mail route. Approximately two weeks later, after "recollecting why [she] was in tremendous pain and walking with a limp," appellant reported the injury to her supervisor and requested a claim form. She indicated that her supervisor was unable to provide a claim form, but directed her to the carrier supervisor. Appellant subsequently went on vacation and returned to work on October 5, 2015. Her condition became progressively worse and she sought medical treatment from her physician on October 9, 2015. Appellant indicated that after informing the doctor of how her injury occurred, he noted that her injury should be filed as a workers' compensation claim because it was work related. She contacted her supervisor to relay

the information from her physician and to report a work injury, but was informed that because 48 hours had passed since the incident she could not complete the claim form. Appellant contacted the union who provided her with the proper claim form.

On November 3 and 5, 2015 appellant came under the treatment of Dr. Brian A. Klatt, a Board-certified orthopedist, for left knee pain. Dr. Klatt noted possible diagnoses of meniscal tear and degenerative joint disease. He provided cortisone injections and returned her to light-duty work. On November 3, 2015 Dr. Klatt referred appellant for physical therapy.

Appellant underwent physical therapy from November 9, 2015 to February 9, 2016 for acute left knee pain. She submitted exercise instructions.

In a prescription note dated January 28, 2016, a physician assistant continued appellant's limited-duty restrictions until evaluated by Dr. Fowler.

In a duty status report dated February 8, 2016, Dr. Sachin Bahl, a Board-certified internist, noted clinical findings and diagnosed knee pain. She returned appellant to work part-time, light duty. Dr. Bahl reexamined appellant on March 3, 2016 for left knee pain. She noted an essentially normal physical examination and diagnosed left knee pain, possible meniscal tear, and obesity. In a June 14, 2016 report, Dr. Bahl noted that appellant presented on March 3, 2016 with left knee pain. Appellant reported sustaining an injury at work on September 9, 2015 when she stumbled on a broken sidewalk. She experienced left knee pain since that time and difficulty walking and climbing steps.

Appellant was reexamined by Dr. Fowler on February 12, 2016, and he diagnosed a left knee effusion. On March 3, 2016 Dr. Fowler noted tenderness and soreness of the left medial joint line and diagnosed left knee medial meniscus tear. He opined that appellant most likely had some mild underlying degenerative condition and the work injury led to the meniscal tear. Dr. Fowler noted conservative treatment including cortisone injections and physical therapy did not relieve appellant's symptoms. He advised that appellant could work in a sedentary position. On April 8, 2016 Dr. Fowler diagnosed osteoarthritis involving the lower left leg. He continued to treat appellant and on May 24, 2016 he noted that x-rays revealed mild-to-moderate medial compartment arthritis. Dr. Fowler indicated that a CT arthrogram revealed a vertical longitudinal tear involving the posterior horn of the medial meniscus, extrusion of the meniscal body, grade 4 chondral fissuring of the medial femoral condyle, and moderate patellar arthritis. He noted that the grade 4 changes indicated preexisting arthritis, the extrusion represented a degenerative component and the vertical tear could be from degeneration or trauma. Dr. Fowler opined that appellant had preexisting arthritis which lead to degeneration of the meniscus and susceptibility to tearing with a fall or day-to-day activities. However, he advised that there were no objective tests that could distinguish the etiology of a tear. Dr. Fowler recommended arthroscopic surgery.

On June 6, 2016 appellant was treated by Dr. Adolph J. Yates, a Board-certified orthopedist, for left knee pain. Dr. Yates noted that she reported developing left knee pain last fall after an injury while carrying mail as a postal worker. He noted findings on examination of extension and flexion of 115 degrees, medial joint line tenderness with crepitus, intact extensor mechanism, intact cruciate, intact anterior posterior drawer, no gross locking, catching or grating, no calf pain, tenderness or swelling, and intact neurovascular examination. Dr. Yates noted that

the CT arthrogram revealed a small vertical tear and areas of significant chondral loss with cyst formation in the medial compartment and that x-rays of the left knee revealed moderate-to-severe patellofemoral and medial compartmental osteoarthritic changes. He opined that appellant's examination, history, and x-rays were compatible with moderately severe osteoarthritis of the left knee with associated degenerative meniscus tear. Dr. Yates noted that it was possible that her arthritis was aggravated by an injury, but the documentation was not ideal. He recommended light-duty work with no more than one hour of intermittent walking.

By decision dated June 22, 2016, OWCP denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish a causal relationship between appellant's left knee condition and the accepted September 9, 2015 employment incident.

On June 20, 2017 appellant, through counsel, requested reconsideration.

Appellant attended physical therapy from June 6 to July 8, 2016.

Dr. Yates reexamined appellant on June 12, 2016 and noted findings of full extension without evidence of calf pain tenderness or swelling. He indicated that she had twisted her foot and knee while working. Dr. Yates opined that appellant's injury was, at a minimum, an aggravation of her underlying osteoarthritis with a possible new onset of medial meniscus tear. He indicated that this injury occurred on the job. Dr. Yates noted that he was not the initial surgeon to treat appellant and her medical record was "disjointed." In a duty status report (Form CA-17) dated June 16, 2016, Dr. Yates noted clinical findings of knee pain and swelling and diagnosed small meniscal tear and osteoarthritis of the knee. He noted that appellant could work full-time, light duty.

By decision dated September 18, 2017, OWCP denied modification of its June 22, 2016 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 of FECA,⁴ 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

³ *Id.*

⁴ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.⁵ 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.⁶

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.⁷ 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.⁸ The second component is whether the employment incident caused a personal injury.⁹ 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.¹⁰

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹¹ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.¹² Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹³

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, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁴

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁸ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *J.P.*, *supra* note 4; *L.T.*, *supra* note 8; *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹¹ *E.M.*, *supra* note 7; *Robert G. Morris*, 48 ECAB 238 (1996).

¹² *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹³ *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left knee condition is causally related to the accepted September 9, 2015 employment incident.

Appellant submitted February 12 and 23, 2016 reports from Dr. Fowler who noted that a left knee CT arthrogram revealed a vertical longitudinal tear involving the posterior horn of the medial meniscus and moderate patellofemoral compartment arthritis. Dr. Fowler diagnosed tear of the meniscus and opined that some of the findings could be degenerative in nature as there was arthritis in this area. However, he did not address whether appellant's meniscal tear was causally related to the accepted employment incident on September 9, 2015. 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.¹⁵ These reports, therefore, are insufficient to establish appellant's claim.

In his March 3 and April 8, 2016 reports, Dr. Fowler diagnosed left knee medial meniscus tear and opined that appellant most likely had some mild underlying degeneration and the work injury led to the meniscal tear. The Board notes while these reports from Dr. Fowler are generally supportive of causal relationship, they are insufficient to establish the claimed left knee condition was causally related to her employment duties.

In a May 24, 2016 report, Dr. Fowler noted that the CT arthrogram revealed preexisting arthritis, a degenerative component, and the vertical tear that could be from degeneration or trauma. He noted that appellant had preexisting arthritis which led to degeneration within the meniscus and made it easier to tear, but he opined that there was no objective test that could distinguish the etiology of a tear. The Board has long held, however, that medical opinions that are speculative or equivocal in character have little probative value.¹⁶ Therefore this report is insufficient to establish her claim.

In a duty status report (Form CA-17) dated February 8, 2016, Dr. Bahl noted clinical findings and diagnosed knee pain. She returned appellant to part-time, light-duty work. Dr. Bahl reexamined appellant on March 3, 2016 for left knee pain and diagnosed left knee pain, possible meniscal tear and obesity. Similarly, on June 14, 2016, she noted that appellant sustained an injury at work on September 9, 2015 when she stumbled on a broken sidewalk. As these reports do not address whether appellant's employment incident caused or aggravated a diagnosed medical condition, they are insufficient to establish the claim.¹⁷

Appellant submitted a report from Dr. Yates dated June 6, 2016. Dr. Yates opined that appellant's examination, history, and x-rays were compatible with moderately severe osteoarthritis of the left knee with associated degenerative meniscus tear. He noted that it was "possible" that her arthritis was aggravated by an injury, but the documentation was not ideal. The Board notes

¹⁵ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

¹⁷ *Supra* note 15.

that Dr. Yates' report is speculative as the physician qualifies his support by noting that it was "possible" that her arthritis was aggravated by an injury. Therefore, this report is insufficient to meet appellant's burden of proof.¹⁸

In a June 12, 2016 report, Dr. Yates opined that upon review of appellant's chart and history, at a minimum, appellant had sustained an aggravation of her underlying osteoarthritis with a possible new onset of medial meniscus tear. He agreed that this injury occurred on the job. In a duty status report (Form CA-17) dated June 16, 2016, Dr. Yates noted clinical findings of knee pain and swelling and diagnosed small meniscal tear and osteoarthritis of the knee. The Board finds that, although Dr. Yates supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's left knee condition and the factors of employment.¹⁹ Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant submitted reports from Dr. Klatt dated November 3 and 5, 2015, who treated her for left knee pain. Dr. Klatt noted a possible diagnoses of meniscal tear and degenerative joint disease. His notes are insufficient to establish the claim as he did not address whether appellant's employment incident was sufficient to have caused or aggravated a diagnosed medical condition.²⁰

Appellant also submitted physical therapy notes and a note from a nurse practitioner. The Board has held that treatment notes signed by a nurse practitioners or physical therapists are insufficient to establish the claim as these providers are not considered physicians as defined under FECA²¹ and are not competent to render a medical opinion under FECA. Thus, these reports are insufficient to meet appellant's burden of proof.

The remainder of the medical evidence including x-rays of the left knee and a CT arthrogram are of limited probative value as they fail to provide a physician's opinion on the causal relationship between appellant's work incident and her diagnosed left knee meniscal tear.²² For this reason, this evidence is insufficient to meet her burden of proof.

As the record does not contain rationalized medical opinion evidence sufficient to establish causal relationship, appellant has not met her burden of proof.

¹⁸ *D.D.*, 57 ECAB 734 (2006).

¹⁹ *See T.M.*, *supra* note 16 (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

²⁰ *Supra* note 15.

²¹ *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

²² *See S.E.*, Docket No. 08-2214 (issued May 6, 2009).

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 left knee condition causally related to the accepted September 9, 2015 employment incident.

ORDER

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

Issued: December 30, 2019
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board