United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 19-1176**
	)	**Issued: December 13, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Summerville, SC, 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:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 1, 2019 appellant, through counsel, filed a timely appeal from an April 5, 2019 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 his burden of proof to establish right knee and shoulder conditions causally related to May 8 or June 18, 2014 accepted employment incidents.

FACTUAL HISTORY

This case has been previously been before the Board.[3] The facts and circumstances of the case as set forth in the Board's prior decision and order are incorporated herein by reference. The relevant facts are as follows.

On June 18, 2014 appellant, then a 55-year-old rural letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her right knee and right shoulder on May 8, 2014 when she jammed on brakes to stop suddenly while delivering mail in her postal vehicle. Under this claim, adjudicated by OWCP under File No. xxxxxx360, she submitted medical evidence from Dr. Nancy Lembo, an osteopath Board-certified in physical medicine and rehabilitation, who diagnosed right shoulder and right knee pain and effusion, medial collateral ligament (MCL) sprain, and right shoulder biceps tendinitis.

The employing establishment controverted this claim, noting that appellant had not reported hitting her knee or other injury to her knee or shoulder until six weeks after the motor vehicle accident, and that she continued to work full duty until June 18, 2014 when her physician placed her off work.

By decision dated July 29, 2014, OWCP denied the claim under File No. xxxxxx360, finding that, although appellant established that the claimed May 8, 2014 employment incident occurred, the medical evidence of record was insufficient to establish that the incident caused an injury and/or medical condition causally related to the accepted employment incident.

On August 6, 2014 appellant filed a second traumatic injury claim (Form CA-1), alleging that on June 18, 2014 she injured her right shoulder and right knee when she stepped back and fell while in the performance of duty. OWCP adjudicated this claim under File No. xxxxxx120. The employing establishment challenged this claim noting that, although there were other employees near appellant sorting mail, no one saw her fall, but just saw her sitting on the floor.

By decision dated September 22, 2014, OWCP denied the claim, under File No. xxxxxx120. It found that appellant had not submitted sufficient evidence to establish that the alleged injury and/or event had occurred as alleged. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

By decision dated May 6, 2015, issued under File No. xxxxxx360, an OWCP hearing representative affirmed the July 29, 2014 decision. By decision dated July 24, 2015, issued under File No. xxxxxx120, an OWCP hearing representative affirmed the September 24, 2014 decision, as modified, finding that the evidence of record was sufficient to establish that the claimed June 18,

[3] Docket No. 16-1661 (issued February 10, 2017); *Order Remanding Case*, Docket No. 18-0592 (issued February 6, 2019).

2014 employment incident occurred as alleged, but that the medical evidence submitted was insufficient to establish that diagnosed conditions were caused by the accepted employment incident. By decisions dated February 18 and July1, 2016 under File No. xxxxxx360, OWCP denied modification of its prior decisions. By decision dated July 25, 2016, issued under File No. xxxxxx120, OWCP also denied modification of the prior decisions.

Appellant, through counsel, filed an appeal with the Board on August 17, 2016. By decision dated February 10, 2017, the Board found that appellant had not met her burden of proof to establish either a right knee and/or a right shoulder injury on May 8, 2014 or on June 18, 2014. The Board affirmed the July 1 and 25, 2016 merit decisions of OWCP.[4]

On August 15, 2017 counsel requested reconsideration with OWCP.

Medical evidence of record submitted subsequent to the July 2016 merit decisions includes treatment notes completed by Anushaya Fitzgerald, a physician assistant, dated March 27, April 10, July 30, and September 3, 2015.

In an August 30, 2016 report, Dr. Michael A. Kavanagh, an attending Board-certified orthopedic surgeon, noted that appellant had been treated in his office since December 29, 2014 for right knee and right shoulder injuries that occurred on May 8, 2014, and that she had another incident at work on June 18, 2014 when her knee buckled and she fell.[5] He indicated that, after reviewing a right knee magnetic resonance imaging (MRI) scan report and examining appellant, he recommended right knee surgery.[6] Dr. Kavanagh maintained that appellant's conditions were directly related to the original injury of May 8, 2014. In a July 11, 2017 report, he indicated that on May 8, 2014 (OWCP File No. xxxxxx360), while delivering mail, appellant's right shoulder was wrenched when she jerked her steering wheel because a vehicle pulled in front of her causing her to hit her right knee on something on the dash. Dr. Kavanagh reiterated the conclusions expressed in his August 30, 2016 report.

By decision dated December 12, 2017, OWCP denied modification of the prior decisions.

On January 26, 2018 appellant filed an appeal with the Board. By order dated February 6, 2019, the Board found that OWCP should administratively combine File Nos. xxxxxx360 and xxxxxx120, to be followed by a *de novo* decision on appellant's claims for right shoulder and right knee conditions.[7]

OWCP administratively combined the files on April 5, 2019, with OWCP File No. xxxxxx360 serving as the master file. No additional medical evidence was submitted to either

[4] *Id.*

[5] In a December 29, 2014 report, Dr. Kavanagh diagnosed internal derangement, meniscal, early osteoarthritis, and chondromalacia of the right knee, and rotator cuff labral/biceps dysfunction of the right shoulder.

[6] Although the record does not contain an operative report, in treatment notes dated January 16 and 30, 2015, Dr. Kavanagh described postoperative care.

[7] *Supra* note 3.

record. By decision dated April 5, 2019, OWCP denied that appellant sustained right shoulder and right knee injuries. It found that Dr. Kavanagh merely provided conclusory opinions regarding the cause of these conditions such that his opinion was of insufficient rationale to support her claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA[8] 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,[9] 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.[10] 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.[11]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally in the form of medical evidence, to establish that the employment incident caused a personal injury.[12]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[13] 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 incident.[14] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[15]

[8] *Supra* note 2.

[9] *M.C.*, Docket No. 19-0744 (issued September 23, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[10] *D.H.*, Docket No. 19-0803 (issued September 10, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[11] *S.C.*, Docket No. 18-1242 (issued March 13 2019); *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).

[12] *K.K.*, Docket No 19-1193 (issued October 21, 2019); *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

[13] *K.K.*, *id.*; *M.B.*, Docket No. 17-1999 (issued November 13, 2018).

[14] *N.G.*, Docket No. 19-0928 (issued September 13, 2019); *M.L.*, Docket No. 18-1605 (issued February 26, 2019).

[15] *Id*.

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish right knee and shoulder conditions causally related to the accepted May 8 or June 18, 2014 employment incidents.

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's July 25, 2016 decision because the Board considered that evidence in its February 10, 2017 decision.[16]

The medical evidence of record in the consolidated record that had not been previously reviewed by the Board includes reports from Dr. Kavanagh. In an August 30, 2016 report, Dr. Kavanagh noted that appellant had been treated in his office since December 29, 2014 for right knee and right shoulder injuries that occurred on May 8, 2014, and that she had another incident at work on June 18, 2014 when her knee buckled and she fell. He indicated that he recommended surgery after reviewing a right knee MRI scan report and examining appellant. Dr. Kavanagh maintained that appellant's conditions were directly related to the original injury of May 8, 2014. In a July 11, 2017 report, he indicated that on May 8, 2014, while delivering mail, appellant wrenched her right shoulder when she jerked her steering wheel because a vehicle pulled in front of her, and that at that time her right knee hit something on the dash, causing injury to the right knee. Dr. Kavanagh reiterated the conclusions expressed in his August 30, 2016 report. He did not attribute appellant's right shoulder and right knee diagnoses to the June 18, 2014 employment incident, as he provided no opinion causally relating her right shoulder or knee conditions to the June 18, 2014 employment incident, his reports are of no probative value on this issue.[17] The Board finds that there is no probative medical evidence sufficient to establish a June 18, 2014 employment injury.[18]

Regarding the May 8, 2014 employment incident, Dr. Kavanagh reported a history that appellant wrenched her right shoulder when she jerked her steering wheel because a vehicle pulled in front of her and hit her right knee on something on the dash at that time. The record indicates that appellant continued to work full duty until June 18, 2014, and the evidence of record does not contain any medical evidence dated prior to June 18, 2014. Dr. Kavanagh did not begin treating appellant until December 29, 2014.

In its February 10, 2017 decision,[19] the Board found Dr. Kavanagh's opinion of insufficient rationale because his reports were speculative as to the specific mechanism of injury and conclusory without the necessary rationale explaining how and why work factors were sufficient to result in the diagnosed medical conditions.

[16] *V.S.*, Docket No. 19-0936 (issued October 7, 2019); *T.J.*, Docket No. 18-1477 (issued April 4, 2019).

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

[18] *See D.R.*, Docket No. 19-0954 (issued October 25, 2019); *see also M.V.*, Docket No. 18-1132 (issued September 16, 2019).

[19] *Supra* note 3.

The Board again finds Dr. Kavanagh's medical reports speculative as to the specific mechanism of injury and, therefore, his new submissions are entitled to little probative value. Dr. Kavanagh merely provided a conclusory opinion on the issue a causal relationship, indicating that on May 8, 2014, while delivering mail, appellant wrenched her right shoulder when she jerked her steering wheel because a vehicle pulled in front of her, and that at that time, her right knee hit something on the dash, causing injury to the right knee. He did not provide a rationalized opinion as to how jerking her shoulder or hitting something on the dash caused any diagnosed conditions. 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 conclusion is insufficient to meet a claimant's burden of proof to establish a claim.[20]

The March 27 to September 3, 2015 treatment notes by Ms. Fitzgerald, a physician assistant, are also insufficient to establish appellant's claim because a physician assistant is not considered a "physician" under section 8102(2) of FECA. Therefore, her opinion does not constitute competent medical evidence.[21]

As there is no well-reasoned medical opinion establishing appellant's claims for compensation, the Board finds that she has not met her burden of proof to establish an injury causally related to either the May 8 or June 18, 2014 accepted employment incidents.[22]

On appeal counsel contends that OWCP's April 5, 2019 decision is contrary to fact and law. For the reasons set forth above, the Board finds that appellant has not met her 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established right knee or shoulder conditions causally related to the accepted May 8 or June 18, 2014 employment incidents.

[20] *F.D.*, Docket No. 19-0932 (issued October 3, 2010); Docket No. 16-1661, *supra* note 3.

[21] 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 L.S.*, Docket No. 18-0650 (issued September 3, 2019).

[22] *See B.K.*, Docket No. 19-0829 (issued September 25, 2019).

ORDER

IT IS HEREBY ORDERED THAT the April 5, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 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