United States Department of Labor
Employees' Compensation Appeals Board

A.L., Appellant	)	
	)	
and	)	**Docket No. 18-1465**
	)	**Issued: February 14, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Denver, CO, Employer	)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 27, 2018 appellant filed a timely appeal from a June 5, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a left knee injury causally related to the accepted January 7, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 16, 2018 appellant, then a 23-year-old mail clerk, filed a traumatic injury claim (Form CA-1) alleging that, on January 7, 2018, he twisted his left knee at work. He did not stop work.

In a letter dated January 17, 2018, the employing establishment indicated that it was controverting appellant's claim because he did not report his claim until nine days after the alleged incident.

In a development letter dated January 25, 2018, OWCP advised appellant that initially his injury appeared to be a minor injury that resulted in minimal or no lost time from work. The letter noted that because the employing establishment had not controverted continuation of pay or challenged the merits of the case, payment of a limited amount of medical expenses was administratively approved and the merits of the claim had not been formally considered. OWCP reported that the claim was reopened for consideration because the employing establishment submitted a late challenge to the claim. It advised appellant of the deficiencies of his claim. Specifically it noted that the documentation received was insufficient to support his claim. OWCP provided him a factual questionnaire to complete and return and requested medical evidence in support of his claim. It afforded appellant 30 days to submit the requested evidence.

In multiple nurse's reports dated January 19, 26, and 30, 2018, Kathy Okamatsu, a nurse practitioner, noted that appellant complained of left knee pain. In the report dated January 19, 2018, countersigned by Dr. Lynne Yancey, Board-certified in emergency medicine, appellant's diagnoses were listed as acute pain in left knee and strain of left knee.

By decision dated February 26, 2018, OWCP denied appellant's traumatic injury claim. It found that the evidence of record was insufficient to establish that the incident occurred as alleged. OWCP related that the reason for this finding was that appellant had not responded to the initial development letter dated January 25, 2018.

On March 6, 2018 appellant requested a hearing before an OWCP hearing representative.

In the completed questionnaire dated March 6, 2018, appellant responded to OWCP's factual inquiries. He noted that on January 7, 2018 he was in the package sorting area handling packages, and was bending and lifting a 30- to 40-pound package. Appellant indicated that as he turned, the sole of his shoe caught the floor and he twisted his knee. He related that he was the only one working that day and there were no witnesses to the event. Appellant noted that when the event happened he heard a pop and his knee felt funny. He indicated that he did not report it at the time because he had work that needed to be done and he did not think the injury was serious. Appellant related that he reported his injury to management on January 11, 2018 after experiencing a second painful knee-twisting event. He noted that his first medical examination was on January 12, 2018 by Ms. Okamatsu.

By decision dated June 5, 2018, an OWCP hearing representative conducted a review of the written record and affirmed the February 26, 2018 decision denying appellant's claim for lack of medical evidence to establish fact of injury. He noted that the employing establishment had not

disputed appellant's account of the January 7, 2018 work incident as described in the March 13, 2018 response to the questionnaire. However, OWCP's hearing representative indicated that appellant had still not met his burden to establish the medical component of his claim because the medical record contained only an assessment of pain prepared by a nurse practitioner and the record did not contain a valid diagnosis by a qualified physician.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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 filed within the applicable time limitation, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

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.[5] 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.[6] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence.[8] Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[9] 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

[2] *Supra* note 1.

[3] *T.M.*, Docket No. 18-0972 (issued December 13, 2018); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[4] *T.M., id.*; *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3.

[6] *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[7] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3.

[8] *K.V.*, Docket No. 18-0306 (issued August 8, 2018); *Elizabeth H. Kramm*, 57 ECAB 117, 123 (2005).

[9] *I.J.*, 59 ECAB 408 (2008).

identified by the claimant.[10] This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his left knee condition was causally related to the accepted January 7, 2018 employment incident.

While initially OWCP found that appellant had not established that the January 7, 2018 incident occurred as alleged, OWCP's hearing representative found that appellant had responded to OWCP's questionnaire and had established that the employment incident occurred as alleged. The hearing representative, however, denied appellant's claim because he had not submitted medical evidence of a diagnosed left knee condition in connection with the accepted January 7, 2018 employment incident.

The record contains multiple nurse's reports from Ms. Okamatsu dated January 19, 26, and 30, 2018. The Board has held that medical reports signed solely by a nurse practitioner are of no probative value as a nurse practitioner is not considered a physician as defined under FECA and therefore is not competent to provide a medical opinion.[12]

The Board finds that the January 26, 2018 report from Ms. Okamatsu was countersigned by Dr. Yancey. Therefore, the January 26, 2018 report is of probative value because it was countersigned by a physician.[13] In the January 26, 2018 report, Dr. Yancey reviewed appellant's history of injury. She diagnosed left knee strain, however, she did not offer a rationalized medical opinion establishing causal relationship between the diagnosed left knee strain and the accepted employment incident. 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 regarding the issue of causal relationship.[14]

[10] *Id*.

[11] *D.H.*, Docket No. 17-1913 (issued December 13, 2018); *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *James Mack*, 43 ECAB 321 (1991).

[12] *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (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). *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

[13] *See D.W.*, Docket No. 17-1413 (issued December 18, 2018). A report from a nurse practitioner will be considered medical evidence if countersigned by a qualified physician.

[14] *C.C.*, Docket No. 18-1099 (issued December 21, 2018); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[15] An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there was a causal relationship between his condition and his employment.[16] Causal relationship must be based on rationalized medical opinion evidence.[17] As appellant has not submitted a rationalized medical opinion supporting that his diagnosed left knee condition was causally related to the accepted January 7, 2018 employment incident, he has not met his burden of proof to establish his claim.

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 his burden of proof to establish that his left knee condition was causally related to the accepted January 7, 2018 employment incident.

[15] *See A.W.*, Docket No. 17-0285 (issued May 25, 2018); *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[16] *Id.*

[17] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 2019
Washington, DC

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

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

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