United States Department of Labor
Employees' Compensation Appeals Board

K.J., Appellant	)	
and	)	**Docket No. 19-0131**
	)	**Issued: June 19, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Milwaukee, WI, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 23, 2018 appellant, through counsel, filed a timely appeal from an August 30, 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 counsel did not appeal from the October 11, 2018 decision which denied appellant's claim for a schedule award. Therefore, the Board has not exercised jurisdiction over that decision. *See* 20 C.F.R. § 501.3(c)(4).

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a recurrence of total disability, commencing March 1, 2016, causally related to her accepted August 19, 2015 employment injury; and (2) whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional conditions of reflex sympathetic dystrophy (RSD)/complex regional pain syndrome (CRPS).

FACTUAL HISTORY

On August 21, 2015 appellant, then a 31-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 19, 2015 she injured her left calf when a dog bit her while she was in the performance of duty. She stopped work on August 19, 2015 and returned to work on August 20, 2015. OWCP accepted the claim for a puncture wound to the left lower leg. It paid appellant wage-loss compensation for intermittent time lost from work in October 2015.[4]

Dr. Matthew M. Richlen, Board-certified in family medicine, found in a November 16, 2015 report that appellant could resume work on November 17, 2015 with no restrictions.

On March 11, 2016 appellant filed a notice of recurrence (Form CA-2a) claiming disability commencing March 1, 2016 causally related to her August 19, 2015 employment injury. She related that following her injury she initially had performed modified employment prior to resuming her regular work duties.

Dr. Richlen on March 3, 2016 indicated that he had evaluated appellant for "a flare up of [appellant's] left lower leg pain that started after a work injury in August 2015." He found that she could perform sedentary employment from March 2 through 16, 2016.

In a progress report dated March 16, 2016, Dr. Jennifer N. Klopfstein, a Board-certified physiatrist, evaluated appellant for pain and swelling in her left leg that had begun on August 19, 2015 after a dog bite to the anterior proximal tibial area of the left leg. She noted that appellant had gradually returned to her usual employment, but currently had limitations. Dr. Klopfstein diagnosed left leg pain. In a work status report dated March 16, 2016, she indicated that appellant could perform sedentary employment.

By development letter dated April 7, 2016, OWCP advised appellant of the definition of a recurrence of disability and the type of evidence necessary to establish that she had employment-related disability beginning March 1, 2016. It afforded her 30 days to submit additional evidence.

OWCP subsequently received a March 4, 2016 report from Dr. Richlen. Dr. Richlen noted that appellant had experienced periodic aggravations of left knee pain after an August 2015 dog bite. He found that she had "significant swelling on the medial aspect of the proximal left lower leg near the pes anserine" that was tender to the touch, but not "hot or red." Dr. Richlen diagnosed

[4] By decision dated April 8, 2016, OWCP denied appellant's claim for wage-loss compensation from October 28 to 30, 2015. It found that the medical evidence was insufficient to support disability from work during the claimed period.

left lower leg pain and bursitis/tendinitis of the left pes anserinus. He referred appellant for an ultrasound to rule out an infection due to the extent of swelling and related, "Given [appellant's] significant debility with her current symptoms, I will put her on seated-only work until then."

In a progress report dated April 6, 2016, Dr. Klopfstein discussed appellant's history of an August 19, 2015 employment injury and diagnosed left leg pain. In an April 6, 2016 work status report, she opined that appellant could work in a seated position.

On April 13, 2016 Dr. Richlen advised that appellant had "left lower leg swelling and pain due to a work[-]related dog bite injury from August 19, 2015."

By decision dated June 7, 2016, OWCP denied appellant's claim for a recurrence of disability. It found that the medical evidence submitted failed to establish that her accepted August 19, 2015 employment injury had worsened to the extent that she was disabled from work beginning March 1, 2016.

In a report dated June 27, 2016, Dr. Richlen reviewed appellant's history of a dog bite on the left lower leg close to her knee on August 19, 2015 with intermittent pain and swelling subsequent to the injury. She underwent an ultrasound due to "significant pain and swelling," but appellant's symptoms had abated prior to the ultrasound. Dr. Richlen related:

> "Within a reasonable degree of medical certainty, [appellant's] symptoms dating from February to the present are directly related to her original dog bite injury sustained on August 19, 2015. No other intervening cause can be identified. Causes such as internal knee derangement, nerve injury, bursitis, and infection have been ruled out. In my opinion [appellant] has developed reflex sympathetic dystrophy of the left lower extremity due to her dog bite injury on August 19, 2015. Due to this she cannot stand or walk for long periods of time as this activity produces significant swelling, tenderness, difficulty ambulating, and pain."

On July 2, 2016 appellant requested a review of the written record before an OWCP hearing representative.

By decision dated November 22, 2016, OWCP's hearing representative affirmed the June 7, 2016 decision. He found that Dr. Richlen had failed to provide rationale explaining how appellant sustained RSD or a recurrence of disability due to her accepted employment injury.

On December 27, 2016 appellant requested reconsideration.[5]

On January 23, 2017 Dr. Richlen indicated that he was treating appellant for CRPS/RSD of the lower left leg.[6] He advised that she had work restrictions and recommended a functional capacity evaluation.

[5] Appellant submitted reports from a physician assistant dated December 9, 2016 and January 6, 2017 regarding her treatment after a left ankle injury.

[6] Dr. Richlen provided similar findings in a report dated February 21, 2017.

In a report dated February 9, 2017, Dr. Sean C. Tracy, a Board-certified orthopedic surgeon, indicated that appellant had returned to her usual employment and had no further pain or partial disability.

By decision dated March 24, 2017, OWCP denied modification of its November 22, 2016 decision.[7]

OWCP subsequently received a March 21, 2017 report from Dr. Richlen, who again diagnosed RSD/CRPS and found work restrictions.

In a report dated June 12, 2017, Dr. Richlen related that appellant had sustained RSD/CRPS as a result of the dog bite to her left lower leg on August 19, 2015, with "most of [appellant's] pain centered on the region of the dog bite just below the knee on the inside of the leg." He advised that he had diagnosed CRPS using the "Budapest criteria," noting that she had disproportionate pain, hyperesthesia and allodynia, swelling, and "intermittent palpable warmth and edema." Dr. Richlen indicated that diagnostic studies had yielded unremarkable findings and that "no other diagnosis better explains [appellant's] signs and symptoms."[8]

On June 29, 2017 appellant requested reconsideration.

By decision dated September 27, 2017, OWCP denied modification of its March 24, 2017 decision. It found that Dr. Richlen had failed to support his diagnoses of RSD with objective findings. OWCP further determined that the evidence was insufficient to demonstrate that appellant had sustained an employment-related recurrence of disability.

Thereafter, OWCP received a June 26, 2017 report from Dr. Richlen. Dr. Richlen reviewed appellant's symptoms of increased pain and swelling in her left lower leg after carrying mail. He diagnosed a suspected exacerbation of RSD/CRPS and found that she could not work.

In a report dated July 13, 2017, Dr. Richlen indicated that appellant's leg symptoms had improved because she was off work and not walking. He advised that she could resume work walking no more than two hours. Dr. Richlen diagnosed left lower leg CRPS following an August 19, 2015 dog bite.

In a report dated March 19, 2018, Dr. Richlen asserted that he had been treating appellant for RSD/CRPS of the left lower extremity due to a "work[-]related dog bite sustained on August 19, 2015." He related:

> "The vast majority of chronic regional pain syndrome occurs after an inciting event. On the date of [appellant's] injury she was bit by a dog on the inside of her lower leg just below her left knee. In people who develop chronic regional pain syndrome such as [appellant] this injury results in excessive inflammation and/or central

[7] OWCP initially issued a decision dated March 2, 2017 which was returned to sender as it had the wrong address. It reissued the decision on March 24, 2017.

[8] On July 13 and August 17, 2017 Dr. Richlen provided work restrictions due to CRPS/RSD resulting from appellant's August 19, 2015 employment injury.

> neurologic sensitization. This results in long[-]term pain that is out of proportion to the inciting event. Consequently, there is a direct causal relationship between the dog bite and her development of chronic regional pain syndrome in the same area."

Dr. Richlen noted that examinations had revealed the presence of "swelling, warm or cool skin, allodynia, hyperalgesia, focal sweating, and/or limited range of motion" which constituted objective evidence supporting the diagnosis. He noted that objective studies were normal which "strongly supports the diagnosis of chronic regional pain syndrome. In other words, these tests are expected to be negative in chronic regional pain syndrome."

In a report dated May 16, 2018, Dr. Richlen discussed appellant's history of a dog bite on August 19, 2015 and described in detail her subsequent medical treatment. He noted that he initially had treated her on August 21, 2015 for swelling and a skin abrasion and prescribed antibiotics. Appellant had continued to experience swelling and a September 14, 2015 magnetic resonance imaging scan study showed "nonspecific soft-tissue edema." Dr. Richlen related that she had resumed work with restrictions, but continued to have leg pain and swelling. He referred appellant for an ultrasound on March 3, 2016 as the "area remained swollen and there was suspicion for bursitis and possible infection." Dr. Richlen advised that he had continued to treat her for pain, swelling, and tenderness and found work restrictions.

On June 5, 2018 appellant, through counsel, requested reconsideration.

By decision dated August 30, 2018, OWCP denied modification of its September 27, 2017 decision.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.[9] This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.[10]

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a

[9] 20 C.F.R. § 10.5(x); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

[10] *Id*.

condition that results from a new injury, even if it involves the same part of the body previously injured.[11]

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.[12] Where no such rationale is present, the medical evidence is of diminished probative value.[13]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability, commencing March 1, 2016, causally related to her accepted August 19, 2015 employment injury.

On March 3, 2016 Dr. Richlen noted that appellant had increased pain in her left lower leg that had begun after an August 2015 employment injury. He opined that she could perform sedentary employment. However, the Board has held that pain is a symptom rather than a medical diagnosis, and thus this report is of limited probative value in establishing a recurrence of disability causally related to the August 19, 2015 employment injury.[14]

In a report dated March 4, 2016, Dr. Richlen noted that appellant had pain and swelling of the left leg after walking. He discussed her history of an August 2015 dog bite and diagnosed pain in the left lower leg and bursitis/tendinitis of the left pes anserinus. Dr. Richlen found that appellant could perform sedentary employment. He did not, however, directly address the cause of the bursitis/tendinitis. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[15]

In a March 16, 2016 report, Dr. Klopfstein obtained a history of appellant experiencing left leg pain and swelling after an August 19, 2015 dog bite. She diagnosed left leg pain and found that appellant could work with restrictions. Dr. Klopfstein provided similar findings in a report dated April 6, 2016. As discussed, a diagnosis of left leg pain is a description of a symptom rather

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

[12] *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

[13] *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

[14] *F.D.*, Docket No. 18-0199 (issued March 20, 2019).

[15] *M.C.*, Docket No. 18-0919 (issued October 18, 2018).

than a clear diagnosis of a medical condition, and thus insufficient to satisfy appellant's burden of proof with respect to causal relationship.[16]

The remaining medical evidence is insufficient to establish that appellant sustained a recurrence of disability due to the accepted condition of a puncture wound to the left leg. In reports dated June 27, 2016 through May 16, 2018, Dr. Richlen found that she had work restrictions due to RSD/CRPS rather than a spontaneous worsening of the accepted condition.[17] As he did not relate appellant's disability to the accepted condition of a left leg puncture wound, his reports are insufficient to meet her burden of proof to establish an employment-related recurrence of disability.[18]

The Board finds that the medical evidence submitted is insufficient to establish disability from work commencing March 1, 2016 causally related to residuals of the accepted employment injury. Thus, the Board finds that appellant has not established by the weight of the reliable, probative, and substantial evidence, a change in the nature and extent of the injury-related condition resulting in her inability to perform her employment duties.[19]

Appellant may submit new evidence 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.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA[20] has the burden of proof to establish the essential elements of his or her claim, including the fact that he or she 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 while 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.[21]

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[22] To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and

[16] *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

[17] *See S.H.*, Docket No. 18-1398 (issued March 12, 2019).

[18] *Supra* note 12.

[19] *Id*.

[20] *Supra* note 3.

[21] *See C.W.*, Docket No. 17-1636 (issued April 25, 2018).

[22] *See T.F.*, Docket No. 17-0645 (issued August 15, 2018).

medical background, supporting such a causal relationship.[23] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[24] 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.[25]

While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and to see that justice is done.[26]

ANALYSIS -- ISSUE 2

The Board finds that the case is not in posture for decision regarding whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include RSD/CRPS.

Dr. Richlen treated appellant following her employment injury for exacerbations of her left leg pain with swelling. On June 27, 2016 he diagnosed RSD of the left lower extremity causally related to her dog bite at work on August 19, 2015. Dr. Richlen advised that appellant had undergone an ultrasound due to her significant left leg swelling, but that the exacerbation of her condition had resolved prior to testing.

On June 12, 2017 Dr. Richlen diagnosed RSD/CRPS due to appellant's dog bit on her lower left leg at work on August 19, 2015. He related that he had based his diagnosis on her pain, hyperesthesia, swelling, and intermittent edema and warmth to palpation of the extremity. Dr. Richlen indicated that diagnostic studies were unremarkable and that it was the diagnosis that best explained appellant's symptoms. In a report dated March 19, 2019, he advised that CRPS frequently occurred after "an inciting event." Dr. Richlen reviewed the history of appellant's August 19, 2015 dog bite to the left lower leg, noting that CRPS caused pain in excess of what was normal given the injury due to inflammation and sensitization. He concluded that objective findings on physical examinations, which included swelling, changes in skin temperature, hyperalgesia, sweating, and reduced motion, supported the diagnosis of CRPS.

The Board finds that Dr. Richlen's opinion is sufficient, given the absence of any opposing medical evidence, to require further development of the record.[27] The Board notes that his reports are not contradicted by any substantial medical or factual evidence of record. While Dr. Richlen's reports are insufficiently rationalized to meet appellant's burden of proof to establish her claim,

[23] *See S.A.*, Docket No. 18-0399 (issued October 16, 2018).

[24] *See P.M.*, Docket No. 18-0287 (issued October 11, 2018).

[25] *See F.H.*, Docket No .18-1238 (issued January 18, 2019).

[26] *T.E.*, Docket No. 18-1595 (issued March 13, 2019).

[27] *D.C.*, Docket No. 18-1664 (issued April 1, 2019).

they raise an uncontroverted inference between her diagnosis of RSD/CRPS and the accepted employment injury and, therefore, are sufficient to require OWCP to further develop the medical evidence and the case record.[28]

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[29] OWCP has an obligation to see that justice is done.[30]

The Board will, therefore, remand the case for further development of the medical evidence. On remand OWCP shall refer appellant, a statement of accepted facts, and the medical evidence of record to an appropriate Board-certified specialist for an examination, diagnosis, and a rationalized opinion as to whether she sustained RSD/CRPS causally related to her accepted dog bite employment injury on August 19, 2015. After this and other such further development deemed necessary, OWCP shall issue a *de novo* decision.[31]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability, commencing March 1, 2016, causally related to her accepted August 19, 2015 employment injury. The Board further finds that the case is not in posture for decision regarding whether she has met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional conditions of RSD/CRPS.

[28] *Id*.

[29] *D.W.*, Docket No. 17-1884 (issued November 8, 2018).

[30] *X.V.*, Docket No. 18-1360 (issued April 12, 2019).

[31] *See supra* note 27.

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2018 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: June 19, 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