United States Department of Labor
Employees' Compensation Appeals Board

E.G., Appellant	)	
	)	
and	)	**Docket No. 18-1383**
	)	**Issued: March 8, 2019**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Los Angeles, CA, 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 July 2, 2018 appellant, through counsel, filed a timely appeal from an April 6, 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.

[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 recurrence of the need for medical treatment causally related to her accepted February 12, 2009 employment injury.

FACTUAL HISTORY

On February 12, 2009 appellant, then a 62-year-old primary ambulatory care specialist, filed a traumatic injury claim (Form CA-1) alleging that on that day she injured both knees and hands when she tripped over two concrete blocks in the parking lot on the way to work and fell. She stopped work on February 12, 2009 and returned to work on March 1, 2009.

By decision dated October 24, 2011, OWCP found the evidence of record sufficient to establish that appellant sustained a right wrist sprain and bilateral knee contusion as a result of the accepted February 12, 2009 work incident. However, it found the record failed to establish a causal relationship between a left wrist sprain, bilateral knee sprains and the accepted February 12, 2009 injury.[3]

On April 25, 2016 appellant filed a notice of recurrence (Form CA-2a) in which she checked the box denoting that she was only claiming a recurrence due to the need for medical treatment related to her accepted February 12, 2009 employment injury.[4] Regarding the date of the recurrence, appellant noted the dates of March 9, 2015 and January 1, 2016. She asserted that she frequently required pain medication because she had constant pain. Appellant also noted that her knees and hands were swollen.

By development letter dated June 7, 2016, OWCP informed appellant that the evidence of record was insufficient to support her recurrence claim. It advised her of the medical and factual evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By decision dated July 20, 2016, OWCP denied appellant's claim for a recurrence of a medical condition causally related to her February 12, 2009 employment injury. It determined that she had not submitted a medical report with sufficient rationale to establish causal relationship between the requested medical treatment and the accepted February 12, 2009 employment injury.

By letter dated August 1, 2016, counsel requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review, which was subsequently changed to a request for review of the written record.

By decision dated March 20, 2017, OWCP's hearing representative affirmed OWCP's July 20, 2016 decision. He found that appellant had not presented medical evidence sufficient to

[3] On February 22, 2013 appellant filed an appeal with the Board of the October 24, 2011 OWCP decision. By order dated March 7, 2013, the Board dismissed appellant's appeal, finding that her appeal to the Board was untimely filed. *Order Dismissing Appeal*, Docket No. 13-0814 (issued March 7, 2013).

[4] Appellant had retired from the employing establishment on March 31, 2015.

establish the need for medical treatment causally related to her accepted February 12, 2009 employment injury.

On November 8, 2017 counsel requested reconsideration and submitted an October 12, 2017 report from Dr. Martha Wafer, a treating physician specializing in family medicine.

Dr. Wafer, in her October 12, 2017 report, noted appellant's February 12, 2009 employment injury and that appellant was seen for complaints of bilateral hand and knee pain. Since relocating to Shreveport, LA, appellant related that she had not received medical treatment for her bilateral knee and hand conditions. She described her symptoms, which included pain, popping and locking of her left knee, numbness in both legs, and numbness and tingling in her left hand. Dr. Wafer diagnosed bilateral hand and knee strains and sprains due to the accepted 2009 work injury. She also opined that the 2009 work injury aggravated a prior right knee condition. Dr. Wafer recommended medication, knee braces, imaging tests, and physical medicine treatment. She advised that appellant was currently unemployed and recommended that she not perform strenuous activity or heavy lifting. Appellant was directed to return in four weeks for a reevaluation.

By decision dated April 6, 2018, OWCP denied modification of the March 20, 2017 decision, finding that the medical evidence of record was insufficient to establish that appellant's need for additional medical treatment was causally related to the accepted February 12, 2009 employment injury.

LEGAL PRECEDENT

The United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.[5]

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.[6] An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury without intervening cause.[7]

If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal relationship between the employee's current condition and the original injury in order to meet his

[5] 5 U.S.C. § 8103(a).

[6] 20 C.F.R. § 10.5(y).

[7] *T.B.*, Docket No. 18-0762 (issued November 2, 2018); *E.R.*, Docket No. 18-0202 (issued June 5, 2018).

or her burden.[8] To meet this burden the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.[9] Where no such rationale is present, medical evidence is of diminished probative value.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of the need for medical treatment causally related to her accepted February 12, 2009 employment injury.

In her October 12, 2017 report, Dr. Wafer noted appellant's complaints of bilateral knee and hand pain and diagnosed bilateral knee and hand strains and sprains, which she attributed to the February 12, 2009 work injury. However, OWCP has not accepted a left wrist sprain/strain or bilateral knee sprain/strains as causally related to the February 12, 2009 employment injury. The Board finds that Dr. Wafer's report is insufficient to establish that appellant required further medical care causally related to her accepted 2009 employment injury. As appellant filed the recurrence of medical treatment more than 90 days following her last medical treatment for her accepted employment conditions, she was required to submit a rationalized medical opinion establishing causal relationship between her current condition and the original injury.[11] A physician must provide an opinion that the employment injury caused or contributed to the claimant's diagnosed medical condition, supported by medical reasoning sufficient to demonstrate that the conclusion reached is sound, logical, and rational.[12] The Board finds that Dr. Wafer provided a conclusory opinion which did not include a rationalized medical opinion establishing that appellant required further medical care after March 9, 2015 causally related to her accepted February 12, 2009 employment injury.[13]

Appellant did not submit a medical report from a physician who, on the basis of a complete and accurate factual and medical history, concluded that she required further medical treatment for her accepted conditions on or after March 9, 2015 a result of her accepted February 12, 2009 employment injury.[14] She 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 required continued medical treatment. As appellant has not submitted medical evidence showing

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013); *see also J.M.*, Docket No. 09-2041 (issued May 6, 2010).

[9] *A.C.*, Docket No. 17-0521 (issued April 24, 2018); *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

[10] *O.H.*, *id.*; *Michael Stockert*, 39 ECAB 1186 (1988); *see Ronald C. Hand*, 49 ECAB 113 (1997).

[11] *Supra* note 8.

[12] *See A.C.*, *supra* note 9; *John W. Montoya*, 54 ECAB 306 (2003).

[13] *Supra* note 9.

[14] *K.P.*, Docket No. 15-1711 (issued January 14, 2016).

a recurrence of medical condition due to her accepted employment injury, the Board finds that she has not met her burden of proof.[15]

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 established a recurrence of the need for medical treatment causally related to her accepted February 12, 2009 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 6, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 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

[15] *See E.R.*, Docket No. 18-0202 (issued June 5, 2018).