United States Department of Labor
Employees' Compensation Appeals Board

A.R., Appellant	)	
and	)	**Docket No. 18-1728**
	)	**Issued: March 19, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Lancaster, KY, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 13, 2018 appellant, through counsel, filed a timely appeal from an August 17, 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 following the August 17, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that her right knee condition was causally related to the accepted January 16, 2018 employment incident.

FACTUAL HISTORY

On January 16, 2018 appellant, then a 38-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a right knee injury after slipping on an icy sidewalk while in the performance of duty. On the reverse side of the claim form the employing establishment noted that she stopped work on January 16, 2018.

In a report dated January 16, 2018, Megan M. Kegley, a nurse practitioner, indicated an impression of acute right knee pain.

By development letter dated January 25, 2018, OWCP advised appellant of the type of medical and factual evidence needed to establish her claim, including a comprehensive narrative medical report from a qualified physician. It also provided her with a questionnaire for completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a report dated January 16, 2018, Ms. Kegley indicated that appellant had knee pain and that she should not return to work until she underwent a magnetic resonance imaging (MRI) scan.

In a report dated January 31, 2018, Jennifer C. Daniel, a nurse practitioner, indicated that appellant had recurrent right knee instability. She noted that appellant should remain off work unless she was able to perform sedentary work.

On February 1, 2018 Ms. Kegley noted that appellant's history of injury consisted of knee hyperextension with instability. She related that appellant should not return to work for two weeks.

In a supplemental statement dated February 2, 2018, appellant explained that her injury occurred when she ascended a staircase to a mailbox, placed mail in the mailbox, descended the stairs, but slipped and hit her knee as she stepped onto the sidewalk. She noted that she heard a pop, and her knee became weak and unstable.

In a report dated February 19, 2018, Dr. Donald Hamner, Board-certified in family practice and geriatric medicine, noted a diagnosis of lateral derangement of the right knee.

By decision dated February 28, 2018, OWCP accepted that the employment incident occurred as alleged, but denied appellant's claim finding that she had not submitted any medical evidence containing a medical diagnosis in connection with the accepted January 16, 2018 employment incident. It concluded, therefore, that she had not met the requirements to establish an injury as defined by FECA.

In a form report dated March 5, 2018, Dr. Hamner noted that appellant had right knee instability after slipping on ice on January 16, 2018. He indicated that she should not return to work until April 5, 2018.

In a report dated March 5, 2018, Ms. Daniel examined appellant and noted an impression of internal derangement of appellant's right knee. She related that appellant should remain off work until she could be evaluated by an orthopedic surgeon.

On March 28, 2018 appellant requested a review of the written record before an OWCP hearing representative.

In a letter dated March 22, 2018, received by OWCP on April 2, 2018, Ms. Daniel indicated that Dr. Hamner had cosigned her reports on February 20, 2018.

In a medical report and a work excuse note dated April 9, 2018, Ms. Daniel related that appellant suffered from an unspecified internal derangement of her right knee, and that appellant should be excused from work for one month. She provided the same information on reports dated May 9 and June 6, 2018. Ms. Daniel indicated that appellant could not return to work until July 9, 2018.

By decision dated August 17, 2018, an OWCP hearing representative affirmed the February 28, 2018 decision as modified. She indicated that appellant sustained a diagnosed condition. However, the hearing representative found that appellant had not submitted rationalized medical opinion evidence from a physician which established causal relationship between the diagnosed condition and the accepted January 16, 2018 employment incident.

LEGAL PRECEDENT

A claimant seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.[5]

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. Generally, 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.[6] The second component is whether the employment incident caused a personal injury.[7] 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.[8]

[4] *See supra* note 2.

[5] 20 C.F.R. § 10.115(e), (f); *T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[6] *See T.O., id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *K.C.*, Docket No. 17-1693 (issued October 29, 2018); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.[10] 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 the employment incident.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her right knee condition was causally related to the accepted January 16, 2018 employment incident.

In support of her claim, appellant initially submitted a series of reports from Ms. Kegley and Ms. Daniel, nurse practitioners. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[12] Consequently, their medical findings and/or opinions are of no probative value and will not suffice for purposes of establishing entitlement to compensation benefits.[13]

The reports of record from Ms. Daniel and cosigned by Dr. Hamner, are sufficient to establish a diagnosis of an internal derangement right knee condition.[14] However, appellant has not met her burden of proof to establish that this diagnosed condition was causally related to the accepted January 16, 2018 employment incident. In his March 5, 2018 report, Dr. Hamer noted that she had slipped on ice on January 16, 2018, but he provided no opinion on the issue of causal relationship.

Since appellant has not submitted rationalized medical evidence explaining how her diagnosed internal derangement of the right knee was causally related to her accepted January 16, 2018 employment incident, she 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

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[9] *See K.C., id.*; *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *See A.J., supra* note 7; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] *Id.*

[12] Section 8101(2) of FECA provides that medical opinion, in general, can only be given by a qualified physician. This section 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. *See also J.R.*, Docket No. 18-0801 (issued November 26, 2018).

[13] *B.J.*, Docket No. 18-1276 (issued February 4, 2019); *see David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); *see also S.J.*, Docket No. 17-0783 n.2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

[14] A medical opinion constitutes competent medical evidence if it was cosigned by a physician as defined under FECA. *See E.S.*, Docket No. 17-1598 (issued November 8, 2018).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her right knee condition was causally related to the accepted January 16, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 17, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2019
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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