United States Department of Labor
Employees' Compensation Appeals Board

K.G., Appellant	)	
and	)	**Docket No. 18-1691**
	)	**Issued: May 1, 2019**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Houston, TX, 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 September 7, 2018 appellant filed a timely appeal from an August 13, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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] Appellant timely requested oral argument pursuant to section 501.5(b) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). By order dated March 8, 2019, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed in a decision based on the case record. *Order Denying Request for Oral Argument*, Docket No. 18-1691 (issued March 8, 2019).

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that following the April 13, 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 evidence for the first time on appeal. *Id*.

ISSUE

The issue is whether appellant has met her burden of proof to establish a left knee condition causally related to the accepted September 28, 2017 employment incident.

FACTUAL HISTORY

On October 4, 2017 appellant, then a 46-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that she injured her left knee on September 28, 2017 while in the performance of duty. She reported that as she turned away after obtaining patient information from a coworker she twisted her knee and it popped, and then developed pain and swelling. The employing establishment indicated on the reverse side of the claim form that an investigation of the incident did not support appellant's statement.

In an October 4, 2017 authorization for examination and/or treatment (Form CA-16), W.T., a workers' compensation program manager at the employing establishment, authorized medical treatment by Dr. George Ozoude, a Board-certified orthopedic surgeon. W.T. checked a form box indicating doubt that her condition was caused by an injury sustained in the performance of duty.

In a development letter dated October 10, 2017, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. It afforded her 30 days to respond.

In a November 2, 2017 statement, appellant wrote that she injured her left knee at approximately 8:30 a.m. on September 28, 2017 when she turned from talking with a team leader regarding a patient. She indicated that, as she turned and twisted to return to her desk, she heard her left knee pop and was unable to put pressure on her left leg, but that after a few minutes she could limp to her desk. Appellant related that after a few minutes the sharp pain diminished and she continued to work from her desk, ambulating only when necessary. She also reported that she was also experiencing shortness of breath and coughing that morning, which eventually worsened, and that at approximately 9:30 a.m. she called her supervisor who advised her to go to her doctor. Appellant indicated that she also informed her supervisor regarding the left knee incident that day. She reported that she was treated for acute bronchitis/pneumonia that day, remained off work, and saw an orthopedic surgeon on October 1, 2017. Appellant described medical treatment and indicated that she had not returned to work.

On disability slips dated October 1 and 6, 2017 Dr. Ozoude indicated that appellant should be out of work due to a left knee medial meniscus tear. On a Family and Medical Leave Act (FMLA) form dated November 7, 2017, he noted that appellant's condition commenced on September 28, 2017 and that she was unable to work due to a left knee medial meniscus tear, which did not allow her to lift, push, pull, or put any strain on the knee. Dr. Ozoude recommended physical therapy and advised that she would be out of work for approximately six months.

By decision dated November 14, 2017, OWCP denied the claim. It found the September 28, 2017 incident occurred as alleged, but denied the claim because the medical evidence submitted was insufficient to establish that the diagnosed condition was causally related to the September 28, 2017 employment incident.

On January 16, 2018 appellant requested reconsideration. She resubmitted her November 2, 2017 statement. In December 8, 2017 correspondence, Dr. Ozoude advised that appellant was under his care. He noted that appellant was first seen on October 2, 2017 when she related that she had injured her left knee by twisting it while in a standing position at work on September 28, 2017. Dr. Ozoude reported that a magnetic resonance imaging (MRI) scan was performed on October 4, 2017, which revealed a left medial meniscus tear. He indicated that appellant's explanation of her injury demonstrated the cause of her diagnosed left medial meniscal tear, noting that the injury was often caused by a twisting motion.

By decision dated January 17, 2018, OWCP reviewed the merits of appellant's claim, but denied modification of its prior decision, finding that the medical evidence submitted was of insufficient rationale to establish causal relationship.

On May 15, 2018 appellant again requested reconsideration. She submitted an April 30, 2018 treatment note in which Dr. Alan Tran, Board-certified in family medicine, noted that appellant was seen for left knee pain. Dr. Tran wrote that appellant related that, while working on September 28, 2017, she twisted her left knee as she turned around and felt it pop. He described her complaint of sharp left knee pain, provoked with weight bearing, and noted that she walked with a visual limp. Physical examination demonstrated moderate tenderness in the right knee with a positive McMurray's test. Dr. Tran diagnosed internal derangement of the left knee and advised that appellant could perform modified duties. In a July 12, 2018 report, he noted her complaint of mild sharp left knee pain with difficulty walking. Dr. Tran described mild tenderness on palpation of the left knee with a positive McMurray's test on the left and repeated his diagnosis.

By decision dated August 13, 2018, OWCP reviewed the merits of appellant's claim, but denied modification of its prior decisions. It found that appellant had not provided rationalized medical opinion evidence sufficient to establish causal relationship between the diagnosed conditions and the accepted September 28, 2017 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 period,[4] 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.[5] 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.[6] To determine if an employee has sustained an injury in the performance of duty, OWCP begins

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[6] *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).

with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7]

Rationalized medical opinion evidence is required to establish causal relationship. 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.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left knee condition causally related to the accepted September 28, 2017 employment incident.

In support of her claim, appellant submitted disability slips dated October 1 and 6, 2017 and an FMLA form dated November 7, 2017 from Dr. Ozoude. In these reports, however, Dr. Ozoude did not provide a medical opinion that the accepted September 28, 2017 incident caused or aggravated appellant's left knee conditions. 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 on the issue of causal relationship.[9] These reports, therefore, are insufficient to establish appellant's claim.

Dr. Ozoude also provided correspondence, dated December 8, 2017, in which he described appellant's recitation that she injured her left knee by twisting it while in a standing position at work on September 28, 2017. He indicated that an MRI scan was done on October 4, 2017, which revealed a left medial meniscus tear. Dr. Ozoude opined that appellant's explanation of her injury demonstrated that the left medial meniscal tear was caused by this incident, noting that such an injury was often caused by a twisting motion. The Board initially notes that a copy of the MRI scan report, which would confirm a medial meniscus tear, is not found in the record before the Board. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.[10]

While Dr. Tran provided treatment notes dated April 30 and July 12, 2018 in which he discussed appellant's left knee condition, he did not provide a medical opinion that the accepted September 28, 2017 employment incident caused or aggravated her left knee condition. Lacking

[7] *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

[8] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

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

[10] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

a rationalized medical opinion regarding causal relationship, his reports are therefore of no probative value.[11]

As the record lacks rationalized medical evidence establishing causal relationship between the September 28, 2017 employment incident and appellant's diagnosed left knee condition, the Board finds that she has not met her burden of proof.[12]

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 her burden of proof to establish a left knee condition causally related to the accepted September 28, 2017 employment incident.

[11] *Id.*

[12] The Board notes that the employing establishment issued appellant a signed authorization for examination and/or treatment (Form CA-16) authorizing medical treatment. The Board has held that where an employing establishment properly executes a CA-16 form, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly to pay the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. §§ 10.300, 10.304; *G.T.*, Docket No. 18-1369 (issued March 13, 2019).

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 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