United States Department of Labor
Employees' Compensation Appeals Board

J.O., Appellant	)	
and	)	**Docket No. 19-0839**
	)	**Issued: November 12, 2019**
DEPARTMENT OF THE ARMY, DURHAM U.S. ARMY HEALTH CLINIC, Carlisle, PA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 13, 2019 appellant filed a timely appeal from a February 28, 2019 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.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the February 28, 2019 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 conditions were causally related to the accepted September 14, 2018 employment incident.

FACTUAL HISTORY

On January 10, 2019 appellant, then a 53-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that she sustained hip and knee injuries on September 14, 2018 when her legs straddled "like doing a split" when she was mopping while in the performance of duty. She indicated that she did not immediately report her injury because she did not think anything was wrong until she started experiencing knee problems. On the reverse side of the claim form, the employing establishment controverted the claim. J.B., a supervisor, explained that appellant did not report her injury within 30 days of the date of injury and that no medical evidence supporting causal relationship was provided.

OWCP received work excuse slips dated October 5 and 15, November 13, and December 5, 2018, and January 9, 2019, from Dr. James A. Oliverio, a Board-certified orthopedic surgeon. A January 4, 2019 note from a nurse was also received regarding treatment provided.

A January 15, 2019 magnetic resonance imaging (MRI) scan of appellant's left hip interpreted by Dr. Elie M. Azar, an interventional radiologist, demonstrated signal changes in the left femoral neck and intertrochanteric region consistent with bone infarcts.

In a January 22, 2019 treatment note, Dr. Adam Buerk, a Board-certified orthopedic surgeon, indicated that appellant was seen for evaluation of left hip pain following an employment injury. He noted that she had a "mechanical fall in September 2018 while mopping a floor at work causing her to do a split." Dr. Buerk diagnosed avascular necrosis with collapse, left hip.

In a development letter dated January 25, 2019, OWCP advised appellant that the evidence received to date was insufficient to establish her claim. It informed her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received appellant's supplemental statement describing the employment incident. Appellant noted that her left leg straddled faster than her right leg; however, she was able to pull herself back up. She explained that, while she experienced pain, she did not initially report the incident because she did not believe that she was injured. Appellant continued to work, however, a few days later, her knee swelled and she saw her physician. She explained that she did not mention the incident to her physician because she did not realize that it was related. Appellant explained that, when she saw an orthopedic surgeon, she informed him that she had slipped.

In an October 5, 2018 report, Dr. Oliverio noted that appellant presented for evaluation of bilateral knee pain. He indicated that she began to develop swelling over the posterior aspects of the knees. Dr. Oliverio noted that appellant denied any known injury or trauma. He diagnosed intermittent synovitis, and bilateral knees. An October 5, 2018 x-ray of the right knee read by Dr. Oliverio, revealed intermittent synovitis of the bilateral knees.

A January 5, 2019 x-ray of the left hip interpreted by Dr. Raymond Dahl, a Board-certified orthopedic surgeon, revealed ilio tibial band syndrome with trochanteric bursitis.

A January 3, 2019 hospital report from Dr. Gerald E. Willwerth, an interventional radiology specialist, noted that appellant presented with left hip and left-sided back pain. He indicated that, approximately two months prior, she sustained an injury to her low back and left hip when she slipped and "did a split." Dr. Willwerth diagnosed acute low back pain and acute left hip pain.

A January 24, 2019 MRI scan of the left hip, interpreted by Dr. Azar, revealed findings consistent with bone infarcts and no convincing evidence of an acute fracture.

In response to a series of questions from OWCP, Dr. Buerk in a February 1, 2019 letter, indicated that he had appended his notes to answer all, but one of the questions. In response to the remaining question, as to whether the September 14, 2018 injury necessitated surgery, he opined that "[i]t is with a reasonable degree of medical certainty the current treatment and need for surgery is directly related to the September 14, 2018 work injury. The mechanism of injury as described by [appellant] directly correlates to her clinical examination."

By decision dated February 28, 2019, OWCP accepted that the September 14, 2018 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted September 14, 2018 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 of FECA,[3] 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.[4] 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.[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

[3] *S.N.*, Docket No. 18-1627 (issued May 15, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[5] *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).

allegedly occurred.[6] The second component is whether the employment incident caused a personal injury.[7]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve.[8] A physician's opinion regarding causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.[9] 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 an employment incident.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her conditions were causally related to the accepted September 14, 2018 employment incident.

OWCP received work excuse notes in support of appellant's claim. The notes dated October 5 and 15, November 13, and December 5, 2018, and January 9, 2019, from Dr. Oliverio, and the January 22, 2019 work excuse from Dr. Buerk, do not provide an opinion on the issue of causal relationship. 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.[11] These reports, therefore, are insufficient to establish appellant's claim.

Similarly, in a January 3, 2019 hospital report, Dr. Willwerth diagnosed acute low back pain and acute left hip pain. However, pain is a symptom and not a valid diagnosis.[12] This report was insufficient to establish appellant's claim as it did not provide a firm diagnosis of a medical condition causally related to the accepted employment incident.[13]

In an October 5, 2018 report, Dr. Oliverio noted that appellant began to develop swelling over the posterior aspects of the knees, but denied any known injury or trauma. He diagnosed intermittent synovitis, bilateral knees. The Board finds that Dr. Oliverio did not offer an opinion as to the cause of appellant's diagnosed conditions and did not describe any injury as occurring at work. As noted above, the Board has held that medical evidence that does not offer an opinion

[6] *See T.O.,* Docket No. 18-1012 (issued October 29, 2018); *Elaine Pendleton,* 40 ECAB 1143 (1989).

[7] *See T.O., id.*; *John J. Carlone,* 41 ECAB 354 (1989).

[8] *See K.C.,* Docket 17-1693 (issued October 29, 2018); *Robert G. Morris,* 48 ECAB 238 (1996).

[9] *See K.C., id.*; *Victor J. Woodhams,* 41 ECAB 345, 352 (1989).

[10] *Id.*

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

[12] *D.B.*, Docket No. 18-1359 (issued May 14, 2019).

[13] *Id.*

regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[14] This report is insufficient to establish appellant's claim.

In a January 22, 2019 treatment note, Dr. Buerk reported that, in September 2018, appellant's legs split while mopping at work. He diagnosed avascular necrosis with collapse, left hip; however, he offered no opinion that the diagnosed condition was the result of the employment incident. As previously noted, 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.[15] This report is also insufficient to establish appellant's claim.

In a February 1, 2019 report, Dr. Buerk opined: ''[i]t is with a reasonable degree of medical certainty the current treatment and need for surgery is directly related to the [September] 14, 2018 work injury." He explained that "the mechanism of injury as described by [appellant] directly correlates to her clinical examination." However, Dr. Buerk did not provide a history of injury or offer medical rationale explaining how appellant's conditions were caused by the employment incident. Simply, offering a conclusion is insufficient to establish a causal relationship.[16] To be of probative medical value, a medical opinion must explain how physiologically the movements involved in the employment incident caused or contributed to the diagnosed conditions.[17] Lacking this rationalized explanation, Dr. Buerk's reports are therefore insufficient to establish appellant's claim.

OWCP also received a January 4, 2019 note from a nurse. Nurses, however, are not considered "physician[s]" as defined under FECA.[18] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[19]

Appellant submitted diagnostic imaging studies in the form of an October 5, 2018 x-ray of the right knee, a January 5, 2019 x-ray of the left hip, and MRI scans of the left hip dated January 15 and 24, 2019. The Board has held that diagnostic studies lack probative value as they

[14] *Supra* note 11.

[15] *Id.*

[16] *See id.*

[17] *T.C.*, Docket No. 18-1498 (issued February 13, 2019).

[18] 5 U.S.C. § 8102(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law; *see T.T.*, Docket No. 18-0838 (issued September 19, 2019). *See also 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); 20 C.F.R. § 10.5(t). *O.R.*, Docket No. 18-1458 (issued August 2, 2019) (nurse practitioners are not considered a physician as defined under FECA).

[19] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

do not provide an opinion on causal relationship between the employment incident and her diagnosed conditions.[20] These reports are therefore also insufficient to establish appellant's claim.

As there is no well-reasoned medical opinion establishing appellant's claim for compensation, the Board finds that 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her conditions were causally related to the accepted September 14, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 12, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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

[20] *See R.C.*, Docket No. 19-0376 (issued July 15, 2019); *C.B.*, Docket No. 18-0071 (issued May 13, 2019).