United States Department of Labor
Employees' Compensation Appeals Board

L.T., Appellant	)	
and	)	**Docket No. 19-1921**
	)	**Issued: August 20, 2020**
U.S. POSTAL SERVICE, POST OFFICE, New Philadelphia, OH, Employer	)	

Appearances:
Alan J. Shapiro, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On September 17, 2019 appellant, through counsel, filed a timely appeal from a May 23, 2019 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 total disability, commencing August 13, 2016, causally related to her accepted March 2, 2016 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 2, 2016 appellant, then a 49-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she slipped on a step and fell on her right knee while in the performance of duty. She indicated that she suffered a right knee contusion. Appellant stopped work on the date of injury. On May l6, 2016 OWCP accepted the claim for right knee contusion. On March 15, 2016 appellant accepted a limited-duty job offer as a full-time regular city carrier. She received intermittent wage-loss compensation on the supplemental rolls from April 19 to May 26, 2016.

A March 28, 2016 magnetic resonance imaging (MRI) scan interpreted by Dr. Victoria Griffiths, a Board-certified diagnostic radiologist, demonstrated small intra-articular loose body at the anterior joint line, meniscal degeneration with no definitive tear, a question of mild popliteus tendinosis, moderate effusion, and chondromalacia patella.

In a June 8, 2016 report, Dr. Thomas L. Teater, a Board-certified orthopedic surgeon, diagnosed a right knee contusion with joint effusion and traumatic chondromalacia of the right knee. He released appellant to return to full-duty work without restrictions, effective June 9, 2016. Dr. Teater also completed a form on June 8, 2016 wherein he listed her right knee diagnoses of recurrent dislocation, chondromalacia, loose body, contusion, and prepatella bursitis. He also advised that appellant should remain out of work until June 9, 2016.

In an August 3, 2016 report, Dr. Teater noted that appellant returned for follow-up related to her March 2, 2016 right knee injury. He related that she had recurrent pain and swelling and had undergone previous injections, but any benefit that was gained had dissipated. Dr. Teater diagnosed right knee contusion with joint effusion and traumatic chondromalacia right knee, loose body. He advised that, due to appellant's persistent symptoms despite conservative care, authorization for arthroscopy with chondroplasty would be requested.

Dr. Teater treated appellant on August 12, 2016, repeated his diagnoses, and advised that she "may not return to work" in any capacity, but could return to work without restrictions as of September 6, 2016.

On August 19, 2016 appellant filed a notice of recurrence (Form CA-2a). She indicated that she sustained a recurrence of the March 2, 2016 employment injury on July 30, 2016, which

[3] *L.T.*, Docket No. 18-1311 (issued April 19, 2019).

caused her to stop work on August 13, 2016. Appellant noted that for a brief period she had received relief to her knee from an epidural injection. However, she explained that her knee steadily began pinching and locking and became very painful to climb up and down stairs. Appellant noted that she was "not sure this is recurring, as pain was relieved from injection, but short term." She also indicated that she was awaiting authorization for a knee arthroscopy.[4] On the reverse of the claim form, the employing establishment indicated that appellant returned to full-time regular duty on June 9, 2016.

In a development letter dated August 25, 2016, OWCP advised appellant that additional medical evidence was necessary to establish her recurrence claim. It explained that a recurrence of disability was defined as a work stoppage caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness, without an intervening injury or new exposure to the work environment that caused the illness. OWCP explained that a recurrence also could be caused by a withdrawal of a light-duty assignment made specifically to accommodate appellant's condition due to the work-related injury. It also explained that if the evidence established that the disability was due to a new work-related injury or illness, a new claim may need to be filed/created. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant provided an August 28, 2016 response to the development letter. She indicated that she had been released to full-duty work after a steroid injection improved her symptoms. Appellant explained that her duties as a letter carrier required that she continuously walk and climb steps for six or more hours a day, and she denied that an incident triggered a recurrence. She explained that she believed the steroid injection wore off and her knee worsened. Appellant noted that her MRI scan revealed loose fragments, which she believed were the cause of her pain. She explained that her knee was locking and pinching, and her physician recommended an arthroscopic procedure.

OWCP received additional reports from Dr. Teater from April 1 to October 7, 2016. In an April 1, 2016 report, Dr. Teater advised that appellant returned for follow up of her March 2, 2016 work-related right knee injury. He noted that she continued to have pain and swelling. Dr. Teater diagnosed: right knee contusion with joint effusion, traumatic chondromalacia, right knee, and loose body. He explained that the March 28, 2016 MRI scan of the right knee demonstrated a small intra-articular loose body at the anterior joint line, meniscal degeneration with no definitive tear, a question of mild popliteus tendinosis, moderate effusion, and chondromalacia patella. Dr. Teater opined, "[i]n my medical opinion, this is a direct result of her work-related injury on [March 2, 2016]."

Dr. Teater saw appellant on May 11, 2016 and repeated his findings and diagnoses. He completed a duty status report (Form CA-17) and recommended return to full-duty work on July 5, 2016.

In a September 7, 2016 report, Dr. Teater repeated his prior opinion and noted that appellant needed surgical intervention. He completed a duty status report (Form CA-17) on September 7, 2016 and advised that she could not return to work. In a separate work excuse note

[4] On August 24, 2016 OWCP received a request for authorization of right knee arthroscopy.

dated September 7, 2016, Dr. Teater indicated that appellant could return to work without restrictions on October 10, 2016.

In a September 21, 2016 report, Dr. Teater advised that he was providing a response to OWCP's August 25, 2016 development letter. He explained that appellant's current diagnosis was post-traumatic chondral injury (chondromalacia). Dr. Teater opined that her pain was caused by prolonged standing and especially walking and that her current conditions and disability were caused from her original fall on March 2, 2016." He explained that appellant had failed conservative treatment and recommended a right knee arthroscopy with chondroplasty and removal of loose body.

By decision dated October 19, 2016, OWCP denied appellant's recurrence claim, finding that she had not established that she was disabled from work due to a material change or worsening of her accepted work-related condition.[5]

On May 5, 2017 counsel requested reconsideration and submitted additional evidence. OWCP received the previously submitted May 11, 2016 report from Dr. Teater and additional reports for the period November 2, 2016 to June 27, 2017.

In the November 2, 2016 report, Dr. Teater provided physical examination findings and recommendations for work restrictions beginning November 7, 2016.

In his December 14, 2016 and February 3, 2017 reports, Dr. Teater repeated his opinion that the diagnoses of right knee contusion with joint effusion, traumatic chondromalacia right knee, and loose body, were a direct result of the March 2, 2016 work-related injury. He explained that appellant's fall on to the front of her knee directly corresponded with her pathology as noted on her MRI scan that evidenced a patella-femoral injury (chondromalacia) with a resultant loose chondral body. Dr. Teater further explained that she had made an attempt to return to her regular job without success. He noted that "[u]nfortunately, this attempt, which was by [appellant's] own request, has resulted in a denial of her claim as they felt she was 'cured' while making this attempt. [Appellant] was not asymptomatic at that time." Dr. Teater indicated that she should undergo arthroscopy.

Dr. Teater also completed a February 3, 2017 duty status report (Form CA-17) indicating that appellant could return to full-duty work as of May 1, 2017.

In an April 19, 2017 report, Dr. Teater explained that on March 2, 2016, appellant sustained a work-related right knee injury while carrying mail. He noted that she tripped going up stairs, falling directly on to the front of her right knee, and striking the patella against the distal femur. Dr. Teater indicated that appellant had an acute onset of pain and swelling and that despite

[5] It explained that Dr. Teater had diagnosed additional right knee conditions, which indicated that she sustained a new injury after returning to work. OWCP also explained that appellant described extensive standing, walking, and climbing stairs that would have aggravated or exacerbated a degenerative condition. It found that the medical necessity of the requested surgery was not consistent with a resolved knee contusion. OWCP explained that the evidence submitted established that the disability was due to a new work-related injury or illness, and that a new claim needed to be filed. It informed appellant that this was the case, even if the new incident or exposure involved the same part of the body as previously affected.

conservative care, the swelling and pain persisted, along with intermittent "clicking." He examined the knee and diagnosed right knee contusion with post-traumatic patella-femoral articular injury (chondromalacia) and loose body. Dr. Teater explained that appellant's work-related diagnosis should include the right knee contusion and patella-femoral articular injury (chondromalacia) and an intra-articular loose body. He opined that "[b]ased upon a reasonable degree of medical certainty, it is my medical opinion that the work-related injury on March 2, 2016 is a direct and proximate cause of the above-noted diagnosis."

Dr. Teater continued to treat appellant. In an April 26, 2017 report, Dr. Teater opined that "[once] again her present symptoms are directly related to her original injury. The fall on to the front of her knee directly corresponds to her pathology as noted on her MRI scan, there is patellofemoral injury (chondromalacia) with a resultant loose chondral body." Dr. Teater noted that despite continued symptoms, appellant attempted to return to her regular position at work without success. He indicated that her attempt was by "her own request" and resulted in the denial of her claim based on a finding that she was "cured" while making the attempt. Dr. Teater indicated that appellant was not symptomatic at the time of his report and recommended that she continue her work restrictions.

In a June 27, 2017 report, Dr. Teater repeated his previous findings and recommended continued restricted duty.

By decision dated February 5, 2018, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was cumulative and substantially similar to evidence or documentation already contained in the case file and previously considered. It explained that the medical reports did not provide a rationalized medical opinion explaining why appellant stopped work on August 13, 2016, due to a material worsening and/or spontaneous change in her medical condition stemming from the March 2, 2016 work injury.

On June 20, 2018 appellant, through counsel, filed a timely appeal to the Board from the OWCP's February 5, 2018 nonmerit decision. In an April 19, 2019 decision, the Board found that the case was not in posture for decision. It explained that the significant delay in issuance of a reconsideration decision by OWCP had impacted appellant's ability to submit additional evidence or argument and file a timely request for reconsideration. To preserve appellant's right to file a timely request for reconsideration and to afford her the ability to present further evidence or argument to establish her claim, the Board remanded the case to OWCP for a merit review of the evidence of record, to be followed by an appropriate decision.

By decision dated May 23, 2019, OWCP denied modification of the October 19, 2016 decision.

LEGAL PRECEDENT

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused

the illness.[6] 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 an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[7] Where no such rationale is present, medical evidence is of diminished probative value.[8]

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP received a series of reports from appellant's treating physician, Dr. Teater. Dr. Teater had released appellant to return to full-duty work as of June 9, 2016. However, on August 12, 2016 he reported that she was totally disabled from work.

In his April 19, 2017 report, Dr. Teater explained that when appellant fell on March 2, 2016 she fell on to the front of her right knee striking her patella against the distal femur. He further related that her March 28, 2016 right knee MRI scan demonstrated knee joint effusion, patell-femoral articular injury and intra-articular loose body, which led to her diagnoses of right knee contusion and post-traumatic patello-femoral articular injury (chondromalacia) and loose body. In his April 26, 2017 report, Dr. Teater explained that appellant's fall onto her right knee directly corresponded with her pathology, as noted on her MRI scan. He also noted that she had attempted to return to work, at her own request, despite the fact that she had continuing symptoms, which led to the denial of her recurrence claim as it was assumed that appellant was "cured" because she attempted to return to work.

It is well established that proceedings under FECA are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[9]

The Board finds that the reports from Dr. Teater, while lacking detailed medical rationale, are sufficient to require OWCP to further develop whether the claim should be expanded to include a post-traumatic patello-femoral articular injury (chondromalacia) and a loose body as causally related to the accepted March 2, 2016 employment injury.[10] On remand OWCP shall refer appellant, a statement of accepted facts, a position description, and the medical evidence of record to an appropriate Board-certified specialist for an examination, diagnosis, and a rationalized

[6] 20 C.F.R. § 10.5(x); *J.B.*, Docket No. 16-0863 (issued July 26, 2016); *R.S.*, 58 ECAB 362 (2007).

[7] *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *C.C.*, Docket No. 18-0719 (issued November 9, 2018).

[8] *J.K.*, Docket No. 18-0854 (issued June 5, 2020). *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

[9] *See R.M.*, Docket No. 20-0342 (issued July 30, 2020); *S.C.*, Docket No. 19-0920 (issued September 25, 2019).

[10] *John J. Carlone*, 41 ECAB 354 (1989).

opinion regarding whether additional conditions should be accepted and whether appellant was totally disabled from work commencing on or after August 13, 2016 due to the accepted March 2, 2016 employment injury. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's recurrence claim.[11]

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: August 20, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

[11] 20 C.F.R. § 10.121.