United States Department of Labor
Employees' Compensation Appeals Board

S.K., Appellant	)	
and	)	**Docket No. 18-1414**
	)	**Issued: April 29, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 16, 2018 appellant, through counsel, filed a timely appeal from a February 2, 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 to consider 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 right knee condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On January 23, 2015 appellant, then a 52-year-old carrier technician, filed an occupational disease claim (Form CA-2) alleging that she developed a right knee condition as a result of prolonged walking causally related to factors of her federal employment. She noted that she first became aware of her condition on January 14, 2011 and realized its relation to her federal employment on November 15, 2014. Appellant stopped work on November 17, 2014 and returned to part-time modified employment on November 20, 2014 casing mail for two hours a day.

In an attending physician's report (Form CA-20) dated November 17, 2014, a nurse practitioner noted that appellant had a history of chronic knee pain from a previous meniscal tear with worsening symptoms over the last two days. She diagnosed right knee pain and to rule out osteoarthritis. In an undated statement accompanying her claim, appellant reported that on November 15, 2014 her right knee had become swollen and hard to bend. She noted that she had sustained a slight tear on the outside of her right knee four years earlier when she had fallen while delivering mail.

In a development letter dated February 5, 2015, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim, including a physician's reasoned opinion addressing the relationship between her claimed condition and specific work factors. It further requested that she respond to a questionnaire to substantiate the factual allegations of her claim. OWCP afforded appellant 30 days to submit the requested information.

By decision dated March 30, 2015, OWCP denied appellant's occupational disease claim, finding that she had not submitted medical evidence containing a medical diagnosis in connection with the accepted employment factors. It concluded that the requirements had not been met to establish an injury or medical condition causally related to the accepted employment factors.

On April 27, 2015 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. On July 2, 2015 she requested a review of the written record in lieu of an oral hearing.

Subsequently, appellant submitted a January 14, 2011 report from Dr. Cyrus K. Houshmand, Board-certified in emergency medicine, who treated her for a right knee injury after she slipped on ice on that date while walking down stairs. Dr. Houshmand also evaluated appellant on April 26, 2012 for a left foot and right knee injury that had occurred on April 25, 2012 when she fell at work going down stairs. He diagnosed a sprain/strain of the knee/leg. A magnetic resonance imaging (MRI) scan of the right knee dated April 8, 2015 revealed a larger tear involving the medial meniscus toward the inner portion of the posterior horn with an additional complex tear within the portion of the posterior horn, no definite lateral meniscal tear, severe degenerative changes at the patellofemoral articulation, a small effusion, and a small Baker's cyst.

On June 18, 2015 Dr. Sommer Hammound, a Board-certified orthopedic surgeon, evaluated appellant for right knee pain. She obtained a history of her having fallen at work down steps four years earlier twisting her right knee and tearing her medial meniscus. Subsequently appellant performed her regular employment duties until November 15, 2014, when she had experienced increasing anterolateral knee pain and difficulty walking up and down steps. Dr. Hammound noted that x-rays of the right knee from 2011 had revealed tricompartmental degenerative changes affecting the patellofemoral compartment. On examination of the right knee, she found limited range of motion, pain with patellofemoral compression, and tenderness along the lateral and medial joint line. Dr. Hammound diagnosed right knee pain, primary localized osteoarthritis of the knee, severe patellofemoral degenerative changes of the right knee, tibiofemoral degenerative changes, and a complex tear of the posterior horn of the medical meniscus with a displaced component of the right knee. She noted that the MRI scan revealed a worsening of appellant's meniscal tear, but that the location of her pain indicated that her symptoms were "more related to the severe patellofemoral degenerative joint disease…." Dr. Hammound related, "The patellofemoral degenerative changes, although these are preexisting processes, I do believe were aggravated by the nature of her work, as it bothers her mainly when she goes up and down stairs, which is typical for patellofemoral degenerative joint disease." In a June 18, 2015 duty status report (Form CA-17), she diagnosed arthritis and provided work restrictions.

In a statement dated June 30, 2015, appellant reported working as a mail carrier for 19 years. She related that she had previously injured her right knee on January 14, 2011 when she fell down stairs while delivering mail. OWCP accepted that claim, assigned OWCP File No. xxxxxx023.[3] Appellant also advised that she had an accepted injury to her right knee in 2012, assigned OWCP File No. xxxxxx611. She experienced difficulty with her right knee on November 15, 2014 after delivering mail. Appellant asserted that on November 17, 2015 her knee became stiff. She described her work duties in detail and maintained that the repetitive activity required in her employment had aggravated her osteoarthritis and meniscal tear.

By decision dated September 1, 2015, an OWCP hearing representative affirmed the March 30, 2015 decision.

On August 29, 2016 appellant, through counsel, requested reconsideration and submitted additional medical evidence. Unsigned reports indicated that appellant was treated on September 23, 2014, February 20, 2015, and June 14, 2016 by Dr. Stephen McCaughan, an osteopath and Board-certified anesthesiologist, as well as those dated November 21 and December 2, 2014 from Dr. Scott A. Bralow, an osteopath and Board-certified internist.

In a report dated March 10, 2015, Dr. Kenneth Wiseman, Board-certified in family medicine, evaluated appellant for right knee pain that had begun four years earlier when she fell down steps. He also noted that she had neck pain with no history of injury. Dr. Wiseman diagnosed chronic right knee pain and neck pain. He provided a similar report on March 26, 2015.

[3] OWCP File No. xxxxxx023 was accepted for sprain of the left knee and leg.

In a November 25, 2015 duty status report (Form CA-17), Dr. Wiseman noted clinical findings of arthritis of the right knee and diagnosed a torn right meniscus. He found that appellant could work with restrictions.

On January 28, 2016 Dr. Paul Steinfield, a Board-certified orthopedist, on January 28, 2016, advised that appellant could perform modified employment. From February 15 to April 15, 2016, he performed a series of four right knee injections and diagnosed medial meniscus tear of the right knee, patellofemoral arthritis, and mild-to-moderate medial joint space arthritis. Dr. Steinfield recommended arthroscopic surgery.

In a Form CA-17 dated May 23, 2016, Dr. Steinfield diagnosed a tear of the right meniscus and provided work restrictions.

On July 5, 2016 Dr. Steinfield performed right knee arthroscopy with partial medial meniscectomy and chondroplasty of the medial femoral condyle. He diagnosed right knee medial meniscus tear and medial joint space arthritis with cartilage lesion involving the medial femoral condyle. On July 13, 2016 Dr. Steinfield advised that appellant's postoperative course was unremarkable. He found that she could resume light-duty work on July 14, 2016.

By decision dated November 29, 2016, OWCP denied modification of the September 1, 2015 decision.

On November 6, 2017 appellant, through counsel, requested reconsideration.

In support of her reconsideration request, appellant submitted an October 11, 2017 report from Dr. Maxwell Stepanuk, Jr., an osteopath and Board-certified orthopedic surgeon. Dr. Stepanuk discussed appellant's history of knee injuries at work on January 14, 2011 and April 25, 2012, and indicated that she could no longer perform her regular employment on November 15, 2014 due to pain and swelling. He advised that her knee symptoms had improved after the July 5, 2016 surgery until September 2, 2017, when she experienced a recurrence of knee pain while at work. Dr. Stepanuk noted an MRI scan of the right knee dated October 21, 2017 revealed a complex tear of the medial meniscus with severe chondromalacia of the patellar with degenerative changes in the medial compartment.[4] On examination he found pain in the right patellofemoral joint, limited range of motion, pain and swelling in the left knee, no crepitance, no weakness, normal sensation, normal gait and station, and normal deep tendon reflexes. Dr. Stepanuk diagnosed right knee pain secondary to aggravation of degenerative arthritis and right knee pain secondary to arthroscopic medial meniscectomy. He opined that appellant's employment duties had caused or aggravated the degenerative arthritis in her right knee. Dr. Stepanuk indicated that unless there were preexisting medical records to indicate otherwise, her degenerative arthritis resulted from her work activities. He opined that appellant's January 14, 2011 employment injury had aggravated her degenerative condition and resulted in a torn meniscus. Dr. Stepanuk further indicated that the need for arthroscopic surgery on her right knee was a direct result of her fall on January 14, 2011.

[4] This diagnostic report is not found in the case record.

Thereafter, appellant submitted a revised report from Dr. Stepanuk dated November 30, 2017. Dr. Stepanuk advised that her knee symptoms worsened over time due to her employment duties, and that "this worsening of her knee pathology resulted in the need for arthroscopic surgery that was performed on July 5, 2016." He indicated that appellant had "aggravated her degenerative arthritis and her meniscal tear necessitating the arthroscopic procedure."

By decision dated February 2, 2018, OWCP denied modification of its November 29, 2016 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation period of FECA,[6] that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[7] 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.[8]

In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[9]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[10] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the

[5] *Supra* note 2.

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

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

[8] *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).

[9] *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

[10] *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

relationship between the diagnosed condition and the specific employment factors identified by the claimant.[11]

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right knee condition causally related to the accepted factors of her federal employment.

In a report dated October 11, 2017, Dr. Stepanuk discussed appellant's history of employment injuries to her right knee on January 14, 2011 and April 25, 2012, and noted that she had experienced pain and swelling in her right knee on November 15, 2014 such that she could not work. He diagnosed right knee pain secondary to an aggravation of degenerative arthritis and a medial meniscectomy. Dr. Stepanuk opined that appellant's right knee degenerative arthritis was either caused or aggravated by her work duties over the past 22 years, unless preexisting medical records demonstrated otherwise. He asserted that her January 14, 2011 fall on stairs had also aggravated her knee degeneration and caused her torn meniscus. Dr. Stepanuk attributed appellant's need for arthroscopic surgery on her right knee to her January 14, 2011 fall. Although his report generally supported causal relationship between the accepted employment factors and her knee condition, he did not provide rationale explaining his conclusions. Without explaining how the movements involved in appellant's employment duties caused or contributed to her conditions, Dr. Stepanuk's report is of limited probative value.[13] As he provided no medical reasoning to support his opinion on causal relationship, his report is insufficient to meet appellant's burden of proof.[14]

In a revised report dated November 30, 2017, Dr. Stepanuk noted that appellant's knee symptoms had worsened as a result of her continued duties as a letter carrier. He opined that she required knee surgery on July 5, 2016 due to the aggravation of degenerative arthritis and her meniscal tear. However, this report is insufficient to meet appellant's burden of proof as Dr. Stepanuk did not provide medical rationale explaining the basis of his opinion regarding the causal relationship.[15] Dr. Stepanuk failed to sufficiently explain why continuing to work as a letter carrier had aggravated her degenerative arthritis or why her knee condition was not due to age-

[11] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *M.O.*, Docket No. 18-0229 (issued September 23, 2019); *J.F.*, Docket No. 19-0456 (issued July 12, 2019).

[13] *C.F.*, Docket No. 19-1748 (issued March 27, 2020); *A.P.*, Docket No. 19-0224 (issued July 11, 2019).

[14] *D.B.*, Docket No. 17-1845 (issued February 16, 2018).

[15] *See A.M.*, Docket No. 19-1138 (issued February 18, 2020); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

related degenerative factors. As his opinion regarding causal relationship was conclusory and unexplained, it is insufficient to meet appellant's burden of proof.[16]

On June 18, 2015 Dr. Hammound obtained a history of appellant twisting her right knee at work in 2011, and noted that in November 2014 she had experienced increased knee pain and difficulty with stairs. She advised that x-rays of the right knee dated 2011 had demonstrated degenerative patellofemoral changes. Dr. Hammound diagnosed right knee pain, primary localized osteoarthritis of the knee, patellofemoral degenerative changes of the right knee, tibiofemoral degenerative changes, and a complex tear of the posterior horn medical meniscus with a displaced component of the right knee. She attributed appellant's symptoms to her severe degenerative patellofemoral joint disease based on the location of her pain. Dr. Hammound opined that appellant's employment duties had aggravated her preexisting patellofemoral degenerative changes as her symptoms increased when she went up and down stairs, which was typical for the diagnosed condition. Such a generalized statement does not constitute probative medical evidence in support of causal relationship because Dr. Hammound merely repeated appellant's description of her symptoms going up and down stairs rather than explaining how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions.[17] Without this explanation, her report is insufficient to meet appellant's burden of proof to establish her claim.[18]

In a March 10, 2015 report, Dr. Wiseman reviewed appellant's history of injuring her right knee on stairs four years earlier and diagnosed chronic right knee pain and neck pain. In reports dated from February to April 2016, Dr. Steinfield diagnosed a medial meniscus tear of the right knee, patellofemoral arthritis, and mild-to-moderated medial joint space arthritis. On July 13, 2016 he discussed appellant's condition subsequent to knee surgery on July 5, 2016. However, neither of these physicians addressed the cause of the conditions diagnosed. Medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[19]

The record contains medical evidence regarding appellant's knee injuries in 2011 and 2012; however, this evidence is of no probative value regarding whether she sustained an occupational disease as it fails to address the employment duties she identified as causing her occupational disease claim.

[16] *P.F.*, Docket No. 19-0630 (issued February 21, 2020); *A.H.*, Docket No. 19-0270 (issued June 25, 2019).

[17] *See D.J.*, Docket No. 18-0694 (issued March 16, 2020); *K.G.*, Docket No. 18-1598 (issued January 7, 2020).

[18] *Id*.

[19] *A.P.*, Docket No. 18-1690 (issued December 12, 2019); *J.H.*, Docket No. 19-0383 (issued October 1, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Appellant submitted duty status reports (Form CA-17) dated 2015 and 2016; however, these form reports offered no opinion regarding the cause of her condition. As noted, medical evidence that fails to address causation is of no probative value on that issue.[20]

Appellant submitted an MRI scan; however, the Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether an employment factor caused a diagnosed condition.[21]

Appellant further submitted reports from a nurse practitioner and physical therapist. Neither nurse practitioners nor physical therapists are considered physicians as defined under FECA and thus these reports do not constitute competent medical evidence.[22]

The record contains unsigned reports that appellant was treated by Dr. Bralow and Dr. McCaughan. The Board has held that a report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[23]

As the medical evidence of record is insufficient to establish causal relationship, the Board finds that appellant has not met her burden of proof.

On appeal appellant, through counsel, asserts that she submitted sufficient medical evidence to support that she developed an aggravation of degenerative right knee arthritis causally related to her employment duties. As noted, the medical evidence does not contain a physician's reasoned opinion regarding the causal relationship between her claimed conditions and factors of her employment, and thus she has not met her burden of proof to establish her occupational disease claim.[24]

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.

[20] *D.S.*, Docket No. 19-0817 (issued September 16, 2019).

[21] *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

[22] Section 8101(2) of FECA provides that medical opinions 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. *H.K.*, Docket No. 19-0429 (issued September 18, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); *see also S.L.*, Docket No. 19-0603 (issued January 28, 2020) (nurse practitioners are not considered physicians as defined under FECA).

[23] *C.F.*, Docket No. 19-1748 (issued March 27, 2020); *K.C.*, Docket No. 18-1330 (issued March 11, 2019).

[24] *See D.B.*, Docket No. 19-0514 (issued January 27, 2020).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right knee condition causally related to the accepted factors of her federal employment.[25]

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 29, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

[25] On return of the case record OWCP should consider administratively combining the present claim with appellant's other knee claims.