United States Department of Labor
Employees' Compensation Appeals Board

D.P., Appellant	)	
and	)	**Docket No. 19-1596**
	)	**Issued: April 23, 2020**
U.S. POSTAL SERVICE, WARWICK POST OFFICE, Warwick, NY, Employer	)	

Appearances:
James D. Muirhead, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On July 22, 2019 appellant, through counsel, filed a timely appeal from an April 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 left knee condition causally related to the accepted December 6, 2017 employment incident.

FACTUAL HISTORY

On January 12, 2018 appellant, then a 53-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 6, 2017 she injured her left knee while in the performance of duty. She explained that she was walking into the breakroom in order to fill a water bottle and when she put her foot down on the floor, her shoe did not move while the rest of her body continued in motion and rotated to the right. Appellant noted that she heard a pop in her left knee and felt unbearable pain and a burning sensation. On the reverse side of the claim form appellant's postmaster, J.V., contended that she was not in the performance of duty when the alleged injury occurred because she was walking to fill a water bottle. Appellant did not stop work.

In an attached statement, appellant explained that around 12:15 p.m. she finished loading her Long-Life Vehicle (LLV) and went back into the office in order to fill her water bottle before beginning her route. She noted that, as she made her way past two tubs and stepped onto the open floor, her left foot stuck to the floor while her whole body continued to turn towards the right. As her body continued to turn to the right, appellant heard and felt a pop and felt unbearable pain and burning in her left knee. She further noted that she could hardly walk or stand and had to be helped by two of her coworkers. Appellant then informed her supervisor, D.H., and her postmaster of her injury and told them she was not sure what she should do. She completed her route and informed her supervisor, and postmaster that the pain in her left knee had not gotten any better. Appellant's postmaster then asked her if she was going to file a claim. Appellant again indicated that she did not know and went to show him where her injury took place.

On January 16, 2018 appellant's postmaster issued an authorization for examination and/or treatment (Form CA-16) noting that appellant was walking and heard a pop in her knee on December 6, 2017.

In a January 17, 2018 medical note, Dr. Andrew Beharrie, a Board-certified orthopedic surgeon, held appellant off from work from January 17 through 21, 2018.

In a January 18, 2018 letter, the postmaster controverted appellant's claim. He explained that, when he saw appellant crying from her injury and asked her if she would be filing a claim, she responded by saying she would assess how her knee felt later that day. When she returned to the office later that day, he again asked her if she would be filing a claim and asked appellant to show him what happened. The postmaster noted that for the remainder of December appellant went the whole month without mentioning her knee again.

In a January 19, 2018 statement, appellant's supervisor indicated that, at the beginning of December 2017, appellant informed her of an injury she suffered while heading towards the bathroom and that she did not want to file a claim because it was unnecessary.[3]

In a development letter dated January 26, 2018, OWCP informed appellant of the deficiencies of her claim and advised her of the type of factual and medical evidence necessary to establish her claim. It provided a questionnaire for her completion to provide further details regarding the circumstances of the claimed December 6, 2017 employment injury. OWCP also requested that appellant submit a narrative medical report from her treating physician which provided a diagnosis and the physician's rationalized medical explanation as to how the alleged employment incident caused the diagnosed condition. It afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted a January 17, 2018 medical report from Dr. Beharrie, who noted that appellant presented with left knee pain following the alleged December 6, 2017 employment incident. Dr. Beharrie reported that, while walking through the office, she twisted her knee and heard a pop. He further reported that appellant experienced immediate pain that had continued since and noted that it had become more difficult to continue working. In a diagnostic report of even date, Dr. Teresa Karcnik, a Board-certified diagnostic radiologist, noted that an x-ray of appellant's left knee revealed degenerative joint disease and no evidence of a fracture or dislocation. Based on his evaluation, Dr. Beharrie diagnosed primary osteoarthritis of the left knee and administered a cortisone injection to her left knee. His assessment also revealed that her injury was work related and recommended that she remain out of work until January 22, 2018.

In response to OWCP's questionnaire, appellant provided a February 1, 2018 statement. She countered the employing establishment's letter by asserting that neither her postmaster nor supervisor asked her during the month of December into January if she needed to file a claim. Appellant further indicated that, throughout the month of December, she mentioned the pain in her knee several times to both the postmaster and her supervisor, but employees were advised not to request any annual or sick leave because no time off during the holiday season would be approved.

In a February 12, 2018 medical report, Dr. Beharrie noted that appellant experienced some relief with the cortisone injection and that she had not yet been approved for physical therapy. He again noted a diagnosis of primary osteoarthritis of the left knee due to a work-related injury. Dr. Beharrie answered "yes" to a question asking whether appellant's history of injury was consistent with his findings. He also provided an attending physician's report (Part B of a Form CA-16) in which he described an injury to the left knee after she twisted her left knee at work and heard a pop on December 6, 2017. Dr. Beharrie checked a box marked "yes" indicating that

[3] In a January 25, 2018 letter, the employing establishment again controverted appellant's claim for continuation of pay, stating that her claim should be barred because she had not filed her Form CA-1 within 30 days of her injury. In an attached letter, the postmaster again explained that he asked appellant on two separate occasions whether she was going to file a claim or not on the day of her injury. He noted that on January 12, 2018 appellant informed him that the pain in her knee was unbearable, that she could not sleep and filed a Form CA-1 to address her injury. The postmaster also noted that appellant did not miss any work until January 17, 2018.

appellant's condition was caused or aggravated by her employment activity. In a medical note of even date, he recommended appellant remain out of work for six weeks.

In a February 13, 2018 letter, the employing establishment again controverted appellant's claim, contending that she provided conflicting statements about how her injury occurred.

By decision dated March 5, 2018, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's medical condition and the accepted employment incident.

On March 15, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted physical therapy notes dated from March 12 to 28, 2018 from Kevin Stafford, a physical therapist, in which he detailed therapy sessions addressing her left knee conditions.

In a medical report dated March 26, 2018, Dr. Beharrie noted that appellant experienced mild improvement after she began her physical therapy on March 12, 2018.

Dr. Marvin Weingarten, a Board-certified radiologist, performed a magnetic resonance imaging (MRI) scan of appellant's left knee. In a June 19, 2018 diagnostic report, he diagnosed a radial tear of the posterior horn of the medial meniscus with internal myxoid degeneration in the body and posterior horn.

In a July 23, 2018 report, Dr. Pankaj Kaw, Board-certified in internal medicine, noted that appellant's MRI scan revealed a degenerative medial meniscus tear. He explained that, based on his evaluation and Dr. Beharrie's notes, appellant's medial meniscus tear resulted from her underlying osteoarthritis. Dr. Kaw further explained that, due to the twisting nature of the injury, it appears most likely that she flared up her osteoarthritis from the injury.

A telephonic hearing was held before an OWCP hearing representative on August 7, 2018. During the hearing, appellant testified that she had no history of problems with her left knee prior to December 6, 2017 and, again, explained the events of the employment incident and the medical treatment she received afterwards. The hearing representative advised appellant of the type of medical evidence necessary to establish her claim and held the case record open for 30 days for the submission of additional evidence. No additional evidence was received.

By decision dated October 4, 2018, OWCP's hearing representative affirmed the March 5, 2018 decision.

On April 17, 2019 appellant, through counsel, requested reconsideration of OWCP's October 4, 2018 decision.

In a March 22, 2019 narrative medical report, Dr. Beharrie explained that degenerative meniscus tears are very common in the setting of osteoarthritis of the knee. He noted that, as osteoarthritis progresses, the contact pressure in the joint increases and the increased pressure results in greater stresses on the meniscus as the quality and strength of the tissue in the meniscus

diminishes with age. As a result of these factors, patients with arthritis are more likely to develop a degenerative meniscus tear because the meniscus is more susceptible to damage. Dr. Beharrie further explained that, prior to her injury, appellant had preexisting arthritis of her knee, but was asymptomatic and that she may have also had preexisting degenerative meniscus tears. The twisting injury to her knee caused significant force across her arthritic joint and this likely resulted in an acute meniscus tear or worsening of a preexisting tear. Additionally, Dr. Beharrie explained that appellant's injury may have caused a new tear in a previously intact meniscus or resulted in a progression of preexisting tear. He also noted that the injury caused a flare up of inflammation in her knee, which resulted in aggravation of her baseline arthritis and associated meniscus tear.

By decision dated April 23, 2019, OWCP denied modification of the October 4, 2018 decision.

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,[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 whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.[7] First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[8] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury[9].

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.[10] The opinion of the physician

[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).

[7] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[8] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

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 factors identified by the claimant.[11]

ANALYSIS

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

In support of her claim, appellant submitted a March 22, 2019 medical report in which Dr. Beharrie explained that patients with arthritis are more likely to develop a degenerative meniscus tear due to contact pressure in the joints increasing, greater stress on the meniscus, and the diminished strength of the tissue in the meniscus with age. He reported that, prior to appellant's injury, she had preexisting arthritis in her knee, but was asymptomatic for a meniscus tear and that she may have also had a preexisting degenerative meniscus tear. Dr. Beharrie opined that the December 6, 2017 twisting injury to appellant's knee caused significant force across her arthritic joint that likely resulted in an acute meniscus injury or the worsening of a preexisting tear. He also attributed the aggravation of her arthritis and associated meniscus tear to the inflammation in appellant's knee from her injury.

Accordingly, the Board finds that, while Dr. Beharrie's May 22, 2019 report is not fully rationalized, it is sufficient to require further development as his opinion demonstrates knowledge of appellant's preexisting left knee conditions and he identified the December 6, 2017 employment incident which appellant consistently claimed had precipitated her left knee injury. He also noted physical findings upon examination and treatment consistent with his noted mechanism of injury and provided an opinion citing to the facts of the case. Thus, the Board finds that Dr. Beharrie's opinion is sufficient to require further development of the record by OWCP.[12]

It is well established that, proceedings under FECA are not adversarial in nature, and that while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[13] OWCP has an obligation to see that justice is done.[14]

On remand OWCP shall refer appellant, a statement of accepted facts, and the medical evidence of record to a district medical adviser or an appropriate Board-certified physician. The selected physician shall provide a rationalized opinion addressing whether the diagnosed left knee conditions are causally related to the accepted December 6, 2017 employment incident. If the physician opines that the diagnosed conditions are not causally related, he or she must provide

[11] *I.J.*, 59 ECAB 408 (2008).

[12] *J.J.*, Docket No. 19-0789 (issued November 22, 2019); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *A.F.*, Docket No. 15-1687 (issued June 9, 2016). *See also John J. Carlone*, *supra* note 9; *Horace Langhorne*, 29 ECAB 820 (1978).

[13] *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

[14] *R.B.*, Docket No. 18-0162 (issued July 24, 2019); *K.P.*, Docket No. 18-0041 (issued May 24, 2019).

rationale explaining the opinion. Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.[15]

CONCLUSION

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

ORDER

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

Issued: April 23, 2020
Washington, DC

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

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

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

[15] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).