United States Department of Labor
Employees' Compensation Appeals Board

C.D., Appellant	)	
and	)	**Docket No. 19-1471**
	)	**Issued: February 4, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Hawthorne, NJ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On June 27, 2019 appellant, through counsel, filed a timely appeal from a February 12, 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 September 21, 2017 employment incident.

FACTUAL HISTORY

On September 21, 2017 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her left knee that day when descending steps while in the performance of duty. She noted that her left knee popped and she experienced left knee pain as a result. Appellant stopped work on September 22, 2017.

OWCP subsequently received the first page of an authorization for examination and/or treatment form (Form CA-16) dated September 21, 2017 and signed by appellant's supervisor, M.A., which indicated that she had dislocated her left knee on that date. Appellant also provided a September 21, 2017 medical note with an illegible signature excusing her from work until September 25, 2017.

In a September 22, 2017 duty status report (Form CA-17), Dr. William Matarese, a Board-certified orthopedic surgeon, noted that appellant was experiencing pain in her left knee after it popped while she was descending stairs on September 21, 2017. He recommended that she remain off work until she was evaluated by orthopedics. Appellant also provided a prescription note of even date from Dr. Matarese.

In an October 6, 2017 medical report, Dr. Matarese diagnosed appellant with internal derangements of her left knee due to the September 21, 2017 employment incident. He noted that an x-ray image of the same date showed mild narrowing of the medical and lateral compartment in appellant's left knee. Dr. Matarese also indicated that appellant had a previous left knee injury four years prior.

In a development letter dated October 17, 2017, OWCP informed appellant that her claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that limited expenses had been authorized as continuation of pay was not controverted by the employing establishment. It further informed appellant, however, that a formal decision was now required. OWCP advised her of the type of factual and medical evidence needed and provided a factual questionnaire for her completion. It afforded appellant 30 days to respond.

In response, appellant provided an October 10, 2017 attending physician's report (Form CA-20) from Dr. Matarese again noting a diagnosis of left knee internal derangement due to the September 21, 2017 employment incident. Dr. Matarese checked a box marked "yes" indicating that her injury was caused or aggravated by her employment activity and that the injury occurred while at work. He again noted appellant's history of a left knee injury four years prior. In a Form CA-17 of even date, Dr. Matarese held her off work and provided that she would be limited until she underwent a magnetic resonance imaging (MRI) scan.

In an October 24, 2017 medical note, Dr. Matarese opined that appellant was still unable to return to work. In CA-20 and CA-17 forms dated from October 24 to November 3, 2017, he indicated that a diagnosis for appellant's injury was pending an approval for an MRI scan.

A November 7, 2017 MRI scan of appellant's left knee revealed findings of a root ligament tear of the posterior horn medial meniscus, severe patellofemoral osteoarthritis and a benign chondroid lesion in the posterolateral tibial plateau. In a November 16, 2017 medical report from a follow-up appointment, Dr. Matarese noted appellant's diagnoses based on the findings of the November 7, 2017 MRI scan. He further noted that she was interested in undergoing an arthroscopy to treat her injury.

By decision dated November 24, 2017, OWCP denied appellant's claim. It found that the medical evidence of record was insufficient to establish causal relationship between her diagnosed medical conditions and the accepted September 21, 2017 work incident. OWCP also noted that the evidence of record failed to differentiate appellant's accepted September 21, 2017 condition from her preexisting left knee injury.

OWCP continued to receive evidence. Appellant provided a November 13, 2017 Form CA-20 from Dr. Matarese reiterating appellant's diagnosis of a left knee medial meniscus tear and checking a box marked "yes" indicating that her condition was caused or aggravated by her employment activity. Dr. Matarese explained that her injury occurred when her knee popped while she was descending stairs.

In a December 4, 2017 medical report, Dr. Matarese opined that appellant's meniscal tear was "beyond a reasonable degree of medical certainty," secondary to the injury sustained at work and as a result, she was unable to ambulate for prolonged periods or work, and she required operative arthroscopy treatment. He also noted that she had preexisting arthritis unrelated to her work injury.

On December 12, 2017 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. In a statement accompanying her request, she provided a history of injury related to the pop she felt in her left knee, as well as treatment she received for her injuries. Appellant indicated that she was still experiencing left knee pain and would be unable to perform her work duties without corrective surgery.

On April 24, 2018 counsel submitted additional medical records from appellant's emergency room visit on September 21, 2017.

A medical report dated September 21, 2017 from Dr. Oleg Formitchev, Board-certified in emergency medicine, included a diagnosis of a left knee sprain as a result of appellant walking down stairs while delivering mail, hearing a pop and falling on her left knee. Dr. Formitchev also noted that her x-ray revealed no acute bony pathology, but showed small well-corticated bony density adjacent to the medial femoral condyle that could be due to a previous medial collateral ligament (MCL) injury.

By decision dated May 16, 2018, OWCP's hearing representative affirmed the November 24, 2017 decision.

On November 15, 2018 appellant, through counsel, requested reconsideration of OWCP's May 16, 2018 decision. Along with the request for reconsideration, she provided an October 9 and November 14, 2018 narrative medical report from Dr. Matarese.

Dr. Martarese, in his October 9, 2018 narrative report, provided a history of treatment for appellant's left knee injury relating to the September 21, 2017 work incident. He discussed a February 27, 2018 surgical procedure of left knee arthroscopic partial posterior horn medial menisectomy and chondroplasty medial femoral condyle procedure to treat her left knee. Dr. Martarese also noted that appellant sustained a previous left knee injury four years prior to the September 2017 work incident. He diagnosed internal derangement of the left knee, as well as a medial meniscus tear. Dr. Martarese explained that "if" her medical history was factual, then the September 21, 2017 work incident was a competent cause for her injury.

In his November 14, 2018 narrative report, Dr. Martarese provided that, in his orthopedic opinion, beyond a reasonable degree of medical certainty, as appellant descended the stairs she sustained a twisting injury about the femoral tibial junction resulting in a tear of her medial meniscus. He explained that a twisting injury or slight pivoting of the femoral tibial junction would cause pressure and shearing action upon the meniscus, resulting in a meniscus tear.

By decision dated February 12, 2019, OWCP denied modification of its May 16, 2018 decision finding that the medical evidence submitted was insufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 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 first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the

[3] *Supra* note 1.

[4] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *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] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

time, place, and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[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 of the employee, 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 employee.[8] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left knee injury causally related to the accepted September 21, 2017 employment incident.

In his October 9, 2018 narrative report, Dr. Matarese provided a history of treatment for appellant's left knee injuries in relation to the September 21, 2017 employment incident and he also referenced her previous left knee injury. He opined that "if" the history was factual, the work-related incident was a competent cause of her left knee injury. The Board has held that medical opinions which are speculative or equivocal in nature are of diminished probative value.[10] 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 appellant's specific employment factor(s).[11] Therefore, Dr. Matarese's October 9, 2018 report is of diminished probative value and is insufficient to establish appellant's claim.

In his November 14, 2018 medical report, Dr. Matarese provided that in his orthopedic opinion, "beyond a reasonable degree of medical certainty," appellant descended the stairs and sustained a twisting injury about the femoral tibial junction resulting in a tear of her medial meniscus. He further explained that a twisting injury or slight pivoting of the femoral tibial junction would cause pressure and shearing action upon the meniscus, resulting in a meniscus tear. While Dr. Matarese provided a rationalized medical opinion expressed to a reasonable degree of

[7] *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[8] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams,* 41 ECAB 465 (2005).

[9] *Id.*; *James Mack,* 43 ECAB 321 (1991).

[10] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (finding that opinions such as the condition is probably related, most likely related, or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662, 669 (2005) (finding that medical opinions which are speculative or equivocal are of diminished probative value).

[11] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams,* 41 ECAB 345, 352 (1989).

medical certainty, his opinion was not based on a complete medical background of appellant.[12] The record reflects that appellant had a previous left knee injury, however, Dr. Matarese failed to discuss whether appellant's preexisting condition contributed to the internal derangement in her left knee or her left medial meniscus tear.[13] The Board has consistently held that complete medical rationalization is particularly necessary when there are preexisting conditions involving the same body part, and has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.[14] For this reason, Dr. Matarese's November 14, 2018 report is insufficient to meet appellant's burden of proof.

In Form CA-20s dated from October 10 to November 13, 2017, Dr. Matarese provided diagnoses of left knee internal derangement and a left knee medial meniscus tear due to the September 21, 2017 employment incident. He checked boxes marked "yes" indicating that appellant's injury was caused or aggravated by her employment and also made note of appellant's previous knee injury.[15] Although his opinion generally supported causal relationship between the accepted employment incident and appellant's diagnosed conditions, Dr. Matarese did not provide sufficient rationale explaining this conclusion. The Board has held that a physician's opinion on causal relationship which consists of checking "yes" to a form question, without explanation or rationale, is of diminished probative value and is insufficient to establish a claim.[16] A medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.[17] Accordingly, the Board finds that Dr. Matarese's CA-20 forms are also insufficient to meet appellant's burden of proof.

In his December 4, 2017 medical report, Dr. Matarese opined that "beyond a reasonable degree of medical certainty," appellant's left knee injury was a result of the September 21, 2017 employment incident. He also again noted that she had preexisting arthritis unrelated to her work injury. The Board finds that Dr. Matarese merely provided a conclusory opinion on the issue of casual relationship. Dr. Matarese did not provide a rationalized opinion as to how descending stairs and hearing a pop caused any of the diagnosed conditions. A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident or work factors were sufficient to result in the diagnosed medical conclusion is insufficient to meet a

[12] *Supra* note 8.

[13] *C.E.*, Docket No. 19-0192 (issued July 16, 2019); *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013); *R.R.*, Docket No. 19-0048 (issued April 25, 2019).

[15] *Id*.

[16] *See J.R.*, Docket No. 18-1679 (issued May 6, 2019); *M.C.*, Docket No. 18-0361 (issued August 15, 2018); *Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

[17] *See J.M.*, Docket No. 17-1002 (issued August 22, 2017).

claimant's burden of proof to establish a claim.[18] Therefore, Dr. Matarese's December 4, 2017 medical report is insufficient to meet appellant's burden of proof.

The remainder of Dr. Matarese's medical evidence consists of a September 22, 2017 Form CA-17 and medical reports dated October 6 and November 16, 2017, which noted that appellant was experiencing pain in her left knee following the September 21, 2017 employment incident and provided a diagnosis of internal derangement of her left knee. However, Dr. Matarese offered no opinion regarding the cause of appellant's medical 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.[19]

In his September 21, 2017 medical report, Dr. Formitchev provided a diagnosis of a left knee sprain as a result of appellant walking down the stairs while working and falling on her left knee. He also noted that x-rays of her knee revealed no acute bony pathology, but showed small well-corticated bony density adjacent to the medial femoral condyle that could be due to a previous MCL injury. Although his opinion generally supported causal relationship between the accepted September 21, 2017 employment incident and appellant's diagnosed condition, Dr. Formitchev did not provide sufficient rationale explaining these conclusions. As previously noted, a mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted incident resulted in the diagnosed condition is insufficient to meet appellant's burden of proof.[20]

Lastly, appellant also provided a November 7, 2017 MRI scan of her left knee revealing a root ligament tear of the posterior horn medial meniscus, severe patellofemoral osteoarthritis and a benign chondroid lesion in the posterolateral tibial plateau. The Board has held that diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and the diagnosed conditions.[21] Accordingly, this report is of no probative value regarding causal relationship.

As there is no rationalized medical evidence of record explaining how appellant's employment duties caused or aggravated her conditions, the Board finds that appellant 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.

[18] *D.L.*, Docket No. 19-1176 (issued December 13, 2019).

[19] *R.Z.*, Docket No. 19-0408 (issued June 26 2019); *P.S.*, Docket No. 18-1222 (issued January 8, 2019).

[20] *See Y.T.*, Docket No. 17-1559 (issued March 20, 2018); *supra* note 17.

[21] *See J.M.*, Docket No. 17-1688 (issued December 13, 2018).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left knee injury causally related to the accepted September 21, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 12, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2020
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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