

**United States Department of Labor
Employees' Compensation Appeals Board**

C.S., Appellant)	
)	
and)	Docket No. 19-1809
)	Issued: July 29, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Griffith, IN, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 27, 2019 appellant, through counsel, filed a timely appeal from a March 12, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

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.*

³ The Board notes that, following the March 12, 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 a right knee condition causally related to the accepted July 17, 2018 employment incident.

FACTUAL HISTORY

On July 25, 2018 appellant, then a 29-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 17, 2018 she experienced limited mobility and inflammation in the tendon of the right knee as a consequence of descending stairs and planting her right foot on the ground while in the performance of duty. She stopped work on July 17, 2018.

In a supplemental statement dated July 23, 2018, appellant described the incident of July 17, 2018. She noted that, on that date, as she was delivering mail on her route, she descended some steps and after planting her right foot on the ground she felt a sharp pain in her right knee. Appellant attempted to continue her route, but eventually drove back to the employing establishment in order to inform management of her injury.

By letter dated July 23, 2018, Dr. Ninos M. Oda, a Board-certified orthopedic surgeon, confirmed that appellant had been seen on July 18, 2018 for a right knee injury that occurred on July 17, 2018. He indicated that she was incapacitated from work until a follow-up appointment on August 29, 2018.

On July 24, 2018 an employing establishment official executed an authorization for examination and/or treatment (Form CA-16) authorizing appellant to obtain treatment at a local orthopedic clinic for the claimed July 17, 2018 employment injury.

In a report dated July 30, 2018, Dr. Oda noted that appellant was seen on July 18, 2019 and indicated that she had sustained a work-related injury the previous day. He explained that she had previously been treated for right knee quadriceps tendinitis secondary to prolonged walking and that he had released her to return to work on June 13, 2018. On physical examination, Dr. Oda noted moderate knee swelling associated with moderate effusion, range of motion from full extension to 90 degrees of flexion, and tenderness to palpation over the quadriceps tendon. He diagnosed right quadriceps tendinitis and opined that this condition occurred “directly as a result of prolonged standing and walking at work.” Dr. Oda recommended that appellant not return to work until her symptoms resolved.

In an occupational health status form report dated July 30, 2018, Dr. Oda noted an injury to the right knee, which was unchanged in severity and that appellant was not working.

In a development letter dated August 15, 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 requested that she clarify whether she was filing a claim for traumatic injury or a claim for occupational disease. OWCP also provided a questionnaire for appellant’s completion. It afforded her 30 days to submit the requested evidence.

In an attending physician’s report (Form CA-20) dated August 22, 2018, Dr. Oda diagnosed right knee tendinitis and quadriceps tendinitis. He noted a history of right knee pain and quadriceps tendinitis. Dr. Oda reported that appellant had returned to work at eight hours per

day and had experienced a recurrence of symptoms, including right knee swelling and pain when bending the knee. He checked a box marked “yes” indicating his belief that the diagnosed conditions were caused or aggravated by an employment activity, listing “prolong[ed] standing [and] walking” as an explanation. Dr. Oda advised that appellant continued to be totally disabled from work, which commenced on July 30, 2018.

In a report dated August 29, 2018, Dr. Oda noted that appellant had presented on July 30, 2018 complaining of right knee pain. He also noted that she had initially been assessed on March 3, 2018 for similar symptoms that resolved with activity modification and physical therapy. However, appellant’s symptoms had recurred when she returned to work. Dr. Oda indicated her physical examination findings and reported that an x-ray performed on July 18, 2018 demonstrated no evidence of fracture or arthritis, while a magnetic resonance imaging (MRI) scan performed on March 9, 2018 demonstrated extensor mechanism tendinopathy. He opined that appellant’s symptoms were a result of prolonged walking at work. In an accompanying occupational health status report of the same date, Dr. Oda noted that she had sustained a right knee injury on July 17, 2018 and advised that she could work with restrictions.

On September 12, 2018 the employing establishment controverted appellant’s claim. It noted that she had submitted a claim for occupational disease (Form CA-2) on March 31, 2018 which OWCP had denied. The employing establishment contended that appellant’s injury under the current claim was the same injury that had been denied previously.

In a duty status report (Form CA-17) dated September 6, 2018, Dr. Oda diagnosed quadriceps tendinitis and advised that appellant could return to work on August 29, 2018 with restrictions of no standing, walking, climbing, kneeling, bending/stooping, twisting, or pulling/pushing.

By decision dated September 20, 2018, OWCP denied appellant’s claim for traumatic injury finding that she had not established causal relationship between the accepted July 17, 2018 employment incident and her diagnosed right knee conditions.

OWCP received progress notes from a physical therapist dated August 29 through September 26, 2018.

Dr. Oda continued to recommend the same work restrictions he had provided on September 6, 2018 in Form CA-17 reports dated October 5 and 17, November 8, and December 20, 2018.

In an October 5, 2018 progress report, Dr. Oda noted that appellant was seen for follow up regarding her right knee pain. He indicated that she had sustained a work-related injury several months prior related to overuse, as she was required to stand and walk during 12-hour shifts, resulting in right knee quadriceps tendon inflammation. Dr. Oda noted that an initial MRI scan had demonstrated evidence of tendinitis, which had recurred as soon as appellant returned to work. On physical examination, he observed tenderness to palpation over the quadriceps tendon with pain associated with flexion. In an occupational health status report of the same date, Dr. Oda diagnosed right knee quadriceps tendinitis related to a right knee injury on July 17, 2018 and recommended that appellant not return to work. He referred her to Dr. Nikhil Pandhi, an orthopedic surgeon.

On October 19, 2018 Dr. Pandhi noted that appellant was seen for complaints of right knee pain, which began around February 20, 2018 after she had worked 15 12-hour shifts consecutively, with no specific inciting injury. Appellant returned to work by the end of June 2018, and began to experience knee pain and instability about a week to a week and a half later. Dr. Pandhi noted her physical examination findings and diagnosed acute right knee pain. In an occupational health status report of the same date, he diagnosed right knee pain related to a right knee injury on July 17, 2018 and recommended another MRI scan.

On November 8, 2018 Dr. Pandhi noted that a right knee MRI scan demonstrated no evidence of quadriceps tear or tendon contracture. On physical examination, he observed reduced right knee range of motion. In an occupational health status form report of the same date, Dr. Pandhi diagnosed right quadriceps tendinitis related to a right knee injury of July 17, 2018 and recommended that appellant not return to work.

In a report dated December 20, 2018, Dr. Pandhi diagnosed right quadriceps tendinosis and right knee synovitis. He recommended that appellant return to work in a sedentary position. In an occupational health status report of the same date, Dr. Pandhi diagnosed right quadriceps tendinitis and right knee pain related to a right knee injury on July 17, 2018. He noted that appellant's right knee condition was improving.

On February 8, 2019 appellant requested reconsideration of OWCP's September 20, 2018 decision and submitted additional medical evidence.

In a report dated July 18, 2018, Dr. Oda indicated that appellant had returned to work the week before after being seen a few months prior for "right knee quadriceps tendon tendinitis." He noted that her current symptoms included swelling of the right knee and pain when bending the knee. On physical examination, Dr. Oda observed moderate knee swelling and effusion with reduced flexion and tenderness to palpation. He opined that appellant's right quadriceps tendinitis was directly related to her prolonged standing and walking at work.

In a letter dated December 3, 2018, Dr. Oda indicated that appellant had sustained right quadriceps tendon inflammation due to factors of her federal employment, including standing and sorting mail, and carrying the mail over uneven surfaces. He noted that her initial MRI scan demonstrated evidence of tendinitis. After a period of rest, appellant returned to work and the tendinitis returned. An October 31, 2018 MRI scan demonstrated no damage to the tendons of meniscus. Appellant walked with a constant limp and had difficulty bending her knee. Dr. Oda opined that the duties of her employment, including lifting and carrying 35 pounds continuously and 70 pounds intermittently and walking up to eight hours per day on uneven surfaces, were the primary cause of her right knee tendinitis. He explained that "the mechanism of [appellant's] injury is the additional stress placed on her knee joint by loading 35 pounds in her satchel and walking on uneven surfaces."

An October 31, 2018 MRI scan of the right knee demonstrated an intact and normal quadriceps tendon and a diminutive appearance of the medial meniscus anterior horn.

Appellant submitted Form CA-17 reports by Dr. Oda reiterating his restrictions dated February 20, 2019, and an occupational health status report containing an illegible signature, dated February 26, 2019.

By decision dated March 12, 2019, OWCP denied modification of the decision dated September 20, 2018.

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. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.⁷

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.⁸ 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.⁹

ANALYSIS

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

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 *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *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 *See B.B.*, Docket No. 19-1541 (issued March 2, 2020); *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

⁸ *S.A.*, Docket No. 19-1765 (issued March 13, 2020); *T.H.*, 59 ECAB 388 (2008).

⁹ *D.J.*, Docket No. 19-0130 (issued January 29, 2020).

The Board notes that appellant claimed a traumatic injury by filing a Form CA-1. The medical evidence of record, however, provided support for an occupational disease due to factors of standing and walking with a satchel.¹⁰ OWCP adjudicated appellant's claim as a traumatic injury having occurred within a single workday or shift, and informed her that she could file a new claim for occupational disease. Under the circumstances of the case, however, the Board finds that she is alleging an occupational disease resulting from her work environment over a period longer than a single workday or shift.¹¹

In support of her claim, appellant submitted a number of reports from her treating physician, Dr. Oda. Dr. Oda noted a history that she had been evaluated during March 2018 for right knee tendinitis, and that she had returned to work in the week prior to July 18, 2018.¹² In reports dated July 18 and 30, August 22 and 29, and October 5, 2018, he opined that appellant's right quadriceps tendinitis was directly related to carrying mail and prolonged standing and walking at work. Dr. Oda further explained the cause of her right knee condition in his December 3, 2018 report by relating that the mechanism of injury was the additional stress placed on her knee joint by loading 35 pounds in her satchel and walking on uneven surfaces.

The Board finds that the reports from Dr. Oda are sufficient to require further development of the medical evidence, for a claim of occupational disease. Dr. Oda provided a comprehensive understanding of the medical record and case history. His reports provide a pathophysiological explanation as to how appellant's standing and walking carrying a 35-pound satchel over a period of time resulted in her diagnosed right knee condition. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹³ Accordingly, the Board finds that Dr. Oda's medical opinion is well rationalized and logical and is therefore sufficient to require further development of appellant's claim.¹⁴

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares

¹⁰ A traumatic injury is defined as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

¹¹ *A.J.*, Docket No. 18-0727 (issued February 21, 2019); *J.F.*, Docket No. 13-1082 (issued September 18, 2013).

¹² On return of the case record, OWCP shall combine this case with appellant's occupational disease claim in OWCP File No. xxxxxx588.

¹³ *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein.

¹⁴ *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

responsibility in the development of the evidence.¹⁵ OWCP has an obligation to see that justice is done.¹⁶

On remand OWCP shall refer appellant to an appropriate specialist, along with the case record and a statement of accepted facts. Its referral physician shall provide a well-rationalized opinion as to whether her diagnosed right knee condition is causally related to or aggravated by the accepted employment factors. After such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.¹⁷

CONCLUSION

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

¹⁵ See *id.* See also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁶ See *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁷ The Board notes that the case record contains an authorization for examination and/or treatment (Form CA-16) dated July 24, 2018. A properly completed Form CA-16 form 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. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the March 12, 2019 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 29, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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