United States Department of Labor
Employees' Compensation Appeals Board

T.S., Appellant	)	
and	)	**Docket No. 20-0343**
	)	**Issued: July 15, 2020**
U.S. POSTAL SERVICE, FRESH MEADOWS POST OFFICE, Flushing, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 2, 2019 appellant, through counsel, filed a timely appeal from a July 5, 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 June 16, 2017 employment incident.

FACTUAL HISTORY

On June 16, 2017 appellant, then a 40-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that same date she sustained torn ligaments to her left knee when she stepped out of her van onto wet grass and slipped and fell while in the performance of duty. She stopped work on June 16, 2017. On the reverse side, the employing establishment indicated that appellant was injured in the performance of duty.

In a June 16, 2017 statement, appellant noted that, while completing her route, she exited her van onto wet grass and slipped and fell. She reported finishing her mail route and when she returned to the office her left knee was swollen and she had difficulty walking. Appellant sought treatment in the emergency room.

In an undated statement, Dionne Avery, a family nurse practitioner, treated appellant on June 16, 2017. Appellant reported slipping and injuring her left knee. Ms. Avery referred her for left knee imaging. Similarly, a June 16, 2017 report from Narina Palinge, a registered nurse, provided discharge instructions for musculoskeletal pain.

A June 16, 2017 note from Dr. Lauren Santiesteban, a resident, advised that appellant could return to work when the swelling and pain in the left knee improved. In a duty status report (Form CA-17) dated June 18, 2017, she noted clinical findings of left medial knee pain and returned appellant to work full-time regular duty on June 22, 2017.

In a June 16, 2017 authorization for examination and/or treatment (Form CA-16), the employing establishing authorized appellant to seek medical care for a left knee injury. In Part B of the Form CA-16, attending physician's report, dated June 18, 2017, Dr. Santiesteban reported that appellant experienced left knee pain after a twisting injury at work. She noted that x-rays revealed no fracture or dislocation. Dr. Santiesteban diagnosed left knee sprain *versus* possible meniscus tear. She checked a box marked "No" indicating that the diagnosed conditions were not caused or aggravated by the described employment activity. Dr. Santiesteban opined that appellant could work light duty until her symptoms improved.

In a July 6, 2017 development letter, OWCP advised that, when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time for work. Therefore payment of a limited amount of medical expenses was administratively approved without formal consideration of the merits of her claim. OWCP opened her claim for consideration of the merits. It advised appellant of the deficiencies of her claim and requested additional factual and medical evidence from her. OWCP afforded her 30 days to respond.

OWCP received a July 3, 2017 Form CA-17 report from a health care provider whose signature was illegible, who noted clinical findings of left knee swelling and possible meniscal tear.

A July 8, 2017 magnetic resonance imaging (MRI) scan of the left knee revealed anterior cruciate ligament (ACL) tear, likely chronic, and no acute bone contusions.

A Form CA-17 report dated July 17, 2017 from Dr. Walter W. Valesky, a specialist in emergency medicine, noted clinical findings of left knee pain and antalgic gait. Dr. Valesky diagnosed a left medial meniscal tear and found appellant disabled from work.

By decision dated August 9, 2017, OWCP denied appellant's traumatic injury claim finding that the medical evidence submitted was insufficient to establish causal relationship between her diagnosed condition and the accepted June 16, 2017 employment incident.

On August 16, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review that was held on February 13, 2018.

In support of her request, appellant submitted an undated attending physician's report (Form CA-20) from Dr. Valesky who reported that she slipped off a bus and experienced left knee pain. Dr. Valesky diagnosed pain in the left knee/medial meniscal tear and checked a box marked "Yes" indicating that appellant's injury was work related. He further indicated that she could return to light-duty work. In an undated progress note, Dr. Valesky reported treating appellant after a fall while exiting a bus on June 16, 2017. A left knee MRI scan revealed an ACL tear and a medial meniscal tear. Dr. Valesky referred appellant to an orthopedic surgeon.[3]

Prescription notes from Dr. Scott E. Barbash, a Board-certified orthopedist, dated September 28, 2017, diagnosed left ACL tear and prescribed crutches and postoperative hinged knee brace. On October 5, 2017 he performed a left knee arthroscopic ACL reconstruction with hamstring allograft, medial meniscus repair, and partial medial meniscectomy. Dr. Barbash diagnosed left knee ACL tear and left knee medial meniscal tear. In a progress note dated October 12, 2017, he noted treatment of appellant following her left knee ACL reconstruction. Dr. Barbash diagnosed rupture of the ACL and sprain of the ACL and recommended physical therapy. In Form CA-17 reports dated December 20, 2017 and January 12, 2018, he diagnosed ACL meniscal tear and noted that appellant was totally disabled. In a note dated January 12, 2018, Dr. Barbash diagnosed left knee ACL reconstruction and advised that appellant remain off work postoperatively. He noted that she sustained an ACL tear while delivering mail.

Appellant was treated by Dr. William Urban, a Board-certified orthopedist, on February 16, 2018. Dr. Urban diagnosed left knee pain and opined that her ACL injury was not a chronic injury, rather it was the result of an accident. On March 1, 2018 he noted treating appellant after a fall which occurred when she was exiting a bus on June 16, 2017. Dr. Urban opined that her symptoms commenced with the injury and were directly related to those injuries. He reviewed the MRI scan of the left knee which revealed an ACL tear and medial meniscus tear and referred appellant to an orthopedic surgeon.

By decision dated April 17, 2018, OWCP's hearing representative affirmed the August 9, 2017 decision.

[3] Appellant attended physical therapy treatment on August 7 and 16, 2017.

OWCP received reports from Dr. Valesky dated from July 3 to September 8, 2017 in which he noted that he administered corticosteroid injections into appellant's left knee on July 3 and 17, 2017. The notes indicated that appellant reported that on June 16, 2017 her left foot slipped off a bus and she experienced a popping sensation in her left knee. Dr. Valesky diagnosed left knee pain and tear of the medial meniscus. In reports dated September 27, 2017 to February 28, 2018, he noted his treatment of appellant in follow up and diagnosed left knee pain.

On April 9, 2019 appellant requested reconsideration. In support of her request, she submitted reports from Dr. Urban dated May 25 and July 6, 2018 documenting treatment following her left ACL reconstruction with medial meniscal repair. Appellant reported injuring herself at work. She presented with symptoms of left knee popping and clicking and difficulty with stair climbing. Dr. Urban diagnosed rupture of ACL and patellofemoral stress syndrome and returned appellant to light-duty work on June 5, 2018.

On May 17, 2019 appellant was evaluated by Dr. Mohammed Emam, a Board-certified physiatrist. Dr. Emam advised her to avoid repetitive bending, lifting/carrying heavy objects, twisting, or prolonged standing or walking until she was reevaluated on July 26, 2019.

By decision dated July 5, 2019, OWCP denied modification of the decision dated April 17, 2018.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 timely filed within the applicable time limitation of FECA,[5] 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.[6] 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.[7]

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

[4] *Id.*

[5] *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[8]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[9] 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 specific employment factors identified by the employee.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left knee condition causally related to the accepted June 16, 2017 employment incident.

A February 16, 2018 report from Dr. Urban diagnosed left knee pain and opined that appellant's ACL injury was the result of her accident. The Board has consistently held that a diagnosis of "pain" does not constitute the basis for payment of compensation, as pain is a symptom rather than a specific diagnosis.[11] Therefore, this report is insufficient to establish appellant's claim.

In other reports from Dr. Urban dated May 25 and July 6, 2018, he noted that appellant reported injuring herself at work and diagnosed rupture of ACL and patellofemoral stress syndrome. However, such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how the accepted June 16, 2017 employment incident actually caused a diagnosed medical condition. Thus, these reports are of limited probative value and insufficient to establish that appellant sustained an employment-related injury on June 16, 2017.

In a March 1, 2018 report, Dr. Urban diagnosed ACL tear and meniscal tear and opined that her symptoms commenced with the injury and were directly related to those injuries. Although Dr. Urban opined that appellant's symptoms were directly related to the injury, he failed to provide a narrative description of the identified employment incident and a reasoned opinion on whether the described incident caused or contributed to a diagnosed medical condition.[12] Due to this deficiency, Dr. Urban's March 1, 2018 report is also insufficient to establish appellant's claim.

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[8] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] *J.P.*, Docket No. 19-0303 (issued August 13, 2019).

[12] *K.B.*, Docket No. 19-0398 (issued December 18, 2019).

In an undated progress note, Dr. Valesky reported treating appellant after a fall on June 16, 2017. Reports dated July 3, 2017 to February 28, 2018 diagnosed pain in the left knee. However, as previously noted, the Board has held that pain is a symptom and not a compensable medical diagnosis.[13] These notes from Dr. Valesky are therefore, insufficient to establish appellant's claim.

In a Form CA-17 report dated July 17, 2017, Dr. Valesky noted clinical findings of left knee pain and antalgic gait and diagnosed left medial meniscal tear. However, he does not render an opinion on causation. 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.[14] In an undated attending physician's report, Dr. Valesky indicated by checking a box marked "Yes" that appellant's left knee pain was causally related to the accepted June 16, 2017 employment incident. The Board has held that an opinion on causal relationship with an affirmative check mark, without more by way of medical rationale, is insufficient to establish the claim.[15] Moreover, pain is a symptom and not a clear diagnosis of a medical condition.[16] As such, this report is insufficient to establish appellant's claim.

Dr. Barbash, in his reports dated September 28 to October 12, 2017, diagnosed left knee ACL tear and left knee medial meniscal tear. In Form CA-17 reports dated December 20, 2017 and January 12, 2018, he diagnosed ACL meniscal tear and noted that appellant was totally disabled. Similarly, in a note dated January 12, 2018, Dr. Barbash diagnosed left knee ACL reconstruction and advised that appellant was disabled. While he indicated that appellant was disabled from work, he did not provide a history of injury or opinion regarding causal relationship. The Board has held that a medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident caused or aggravated the diagnosed conditions.[17] Lacking these elements, these reports are insufficient to establish appellant's claim.[18]

A June 16, 2017 note from Dr. Santiesteban advised that appellant could return to work when the swelling and pain in the left knee improved. In a Form CA-17 report dated June 18, 2017, she noted clinical findings of left medial knee pain and returned appellant to work full-time regular duty. In a Form CA-20 report of even date, Dr. Santiesteban checked a box marked "No" indicating that the diagnosed conditions were not caused or aggravated by the described employment activity and opined that appellant could return to light-duty work. As

[13] *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[14] *Id.*

[15] *See C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018).

[16] *D.S.*, *id.*; *see also P.S.*, Docket No. 12-1601 (issued January 2, 2013).

[17] *T.M.*, Docket No. 19-1283 (issued December 2, 2019).

[18] *Id.*; *T.G.*, Docket No. 19-1441 (issued January 28, 2020).

Dr. Santiesteban's reports are unsupportive of appellant's claim, they are insufficient to meet her burden of proof.[19]

In a May 17, 2019 report, Dr. Emam advised appellant to avoid repetitive bending, lifting/carrying heavy objects, twisting, or prolonged standing or walking until she was reevaluated on July 26, 2019. He did not offer a medical diagnosis or provide an opinion as to whether a diagnosed condition was causally related to the accepted employment incident. The Board has held that medical evidence that does not include an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[20] This report is therefore, insufficient to establish appellant's claim.

OWCP also received an MRI scan and x-rays of the left knee. The Board has held, however, that reports of diagnostic tests, standing alone, lack probative value as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.[21]

Appellant also submitted reports from a nurse practitioner, registered nurse, and physical therapist. Certain healthcare providers such as nurse practitioners, registered nurses, and physical therapists are not considered "physician[s]" as defined under FECA.[22] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[23]

Finally, OWCP received a July 3, 2017 Form CA-17 report bearing an illegible signature. 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.[24]

On appeal appellant, through counsel, asserted that she submitted sufficient medical evidence to establish that she sustained disabling injuries causally related to the employment incident on June 16, 2017. As explained above, the evidence of record does not contain an accurate history of injury and sufficient medical rationale to establish that appellant's left knee condition was causally related to the accepted June 16, 2017 employment incident.

[19] *See L.W.*, Docket No. 19-0698 (issued September 3, 2019).

[20] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

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

[22] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2). *See also David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (physical therapists); *T.J.*, Docket No. 19-1339 (issued March 4, 2020) (nurse practitioner).

[23] *K.W.*, 59 ECAB 271, 279 (2007); *see also C.K.*, Docket No. 19-1549 (issued June 30, 2020).

[24] *I.M.*, Docket No. 19-1038 (issued January 23, 2020); *K.C.*, Docket No. 18-1330 (issued March 11, 2019).

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.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a left knee condition causally related to a June 16, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 5, 2019 decision of the Office of Workers' Compensation Programs is affirmed.[25]

Issued: July 15, 2020
Washington, DC

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

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

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

[25] 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).