United States Department of Labor
Employees' Compensation Appeals Board

P.W., Appellant	)	
and	)	**Docket No. 20-0407**
	)	**Issued: July 17, 2020**
DEPARTMENT OF THE ARMY, CYBER PROTECTION BRIGADE, Fort Gordon, GA, Employer	)	

Appearances:
Bobby Devadoss, 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 December 10, 2019 appellant filed a timely appeal from a December 4, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).[2] Pursuant to the Federal

[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] The Board notes that, following the December 4, 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.*

Employees' Compensation Act[3] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish a right medial meniscus tear causally related to the accepted May 9, 2019 employment incident.

FACTUAL HISTORY

On June 4, 2019 appellant, then a 38-year-old network infrastructure specialist, filed a traumatic injury claim (Form CA-1) alleging that on May 9, 2019 she injured her right knee when she was walking on uneven gravel returning from lunch and stepped on rocks twisting her right knee while in the performance of duty. She indicated that she underwent a magnetic resonance imaging (MRI) scan on May 21, 2019 that revealed a torn meniscus that would require surgery. Appellant stopped work on May 27, 2019.[4]

In a May 7, 2019 medical report, Dr. Alexander Collins, a Board-certified orthopedic surgeon, indicated that appellant was working out and injured both of her knees. He noted that appellant previously underwent a right knee arthroscopic partial medial and lateral meniscectomy on September 15, 2017 and a right knee Supartz injection in January 2019. Dr. Collins diagnosed right knee osteoarthritis, right and left joint inflammation/sciatica, and a right knee traumatic complex posterior horn medial meniscus tear.

In a May 21, 2019 medical report, Dr. Richard Kelly, a Board-certified radiologist, performed an MRI scan of appellant's right knee. He noted that appellant suffered a twisting injury several months prior while working out and underwent previous partial meniscectomies. On examination Dr. Kelly diagnosed a tear of the right knee medial meniscus.

Dr. Collins indicated in a May 23, 2019 medical report that appellant was scheduled to undergo a right knee arthroscopic partial medial meniscectomy on June 28, 2019 and would start physical therapy on July 3, 2019. He reiterated diagnoses of right knee osteoarthritis, right and left joint inflammation/sciatica, and a right knee traumatic complex posterior horn medial meniscus tear.

In a May 29, 2019 statement, J.L., appellant's coworker, explained that he was walking with her from the parking lot at work when he witnessed appellant trip over the uneven surface. Appellant bent over to grab her knee and expressed that she was in pain as a result. J.L. noted that appellant proceeded to limp as they continued walking and also stated that a similar incident had happened at least twice in the past two or three weeks.

[3] 5 U.S.C. § 8101 *et seq.*

[4] Appellant's Form CA-1 indicated that she stopped work on June 27, 2019; however, this appears to be a typographical error.

In a June 4, 2019 medical note, Dr. Collins again noted that appellant was scheduled for surgery on June 28, 2019 and would need to remain off work until August 12, 2019 in order to recover.

Appellant also submitted a position description detailing her duties and responsibilities as a network infrastructure specialist.

In a development letter dated July 17, 2019, OWCP advised appellant of the factual and medical deficiencies of her claim. It informed her of the evidence necessary to establish her claim and provided a questionnaire for her completion regarding the circumstances of her claimed injury. OWCP also requested a narrative medical report from appellant's treating physician, which contained a detailed description of findings and diagnoses, explaining how the alleged incident caused, contributed to, or aggravated her medical conditions. It afforded her 30 days to submit the necessary evidence.

Appellant submitted medical evidence dating from August 27, 2017 to January 31, 2019 detailing her history of right knee injuries, including an October 19, 2016 right knee arthroscopy and a series of Supartz injections to treat a traumatic lateral meniscus tear, right knee osteoarthritis and right sciatica. She also provided physical therapy notes detailing treatment of her right knee conditions.

In a May 23, 2019 medical report, Dr. Collins noted an MRI scan of appellant's right knee revealed complex posterior horn medial meniscus tear. He provided treatment instructions relating to her right knee injury.

In a June 10, 2019 accident report, P.D., a United States military captain, indicated that on May 9, 2019 appellant was returning to work after a lunch break when she strained her knee and ankle while turning a corner on uneven gravel. He attended her medical appointment the next day where a doctor determined the presence of a knee injury that required surgical repair.

In a June 28, 2019 operative-procedure report, Dr. Collins detailed a right knee arthroscopic partial medial and lateral meniscectomy procedure performed to treat her right knee medial meniscus tear.

In a July 16, 2019 attending physician's report (Form CA-20), Dr. Collins noted a diagnosis of a medial meniscus tear. He checked a box marked "Yes" indicating his understanding that appellant had a preexisting injury and provided that she was seen for bilateral knee issues before the May 9, 2019 date of injury. Dr. Collins explained that he was unable to answer whether or not appellant's meniscus tear was caused by her employment activities as there was no medical history contained in her notes.

In response to OWCP's questionnaire, appellant submitted a July 26, 2019 statement in which she indicated that when the injury occurred she immediately informed her supervisor and applied some ice to her knee to help with the swelling. She explained that her May 7, 2019 medical documents were from a follow-up appointment for a Supartz injection she received in January 2019 to treat pain she was experiencing in her left knee. Appellant mentioned to her doctor before her May 21, 2019 MRI scan that she fell at work and learned on May 23, 2019 that

she tore her meniscus. She also noted that she underwent a laparoscopic procedure performed on her right knee on September 15, 2017.

Appellant also submitted photographs of the gravel walkway and description of the walkway. The summary provided that appellant's injury was caused when appellant slipped on the gravel and that it was a known safety issue.

By decision dated August 19, 2019, OWCP denied appellant's traumatic injury claim, finding that she was not in the performance of duty at the time of the alleged May 9, 2019 incident. It explained that the evidence of record was insufficient to establish that the injury and/or medical condition arose during the course of employment and within the scope of compensable work factors as defined by FECA.

On September 16, 2019 appellant requested reconsideration of OWCP's August 19, 2019 decision. She attached a September 12, 2019 letter in which Dr. Collins indicated that, after reviewing an accident report, he agreed that appellant's right knee meniscus tear was caused when she twisted her knee while returning from her lunch break.

In an October 8, 2019 medical report, Dr. Collins evaluated appellant's right knee and noted that she still experienced pain and swelling after tearing her medial meniscus. He performed an arthrocentesis of her right knee to treat problems secondary to osteoarthritis. Dr. Collins recounted appellant's history of injury and opined that her May 9, 2019 fall at work could have created a tear deep inside of her right knee.

By decision dated December 4, 2019, OWCP affirmed in part and modified in part its August 19, 2019 decision. It found that the evidence of record was sufficient to meet and discharge appellant's burden of proof in establishing performance of duty.[5] However, the claim remained denied as the medical evidence of record did not establish that the right medial meniscus tear was causally related to the accepted May 9, 2019 employment incident.

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,[6] 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.[7] These are the essential elements of each and every

[5] OWCP noted that its August 19, 2019 decision should have found that appellant established performance of duty and denied her claim based on causal relationship.

[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).

compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[8]

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.[9] 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.[10] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[11]

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.[12] The opinion of the physician 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.[13]

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.[14]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medial meniscus tear causally related to the accepted May 9, 2019 employment incident.

In his October 8, 2019 medical report, Dr. Collins evaluated appellant's right knee and noted that she still experienced pain and swelling after tearing her medial meniscus. He opined that her May 9, 2019 fall at work "could" have created a tear deep inside of her right knee. While he provided an affirmative opinion on causal relationship, Dr. Collins did not offer any medical rationale sufficient to explain how and why he believes the May 9, 2019 employment incident could have resulted in or contributed to her diagnosed condition. Without explaining how falling and twisting her knee caused or contributed to appellant's injury, his October 8, 2019 medical

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

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

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

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

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

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *V.W.*, Docket No. 19-1537 (issued May 13, 2020); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

report is of limited probative value.[15] Additionally, Dr. Collins' statement that appellant's fall "could" have created a tear deep inside of her right knee is speculative and equivocal, and thus insufficient to establish appellant's burden of proof.[16] Further, the Board has consistently held that complete medical rationalization is particularly necessary when there is a preexisting condition involving the same body part,[17] and has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.[18] Therefore, Dr. Collins' October 8, 2019 medical report is insufficient to meet appellant's burden of proof.

In his July 16, 2019 Form CA-20, Dr. Collins diagnosed appellant with a medial meniscus tear. He checked a box marked "Yes" to indicate his understanding that she had a preexisting injury and provided that she was seen for bilateral knee issues before the May 9, 2019 date of injury. Dr. Collins also explained that he was unable to answer whether or not appellant's meniscus tear was caused by her employment activities as there was no medical history contained in her notes. Without explaining how, physiologically, the movements involved in the employment incident caused or contributed to the meniscus tear, Dr. Collins' opinion is of limited probative value and insufficient to establish causal relationship.[19] He also failed to discuss whether appellant's previous injuries or preexisting conditions contributed to her right knee medial meniscus tear.[20] Therefore, Dr. Collins' Form CA-20 is insufficient to meet appellant's burden of proof.

In his September 12, 2019 letter, Dr. Collins opined that, after reviewing an accident report, he agreed that appellant's right knee meniscus tear was caused when she twisted her knee while returning from her lunch break. As stated previously, without explaining how falling and twisting her knee caused or contributed to appellant's injury, Dr. Collins' September 12, 2019 letter is of limited probative value.[21]

In medical evidence dated from May 7 to June 28, 2019, Dr. Collins diagnosed appellant with a right knee medial meniscus tear and detailed a right knee arthroscopic partial medial and lateral meniscectomy procedure performed to treat her injury. With regard to the May 7, 2019 report, the Board finds that as it predates the date of the employment incident, it is insufficient to

[15] *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

[16] The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value. *R.C.*, Docket No. 18-1695 (issued March 12, 2019); *see Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

[17] *K.R.*, Docket No. 18-1388 (issued January 9, 2019).

[18] *See, e.g.*, *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *J.B.*, Docket No. 17-1870 (issued April 11, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *P.O.*, Docket No. 14-1675 (issued December 3, 2015).

[19] *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019).

[20] *Supra* note 17.

[21] *Supra* note 15.

establish causal relationship.[22] Regarding the remaining evidence, as previously noted 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.[23]

Appellant submitted a May 21, 2019 medical report in which Dr. Kelly performed an MRI scan of appellant's right knee after she suffered a twisting injury several months prior. Dr. Kelly diagnosed a tear of the right knee medial meniscus. The Board has held, however, that diagnostic test reports standing alone lack probative value as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.[24] For this reason, Dr. Kelly's diagnostic report is insufficient to meet appellant's burden of proof.

The remaining medical evidence, dated from August 27, 2017 to January 31, 2019, is also of no probative value as it is dated prior to the May 9, 2019 date of injury and is insufficient to establish appellant's claim.[25]

As appellant has not submitted rationalized medical evidence establishing that her right medial meniscus tear is causally related to the accepted May 9, 2019 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

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 has not met her burden of proof to establish a right medial meniscus tear causally related to the accepted May 9, 2019 employment incident.

[22] *See K.P.*, Docket No. 19-1811 (issued May 12, 2020); *S.H.*, Docket No. 17-1447 (issued January 11, 2018).

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

[24] *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

[25] *See supra* note 22.

ORDER

IT IS HEREBY ORDERED THAT the December 4, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 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