United States Department of Labor
Employees' Compensation Appeals Board

M.C., Appellant	)	
and	)	**Docket No. 19-1074**
	)	**Issued: June 12, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Ripley, T.N., Employer	)	

Appearances:
Alan J. Shapiro, 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 April 16, 2019 appellant filed a timely appeal from a February 28, 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 medical condition causally related to the accepted December 10, 2016 employment incident.

FACTUAL HISTORY

On March 23, 2017 appellant, then a 57-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 10, 2016 she injured her right knee when she stepped in a hole delivering a package while in the performance of duty. She related that her knee remained stiff and then gave out twice, causing her to fall. Appellant advised that the second time she fell she injured her left arm and shoulder. She did not stop work.

In an April 19, 2017 report, Dr. Keith Nord, a Board-certified orthopedic surgeon, evaluated appellant for right knee pain that began on December 10, 2016 after she stepped in a hole while at work twisting her right knee. On examination he found a positive McMurray test, mild swelling of the knee, and tenderness at the medial joint line. Dr. Nord diagnosed right knee pain and derangement of the medial meniscus and aspirated appellant's knee joint. He also referred her for physical therapy.

An April 19, 2017 x-ray of appellant's right knee displayed slight medial narrowing and slight spurring of the superior patella.

In an April 19, 2017 work status report, Dr. Nord checked a box indicating that appellant's December 10, 2016 injury was work related. He diagnosed a torn right medial meniscus. Dr. Nord provided work restrictions and noted that appellant had also injured her left shoulder at the same time.

A May 8, 2017 magnetic resonance imaging (MRI) scan of appellant's right knee, interpreted by Dr. Leland Tsao, a Board-certified radiologist, found a tear in the anterior horn of the lateral meniscus contacting the femoral surface, osteoarthritis with moderate-to-severe thinning at the articular cartilage of the lateral facet of the patella, patella alta, and a small joint effusion with a ganglion cyst.

On May 8, 2017 Dr. Nord discussed appellant's complaints of pain, stiffness, weakness, and instability of the right knee. He noted that she had experienced an accident on December 10, 2016 and was on workers' compensation. Dr. Nord diagnosed derangement of the lateral meniscus and unilateral primary osteoarthritis of the right knee. He recommended a right knee partial lateral meniscectomy and abrasion arthroplasty. Dr. Nord indicated that appellant additionally asserted that she had injured her shoulder when her knee gave out and she fell. In a work status report of the same date, he diagnosed with a torn lateral meniscus in her right knee, checked a box indicating that it was work related, and provided restrictions.

In a May 17, 2017 development letter, OWCP advised appellant that, when her claim was first received, it appeared to be a minor injury that had resulted in minimal or no lost time from work. It administratively approved her claim to allow payment for limited medical expenses, but had not formally adjudicated the merits of the claim. OWCP advised that because appellant had

requested an authorization for surgery, her claim would now be formally adjudicated. It informed her that additional evidence was required to establish her claim including a comprehensive narrative medical report from a qualified physician that included a diagnosis and a rationalized opinion addressing how the claimed employment incident caused or aggravated a medical condition. OWCP provided a factual questionnaire for appellant's completion and afforded her 30 days to submit the necessary evidence.

On May 26, 2017 appellant related that her injury had occurred when she stepped in a hole, causing her knee to twist and pop. She initially had believed that her knee would heal in a few days. Appellant related that her knee was swollen and painful and had caused her to fall twice between the time that she stepped in the hole on December 10, 2016 and the date she first sought medical treatment. She maintained that she had injured her back, left arm, and shoulder as a result of falling. Appellant asserted that Dr. Nord had informed her that her knee tear could have caused her two falls. She indicated that she did not have any problems with her right knee, left arm, or left shoulder prior to her stepping into the hole on December 10, 2016.

In a May 31, 2017 letter, Dr. Nord provided the history of injury as appellant stepping into a hole in a yard on December 10, 2016 twisting her knee and hearing it pop. He recounted his course of treatment and diagnosed a partial lateral meniscus tear and osteoarthritis of the right knee, noting that he had recommended surgery. Dr. Nord indicated that "stepping in a hole can cause [a] meniscal tear with twisting aggravating [appellant's] arthritis."

By decision dated June 22, 2017, OWCP denied appellant's traumatic injury claim, finding that the evidence of record failed to establish a causal relationship between her diagnosed conditions and the accepted December 10, 2016 employment incident.

Subsequently, OWCP received an April 14, 2017 report from a nurse practitioner, who evaluated appellant on that date for right knee pain and provided a history of the December 10, 2016 employment incident.

Appellant resubmitted the May 31, 2017 letter from Dr. Nord to OWCP as amended to indicate that "stepping in a hole caused [a] meniscal tear with twisting aggravating [appellant's] arthritis."

On July 21, 2017 appellant requested a review of the written record before an OWCP hearing representative.[3]

In an accompanying narrative statement, appellant noted that she was waiting to complete her knee surgery prior to having testing done on her arm and shoulder. She related that when she fell a second time after she had stepped into the hole she injured her back and ribs. Appellant sought treatment with a chiropractor for a misplaced rib.

[3] Appellant submitted witness statements from coworkers. S.M., advised that she heard appellant inform her supervisor about the December 10, 2016 incident the Monday after it had happened. R.B., indicated that in December 2016, appellant had complained of injuring her knee when stepping in a hole while delivering mail.

In physical therapy orders dated October 6, 2017, Dr. Nord diagnosed left shoulder adhesive capsulitis and impingement syndrome and referred appellant for physical therapy. On October 25, 2017 he diagnosed adhesive capsulitis of the left shoulder, impingement syndrome of the left shoulder, right knee meniscal derangement, cervical disc degeneration, and cervicalgia. On November 20, 2017 Dr. Nord additionally diagnosed a complete rotator cuff tear of the left shoulder, not specified as traumatic.

A November 20, 2017 MRI scan of appellant's left shoulder interpreted by Dr. Martha Norris, a Board-certified radiologist, revealed adhesive capsulitis, a small full-thickness tear of the anterodistal supraspinatus tendon, severe acromioclavicular degenerative joint disease, and mild infraspinatus and subscapularis tendinosis.

By decision dated December 18, 2017, an OWCP hearing representative affirmed OWCP's June 22, 2017 decision, finding that the evidence of record was insufficient to establish a causal relationship between appellant's diagnosed conditions and her accepted December 10, 2016 employment incident.

Thereafter, appellant submitted a July 7, 2017 statement from N.S., a coworker, notarized on August 14, 2018. N.S. related that she saw appellant limping on December 10, 2016 and that appellant had told N.S. that she had stepped into a hole and fallen. She indicated that appellant had attempted to inform a supervisor about the incident.

In a note dated August 13, 2018, Dr. Nord advised that appellant was under his medical care and was excused from work until September 6, 2018.

On November 26, 2018 Dr. Nord related that he had not evaluated appellant for the claimed injury to her right knee until April 19, 2017 and that he had relied upon the history of injury that she had provided in addressing causation on May 31, 2017. Dr. Nord related that on September 14, 2017 appellant had undergone a right knee arthroscopy, abrasion arthroplasty, and a partial lateral meniscectomy. He also noted that on January 14, 2018 she had undergone a left shoulder arthroscopy, rotator cuff repair, subscapular repair, subacromial decompression, loose body removal, extensive debridement, and manipulation and lysis of adhesion. Dr. Nord opined that appellant's shoulder condition appeared to be degenerative due to the extent of the rotator cuff tearing, the loose body, and the adhesive capsulitis, which had also occurred in her other shoulder. He also noted that her right knee claim could be degenerative due to the osteoarthritis that was observed during surgery and the fact that tears to the meniscus can occur due to arthritis.

On December 10, 2018 appellant, through counsel, requested reconsideration.

By decision dated February 28, 2019, OWCP denied modification of its December 18, 2017 decision.

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 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,[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 must first be determined whether fact of injury has been established.[8] 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.[9] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[10]

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, 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 incident.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted December 10, 2016 employment incident.

In a May 31, 2017 report, Dr. Nord indicated that appellant had stepped in a hole while at work on December 10, 2016 and heard her knee pop. He diagnosed a right knee partial lateral meniscal tear and right knee osteoarthritis. Dr. Nord opined that stepping in the hole caused the

[4] *Supra* note 2.

[5] *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).

[6] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *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).

[8] *R.B.*, Docket No. 17-2014 (issued February 14, 2019); *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[9] *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[10] *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 8.

[11] *B.B.*, Docket No. 19-1541 (issued March 2, 2020); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

meniscal tear and aggravated the osteoarthritis of the right knee. However, he failed to explain how the accepted December 10, 2016 employment incident caused or exacerbated appellant's diagnoses. A medical opinion must explain how, physiologically, the movements involved in the employment incident caused or contributed to the diagnosed conditions.[12] Therefore, this report is insufficient to meet appellant's burden of proof to establish her claim.

In another report of the same date, Dr. Nord generally advised that stepping in a hole can cause a meniscal tear and that twisting the knee can aggravate arthritis. His opinion regarding causation is speculative in nature. The Board has held that medical opinions that are speculative or equivocal are of diminished probative value.[13]

On November 26, 2018 Dr. Nord related that he had relied upon the history provided by appellant in addressing causation on May 31, 2017. He indicated that her right knee condition could be degenerative in nature, noting that arthritis could cause meniscal tears. This opinion is equivocal in nature and therefore fails to support appellant's traumatic injury claim.[14] Dr. Nord additionally opined that her shoulder condition appeared degenerative and preexisting in nature. The Board has held that medical evidence that negates causal relationship is of no probative value.[15] Therefore, this opinion is insufficient to establish causal relationship.

In form reports dated April 19 and May 8, 2017, Dr. Nord diagnosed a torn right medial meniscus and indicated by checking a box that the condition was employment related. On the April 19, 2017 form he advised that appellant had also injured her left shoulder at the time of her fall. The Board has consistently held that merely checking a box on a form report, without further medical rationale, is of diminished probative value and insufficient to establish a claim.[16]

On April 19, 2017 Dr. Nord obtained a history of the accepted December 10, 2016 employment incident. He diagnosed right knee pain and right knee medial meniscus derangement. On May 8, 2017 Dr. Nord noted that appellant had experienced an accident on December 10, 2016 and diagnosed right knee primary osteoarthritis and derangement of the lateral meniscus. While he provided a history of the December 10, 2016 employment incident, he failed to address causation, and thus these reports are of no probative value regarding the case of the diagnosed right knee condition.[17]

In referrals for physical therapy dated October 6 and 25 and November 20, 2017, Dr. Nord listed diagnoses, including adhesive capsulitis of the left shoulder, impingement syndrome of the

[12] *Id*.

[13] *V.W.*, Docket No. 19-1537 (issued May 13, 2020).

[14] *See E.B.*, Docket No. 18-1060 (issued November 1, 2018) (finding that an opinion which is equivocal is of limited probative value regarding the issue of causal relationship).

[15] *T.W.*, Docket No. 19-0677 (issued August 16, 2019).

[16] *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *M.D.*, Docket No. 18-0195 (issued September 13, 2018).

[17] *C.S.*, Docket No. 18-1633 (issued December 30, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

left shoulder, cervical disc degeneration, cervicalgia, and a complete rotator cuff tear of the left shoulder. On August 13, 2018 he indicated that appellant should not work until September 6, 2018. Dr. Nord, however, failed to address the cause of the diagnosed conditions and disability. As noted, 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.[18] Therefore, this evidence is insufficient for appellant to meet her burden of proof to establish her claim.

On April 14, 2017 a nurse practitioner evaluated appellant for right knee pain. The Board has held that medical reports signed solely by a physician assistant or a nurse practitioner are of no probative value as such providers are not considered physicians as defined under FECA.[19] This report is therefore insufficient to establish appellant's claim.

Appellant submitted a right knee x-ray, a right knee MRI scan, and a left shoulder MRI scan. The Board has explained that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[20]

The Board finds that the record lacks rationalized medical evidence establishing causal relationship between appellant's diagnosed medical conditions and the December 10, 2016 accepted employment incident. Thus, 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted December 10, 2016 employment incident.

[18] *Id*.

[19] 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); *S.L.*, Docket No. 19-0607 (issued January 28, 2020) (nurse practitioners are not considered physicians under FECA).

[20] *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 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