

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

D.C., Appellant)

and)

U.S. POSTAL SERVICE, HIGHLAND MILLS)
POST OFFICE, Highland Mills, NY, Employer)

Docket No. 19-1093
Issued: June 25, 2020

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

PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On April 19, 2019 appellant, through counsel, filed a timely appeal from a March 18, 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 18, 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 left knee condition causally related to the accepted August 3, 2017 employment incident.

FACTUAL HISTORY

On October 5, 2017 appellant, then a 50-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 3, 2017 she sustained a meniscus tear of her left knee when she stepped out of her work truck and felt a pull in the back of her knee while in the performance of duty.⁴ She did not stop work.

In support of her claim, appellant submitted an undated note from Dr. Carol P. Taylor, Board-certified in family medicine, who diagnosed medial and lateral meniscus tears of the left knee and a rotator cuff tear of the left shoulder.

A September 22, 2017 magnetic resonance imaging (MRI) scan of the left knee contained an impression of complex tear at the junction of the posterior horn and mid-zone of the medial meniscus with surrounding synovitis, chondral loss in the compartment without subchondral edema, mild-to-moderate effusion, patellofemoral synovitis, popliteal cyst, mild fluid signal in the popliteal fossa, slight sprain of the medial collateral ligament (potentially related to medial meniscal pathology in the absence of recent trauma), and red marrow hyperplasia within the long bones without fracture or suspicious bony lesion.

In a note dated October 3, 2017, Dr. John M. Uhorchak, a Board-certified orthopedic surgeon, indicated that appellant continued to perform full-duty work and was likely to need surgery due to a meniscal tear of her left knee.

On October 5, 2017 an employing establishment official properly executed an authorization for examination and/or treatment form (Form CA-16) authorizing medical treatment for appellant's alleged August 3, 2017 injury.

On October 23, 2017 Dr. Uhorchak examined appellant for complaints of left knee pain, noting that she reported that her injury occurred at work on August 3, 2017 when she stepped out of a truck and felt stiffness and a popping sensation in the back of her left knee. He noted that appellant reported that she had no prior injury to her left knee. On physical examination of the left knee, Dr. Uhorchak observed active range of motion (ROM) from 0 to 120 degrees with pain at extremes of flexion, good strength at extension/flexion against resistance, stability to varus/valgus stress, normal sensation, moderate tenderness at the medial joint, and positive rotary stress and maximal flexion tests with medial joint pain. He diagnosed medial meniscus tear of the left knee and recommended the performance of arthroscopic partial medial meniscectomy of the left knee. Dr. Uhorchak opined that appellant's current symptoms were "causally related to the injury at

⁴ In an undated statement accompanying her claim, appellant advised that, when she stepped out of her truck her left knee gave way and she felt a pop. She indicated that she developed pain in her left knee and saw a physician who diagnosed left medial/lateral meniscus tears.

work,” explaining that her complaints were consistent with the history of injury and that the history of injury was consistent with his objective findings.

In a report dated January 5, 2018, Dr. Uhorchak reviewed appellant’s history of injury and noted left knee examination findings similar to those observed on October 23, 2017. He diagnosed complex tear of the medial meniscus of the left knee. Dr. Uhorchak again opined that appellant’s current symptoms were “causally related to the injury at work,” noting that her complaints were consistent with the history of injury and that the history of injury was consistent with his objective findings.

In a development letter dated January 19, 2018, OWCP requested that appellant submit additional evidence in support of her traumatic injury claim, including a physician’s opinion supported by a medical explanation as to how the claimed August 3, 2017 employment incident caused or aggravated a medical condition. It provided a questionnaire for her completion which posed a series of questions regarding the reported August 3, 2017 employment incident. OWCP afforded appellant 30 days to respond.⁵

On February 12, 2018 appellant responded to OWCP’s questionnaire by submitting a statement in which she provided further details of the claimed August 3, 2017 injury. She explained that she delayed reporting the August 3, 2017 incident at work to her supervisor because she thought her condition would improve. Appellant also indicated that she had not suffered a prior injury to her left knee.

Appellant submitted a January 31, 2018 letter from Dr. Uhorchak who advised that he initially saw appellant on September 5, 2017, at which time she reported having been injured on August 3, 2017 when she stepped out of a truck and felt stiffness in the back of her left knee. Dr. Uhorchak summarized the results of his September 5, 2017 examination of the left knee, noting findings including active ROM from 0 to 120 degrees with pain at extremes of flexion, moderate tenderness at the patella, and positive Apley’s grind and maximal flexion tests with diffuse joint pain. He indicated that the mechanism of appellant’s injury was stepping out of her work vehicle on August 3, 2017 and feeling immediate stiffness to the left knee. Dr. Uhorchak noted that she reported having no prior history of injury to her left knee and opined, within a degree of medical certainty, that her left knee condition was “directly related to her work injury on August 3, 2017.”

By decision dated March 1, 2018, OWCP accepted that appellant established the August 3, 2017 employment incident occurred as alleged in the form of stepping out of her work truck and feeling stiffness and a popping sensation in the back of her left knee. However, it denied her traumatic injury claim, finding that she had not submitted sufficient medical evidence to establish causal relationship between her diagnosed left knee condition and the accepted August 3, 2017 employment incident.

⁵ Appellant requested authorization for arthroscopic partial medial meniscectomy of the left knee and, in a January 24, 2018 informational letter, OWCP advised appellant that her request could not be approved at that time. The case record does not contain a final decision of OWCP regarding appellant’s request for authorization of this surgery and the matter is not currently before the Board. *See* 20 C.F.R. § 501.2(c).

On December 17, 2018 appellant, through counsel, requested reconsideration of OWCP's March 1, 2018 decision.

Appellant submitted a March 30, 2018 report from Dr. Uhorchak in which he discussed appellant's history of injury and detailed his examination of her left knee. Dr. Uhorchak observed active ROM from 5 to 95 degrees, moderate tenderness at the medial joint, and positive rotary stress, maximal flexion, and McMurray tests with medial joint pain. He diagnosed complex tear of the left medial meniscus and advised that he did not recommend left knee surgery as it would not reliably improve appellant's pain or function. Dr. Uhorchak maintained that, within a degree of medical certainty, appellant's left knee condition was directly related to her work injury on August 3, 2017, noting that her complaints were consistent with the history of injury and that the history of injury was consistent with his objective findings.

On June 26, 2018 Dr. Uhorchak reported examination findings for appellant's left knee which were similar to those previously reported and diagnosed complex tear of the left medial meniscus. He noted that appellant had opted for surgery to treat her left knee condition.

In a report dated November 12, 2018, Dr. Uhorchak summarized the medical treatment of appellant's left knee and advised that she had undergone an arthroscopic partial medial meniscectomy of the left knee on July 18, 2018.⁶ He noted that appellant told him she was doing reasonably well until September 6, 2018 when she slipped and fell on a wet floor at a food store, and that she was diagnosed with left knee contusion after seeking emergency medical treatment. On examination of the left knee, Dr. Uhorchak reported moderate-to-marked tenderness along the medial joint line, mild swelling along the medial joint and pes bursal area, pain with maximal flexion on the medial side, and moderate tenderness over the pes anserine bursal area. He diagnosed complex tear of the left medial meniscus and pes anserine bursitis of the left knee.

In a report dated July 27, 2018, Dr. Uhorchak noted that, on examination of the left knee, appellant had active ROM to 135 degrees, normal strength/neurovascular status, and closed, clean, and dry portals from the July 18, 2018 surgery. He diagnosed complex tear of the left medial meniscus and referred her to physical therapy. Dr. Uhorchak opined that the August 3, 2017 incident was the competent medical cause of appellant's condition, that her complaints were consistent with the history given for the condition, and that the history of the condition was consistent with his objective findings.

By decision dated March 18, 2019, OWCP denied modification of its March 1, 2018 decision.

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

⁶ The July 18, 2018 surgery was not authorized by OWCP and the case record does not contain a report detailing the performance of the surgery.

time limitation period of FECA,⁷ 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.⁸ 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.⁹

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.¹⁰ The second component is whether the employment incident caused a personal injury.¹¹

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.¹² Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left knee condition causally related to the accepted August 3, 2017 employment incident.

Appellant submitted several reports from Dr. Uhorchak in support of her claim. In reports dated October 23, 2017 and January 5, 2018, Dr. Uhorchak opined that appellant's left knee condition was causally related to the reported August 3, 2017 injury at work, noting that her complaints were consistent with the history of injury and that the history of injury was consistent with his objective findings. In a January 31, 2018 letter, he indicated that "the mechanism of injury" was appellant's stepping out of her work truck and feeling immediate left knee stiffness on August 3, 2017. Dr. Uhorchak noted that appellant reported having no prior history of injury to her left knee and opined that her left knee condition was "directly related to her work injury on August 3, 2017." On March 30, 2018 he maintained that appellant's left knee condition was directly related to her work injury on August 3, 2017, again noting that her complaints were

⁷ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ *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).

¹⁰ *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹¹ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹² *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

¹³ *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

consistent with the history of injury and that the history of injury was consistent with his objective findings. In a report dated July 27, 2018, Dr. Uhorchak diagnosed complex tear of the left medial meniscus and opined that the August 3, 2017 incident was the competent medical cause of appellant's condition, that her complaints were consistent with the history given for the condition, and that the history of the condition was consistent with his objective findings. In these reports Dr. Uhorchak did not explain the medical mechanism of how the accepted August 3, 2017 employment incident, *i.e.*, stepping out of a work truck, could have caused or contributed to the diagnosed left knee conditions.¹⁴ The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment incident was sufficient to have caused or aggravated a medical condition.¹⁵ Thus, these reports are insufficient to establish the claim.

In his January 31, 2018 letter, Dr. Uhorchak suggested that his opinion on causal relationship was supported by the fact that appellant reported not having left knee problems/symptoms prior to the occurrence of the August 3, 2017 employment incident. The Board has found that the mere fact that a condition manifests itself or is discovered after an employment incident is insufficient to establish causal relationship between the condition and the incident.¹⁶ Therefore, these reports of Dr. Uhorchak are insufficient to establish appellant's claim for an employment-related August 3, 2017 left knee injury.

Appellant also submitted an October 3, 2017 note from Dr. Uhorchak who indicated that appellant was likely to need surgery due to a meniscal tear of the left knee. On June 26, 2018 Dr. Uhorchak reviewed appellant's history of injury and examined her left knee, diagnosing complex tear of the left medial meniscus. In a November 12, 2018 report, he reported examination findings and diagnosed complex tear of the left medial meniscus and pes anserine bursitis of the left knee. In these medical documents, Dr. Uhorchak did not opine as to the cause of appellant's diagnoses and their relationship to the accepted August 3, 2017 employment incident. In his November 12, 2018 report, he noted that appellant had undergone left knee surgery on July 18, 2018, but he did not indicate that the surgery was necessitated by an employment injury. 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.¹⁷ Therefore, these reports of Dr. Uhorchak are of no probative value regarding an August 3, 2017 left knee injury and are insufficient to establish appellant's claim.

Appellant submitted an undated note from Dr. Taylor who diagnosed medial and lateral meniscus tears of the left knee and rotator cuff tear of the left shoulder. This report does not

¹⁴ See *H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016) (medical opinion evidence should offer a medically sound explanation of how the specific employment incident or work factors physiologically caused injury).

¹⁵ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁶ *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *Y.D.*, *supra* note 15.

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

contain an opinion on causal relationship and is of no probative value regarding appellant's claim for an August 3, 2017 employment injury.¹⁸

OWCP also received a report of a September 22, 2017 MRI scan of appellant's left knee. However, this report is of no probative value on the underlying issue of the case. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁹

As such, the record lacks rationalized medical evidence establishing causal relationship between the accepted August 3, 2017 employment incident and appellant's diagnosed left knee conditions. Thus, the Board finds that she has not met her burden of proof.²⁰

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 left knee condition causally related to the accepted August 3, 2017 employment incident.

¹⁸ *Id.*

¹⁹ *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

²⁰ The Board notes that the case record contains an October 5, 2017 Form CA-16. A properly completed 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. *See* 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 18, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 25, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board