United States Department of Labor
Employees' Compensation Appeals Board

S.L., Appellant	)	
and	)	**Docket No. 19-1536**
	)	**Issued: June 26, 2020**
U.S. POSTAL SERVICE, BEAVERCREEK POST OFFICE, Dayton, OH, 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:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 11, 2019 appellant, through counsel, filed a timely appeal from a May 14, 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 October 19, 2018 employment incident.

FACTUAL HISTORY

On October 20, 2018 appellant, then a 49-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on October 19, 2018 she injured her knee while in the performance of duty. She asserted that she had experienced knee pain walking on her route that had increased significantly the following day. On the reverse side of the claim form, the employing establishment indicated that appellant was in the performance of duty at the time of the incident, but controverted the claim as she appeared "fine after [the] traumatic event supposedly happened." Appellant stopped work on October 20, 2018.

In an emergency room discharge report dated October 20, 2018, Dr. William R. Marriott, Board-certified in emergency medicine, and Dr. Jordan Jacobsen, who specializes in emergency medicine, obtained a history of appellant experiencing pain in her left leg radiating to the groin that had begun the day before without a specific injury and had worsened with time.[3] Dr. Jacobsen indicated that her symptoms were "consistent with tendinopathy such as tendinitis." Drs. Marriott and Jacobsen diagnosed acute left knee pain.

An x-ray of appellant's left knee obtained on October 20, 2018 by Dr. Kurt Stedje, a Board-certified radiologist, displayed a small joint effusion with no acute fracture.

In an emergency room report dated October 20, 2018, Dr. Jacobsen diagnosed knee pain and noted that appellant's symptoms were consistent with tendinopathy/tendinitis. He indicated that an x-ray had demonstrated soft tissue swelling. Dr. Jacobsen found that appellant should not work for five days.

In an October 20, 2018 state workers' compensation form, appellant advised that she had felt throbbing in her left knee on October 19, 2018 that had worsened on October 20, 2018 when she returned to work. She sought treatment at the hospital.

In a report dated October 22, 2018, Dr. Steve McKee, Board-certified in family practice, obtained a history of appellant experiencing left knee pain walking on October 19, 2018 without a specific injury. Appellant's pain had worsened overnight and she had sought treatment at the hospital. Dr. McKee noted that she had no history of a previous injury to her knee. On examination he found diffuse tenderness over the anteromedial aspect of the knee, limited range of motion, and no effusion. Dr. McKee diagnosed a strained left knee and referred appellant for physical therapy. He found that she could return to work on modified duty and provided restrictions. On the same date Dr. McKee completed a duty status report (Form CA-17), a state workers' compensation form, an attending physician's report (Form CA-20), and a physician's work activity status report. In the Form CA-20 report, Dr. McKee diagnosed a left knee sprain

[3] The report indicated that appellant complained of right rather than left knee pain; however, this appears to be a typographical error.

and checked a box marked "Yes" that appellant's condition was caused or aggravated by an employment activity.

A nurse practitioner, Annie Longenecker, provided progress reports and Form CA-17 reports dated October 24 and 31, 2018.

In a November 7, 2018 development letter, OWCP informed appellant that when it had received her claim it had appeared to be a minor injury that had resulted in minimal or no lost time from work, and thus it had administratively approved payment of a limited amount of medical expenses. As appellant had not resumed her regular employment, it advised that it was now formally considering the merits of her claim. OWCP notified her that the documentation received to date was insufficient to support her claim for FECA benefits. It informed appellant of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. OWCP afforded her 30 days to submit the requested factual and medical evidence.

Subsequently, OWCP received an October 20, 2018 statement from appellant in response to its development letter. Appellant advised that she had experienced left knee pain on October 19, 2018, but had finished her route. She explained that the next morning she continued to have pain. Appellant began her route, but was unable to walk due to significant pain.

Appellant submitted a November 7, 2017 report and Form CA-17 report and a November 14, 2018 note from Ms. Longenecker.

On November 21, 2018 Dr. McKee listed the dates that he had treated appellant and noted that she had developed mild pain in her left knee on October 19, 2018 while delivering mail and that her symptoms had increased the next day on her route. He diagnosed left knee strain and noted that he had referred appellant for a magnetic resonance imaging (MRI) scan. Regarding whether the employment incident caused or aggravated a medical condition, Dr. McKee advised that she walked 12 to 15 miles each day and had "developed left knee pain while walking for work and did not have prior knee pain." In a report of the same date, he provided findings on examination and noted that appellant was not working as there was no limited duty available. In a Form CA-17 report also dated November 21, 2018, Dr. McKee listed work restrictions.

In a December 5, 2018 Form CA-17 report and accompanying work status report form, Dr. Janet Cobb, a Board-certified internist, diagnosed a sprain of the muscle/tendon of the lower left leg and provided work restrictions. A physician assistant, Abby Rapking, provided a report of the same date.

By decision dated December 19, 2018, OWCP denied appellant's traumatic injury claim finding that the evidence of record failed to establish a causal relationship between a diagnosed medical condition and the accepted October 19, 2018 employment incident.

On December 31, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a report dated January 8, 2019, Dr. Cobb discussed the history of the October 19, 2018 employment incident and appellant's continued complaints of left medial and anterior knee pain. She diagnosed a left knee strain and provided work restrictions.

A January 25, 2019 MRI scan, interpreted by Dr. James Tsatalis, a Board-certified radiologist, displayed a tear of the medial meniscus, a subtle tear of the junction of the body/anterior horn of the lateral meniscus, and small to moderate knee joint effusion and spurring.

The record contains a January 29, 2019 report signed by Ms. Rapking and another health care provider whose signature is illegible. The report noted that appellant had medial and lateral meniscal tears and referred her to an orthopedic specialist. The record also contains an unsigned Form CA-17 report of the same date.

A telephonic hearing was held on April 9, 2019. Appellant stated that she began to have knee pain on October 19, 2018 and that she had sought medical treatment the following day.

By decision dated May 14, 2019, OWCP's hearing representative affirmed the December 19, 2018 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 if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[8] 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.[9] The second component is whether 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

[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] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[9] *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

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 left knee condition causally related to the accepted October 19, 2018 employment incident.

In a Form CA-20 report dated October 22, 2018, Dr. McKee diagnosed a left knee sprain and checked a box marked "Yes" that the condition was caused or aggravated by the employment incident. The Board has held, however, that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the employment incident caused or aggravated the diagnosed condition, is of diminished probative value and insufficient to establish causal relationship.[12]

On November 21, 2018 Dr. McKee noted that appellant had experienced left knee pain on October 19, 2018. He diagnosed left knee strain and noted that she walked 12 to 15 miles during a workday. Responding to a question regarding causation, Dr. McKee opined that appellant had experienced left knee pain walking at work and had no prior history of knee pain. The Board has held that 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 a causal relationship.[13] This report is therefore insufficient to establish appellant's claim.

The remaining medical evidence of record fails to address causation. In reports dated October 20, 2018 from the emergency room, Drs. Marriott and Jacobsen obtained a history of appellant experiencing knee pain the day before without an injury and diagnosed acute left knee pain. As these reports do not address causation, they are insufficient to meet her burden of proof.[14] Moreover, the Board has held that pain is a symptom and not a compensable medical diagnosis.[15]

On October 22, 2018 Dr. McKee provided the history of the October 19, 2018 employment incident and diagnosed a left knee strain. In form reports dated October 22 and November 21, 2018, he listed work restrictions. Again, however, as Dr. McKee failed to address causation, these reports are of no probative value and insufficient to meet appellant's burden of proof.[16]

On January 8, 2019 Dr. Cobb evaluated appellant for left knee pain and noted the history of the October 19, 2018 employment incident. She diagnosed left knee strain and provided work

[11] *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[12] *See K.R.*, Docket No. 19-0375 (issued July 3, 2019); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[13] *J.B.*, Docket No. 19-1101 (issued November 20, 2019).

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

[15] *T.G.*, Docket No. 19-0904 (issued November 25, 2019).

[16] *Supra* note 14.

restrictions. Dr. Cobb also completed a Form CA-17 report and an accompanying work status form on December 5, 2018. As she failed to specifically address whether the October 19, 2018 employment incident either caused or contributed to appellant's diagnosed conditions, her opinion is insufficient to meet appellant's burden of proof.[17]

Appellant submitted reports from Ms. Rapking, a physician assistant, and from Ms. Longenecker, a nurse practitioner. However, certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers' are not considered "physician[s]" as defined under FECA.[18] Consequently, these reports do not constitute competent medical evidence.[19]

The record contains a January 29, 2019 report with an illegible signature and an unsigned Form CA-17 report of the same date. The Board has held that 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.[20] This report is therefore insufficient to establish appellant's claim.

Appellant also submitted an x-ray and an MRI scan of her left knee. The Board has held that diagnostic test reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.[21] These diagnostic reports are therefore also insufficient to establish appellant's claim.

On appeal counsel contends that OWCP failed to give deference to appellant's attending physician or apply the proper causation standard. As discussed, however, appellant has not submitted rationalized medical evidence establishing that she sustained a left knee condition causally related to the accepted October 19, 2018 employment incident, and thus has not met her burden of proof to establish her claim.[22]

[17] *Id*.

[18] 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); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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.K.*, Docket No. 20-0049 (issued April 10, 2020) (a physician assistant is not considered a "physician" as defined under FECA); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA).

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

[20] *I.M.*, Docket No. 19-1038 (issued January 23, 2020); *T.O.*, Docket No 19-1291 (issued December 11, 2019).

[21] *A.P.*, Docket No 18-1690 (issued December 12, 2019).

[22] *See K.K.*, Docket No. 19-1193 (issued October 21, 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 has not met her burden of proof to establish a left knee condition causally related to the accepted October 19, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 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