

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

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S.J., Appellant)	
)	
and)	Docket No. 19-0489
)	Issued: January 13, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Norfolk, VA, Employer)	
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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, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On January 3, 2019 appellant, through counsel, filed a timely appeal from a December 6, 2018 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.

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 expand the acceptance of her claim to include a left knee condition causally related to the accepted November 20, 2017 employment injury.

FACTUAL HISTORY

On November 20, 2017 appellant, then a 33-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 20, 2017 she was bitten by a dog on the right lower leg while in the performance of duty.

Appellant was initially treated in urgent care. In a November 20, 2017 report, Julie Megaro, a nurse practitioner, indicated that appellant was treated for a dog bite of the right lower leg that occurred while at work. She diagnosed puncture wound of the right lower leg and dog bite. Ms. Megaro completed a duty status report (Form CA-17) which recommended that appellant work limited duty.

In a November 22, 2017 urgent care report, Dr. Edward J. Downs, a Board-certified emergency physician, related appellant's complaints of continued throbbing and pain in her right leg after a dog bite at work on November 20, 2017. He diagnosed puncture wound of the right lower leg, dog bite, and open wound of the leg. In a Form CA-17, Dr. Downs indicated that appellant could return to work with restrictions.

In a November 24, 2017 urgent care report, Ms. Megaro related that appellant's leg was still throbbing and painful. She provided examination findings and diagnosed right lower leg puncture wound and dog bite.

In a November 29, 2017 urgent care report and Form CA-17, Dr. N. Michael Baddar, Board-certified in preventive medicine, noted the November 20, 2017 dog bite injury at work. Examination of appellant's lower extremities revealed no weakness or tenderness and normal range of motion of both her ankles and feet. Dr. Baddar diagnosed puncture wound of the right leg and dog bite. He recommended that appellant work full duty.

In a December 16, 2017 urgent care report and Form CA-17, Dr. Gregory Pierce, a Board-certified family physician, noted appellant's complaints of pain and discomfort in her left knee. He reported examination findings of tenderness to palpation of the anterior aspect of the left knee and no crepitus, no joint space effusion, and no tenderness in the medial or lateral joint space. In the Form CA-17, Dr. Pierce noted a November 27, 2017 date of injury and described a history of injury of fall after a dog bite. He diagnosed left knee sprain.

On December 17, 2017 appellant stopped work and began to file claims for wage-loss compensation (CA-7 forms) beginning December 17, 2017.

In a December 27, 2017 report, Dr. Thomas S. Barros II, a Board-certified pediatrician, indicated that appellant was seen for follow-up of left knee strain. He reported left knee examination findings of mild tenderness to palpation and diagnosed left knee sprain.

In a January 2, 2018 progress note, Dr. Michael E. Higgins, a Board-certified orthopedic surgeon, noted appellant's complaints of left knee pain. He recounted that in November appellant was delivering mail when she was attacked by a dog, bitten on the right shin, and fell down on both knees. Dr. Higgins related that appellant had complained of persistent left knee pain with episodic swelling and buckling since the incident. Upon examination of appellant's left knee, he observed tenderness over the joint line and mild-to-moderate crepitus with knee flexion. Dr. Higgins assessed left knee tear of medial meniscus, left knee sprain, left knee pain, and dog bite. He completed a work status note, which recommended that appellant work sedentary duty until January 12, 2018.

In a January 8, 2018 progress note, Dr. Higgins reported impressions of left knee pain and left knee sprain of the medial collateral ligament.

A January 8, 2018 left knee magnetic resonance imaging (MRI) scan revealed a longitudinal tear at the anterior horn of the lateral meniscus and horizontal tear extending to the inferior surface of the posterior horn lateral meniscus, mild-to-moderate lateral compartment osteoarthritis, mild semimembranous bursitis, and no evidence of medial meniscus or ligament tear.

On January 9, 2018 appellant provided a handwritten statement. She related that on November 20, 2017 she was delivering mail on her route when a Rottweiler ran out a front door and jumped on top of her. Appellant indicated that she fell backwards and the dog bit her right leg. She alleged that the way that she fell backwards she also injured her left knee.

In a January 12, 2018 progress report, Dr. Higgins indicated that he discussed appellant's MRI scan findings and explained to her that she had a meniscal tear, which was causing mechanical symptoms. He described that on November 2017 appellant was attacked by a dog when delivering mail and fell down on both knees. Dr. Higgins related that appellant had complained of persistent pain with episodic swelling and buckling in the left knee since that injury. Examination of appellant's left knee revealed tenderness over the joint line and mild-to-moderate crepitus. Dr. Higgins reported impressions of right knee peripheral tear of the lateral meniscus, left knee tear of the medial meniscus, left knee sprain, and dog bite.

By decision dated January 30, 2018, OWCP accepted appellant's claim for a right lower leg dog bite.

In a separate letter of even date, OWCP informed appellant that the evidence of record was insufficient to establish that she sustained a possible consequential left knee sprain causally related to the November 20, 2017 employment injury. It advised her of the type of factual and medical evidence needed to establish her claim. OWCP afforded appellant 30 days to submit the necessary evidence.

By decision dated April 19, 2018, OWCP denied expansion of appellant's claim to include a left knee injury. It found that the evidence submitted was insufficient to establish that appellant sustained a left knee condition as a result of the November 20, 2017 employment injury.

On May 2, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. A hearing was held on October 3, 2018.

OWCP subsequently received a March 13, 2018 addendum to Dr. Higgins' January 12, 2018 report, wherein he opined that appellant's left knee meniscal tear was a direct result of her work-related injury on November 20, 2017 when she was attacked by a dog and fell.

Appellant submitted emergency department records dated February 17, 2018 by Dr. Carty E. Beck, Board-certified in emergency medicine. Dr. Beck indicated that appellant was treated in the emergency department for left knee pain that she attributed to a work injury. She reviewed appellant's history and noted left knee examination findings of tenderness to the lateral aspect and valgus deformity. Dr. Beck diagnosed chronic left knee pain.

OWCP received a handwritten statement by appellant dated November 20, 2017. Appellant recounted that that day around 3:45 p.m. she was on her route when a dog ran out the front door and jumped on her. She indicated that she had a dog bite on her right leg, but both of her knees hurt from falling on them.

By decision dated December 6, 2018, an OWCP hearing representative affirmed the April 19, 2018 decision. She found that appellant had not established a left knee condition causally related to the November 20, 2017 employment injury.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.³

The medical evidence required to establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, is rationalized medical opinion evidence.⁴ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. Additionally, the opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁵

³ *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁴ *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁵ *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include a left knee condition causally related to the accepted November 20, 2017 employment injury.

In support of her claim, appellant submitted a series of urgent care examination reports. In a November 22, 2017 report, Dr. Edwards recounted that on November 20, 2017 appellant had a dog bite on her right lower leg and provided examination findings. He diagnosed dog bite, puncture wound of the right lower leg, and open wound of the leg. Dr. Edwards, however, did not mention left knee symptoms or offer a left knee diagnosis. Likewise, in a November 29, 2017 report, Dr. Baddar only diagnosed puncture wound of the right leg and dog bite. These reports, therefore, are insufficient to establish appellant's claim for a left knee injury causally related to the November 20, 2017 employment incident as they do not contain a description or diagnosis of a left knee injury.

In progress reports dated January 2 to 12, 2018, Dr. Higgins noted appellant's complaints of left knee pain. He described that in November 2017 appellant was working as a letter carrier when she was attacked by a dog, bitten on her right leg, and fell down on both knees. Examination of appellant's left knee revealed tenderness over the joint line and mild-to-moderate crepitus. Dr. Higgins reported impressions of right knee peripheral tear of the lateral meniscus, left knee tear of medial meniscus, left knee sprain, left knee pain, and dog bite. In a March 13, 2018 addendum to the January 12, 2018 report, he opined that appellant's left knee meniscal tear was a direct result of her work-related injury on November 20, 2017 when she was attacked by a dog and fell. Although Dr. Higgins provided an opinion on causal relationship, he provided no supporting medical rationale explaining how appellant's left knee condition had been caused by the accepted November 20, 2017 employment injury. A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.⁶ Thus, the medical evidence of record is insufficient to establish that appellant sustained a left knee injury due to the accepted November 20, 2017 employment incident.

Appellant also submitted additional urgent care and emergency department reports, including a December 16, 2017 report by Dr. Pierce, a December 27, 2017 report by Dr. Barros, and a February 17, 2018 report by Dr. Beck. The reports noted diagnoses of left knee sprain and left knee pain. None of these physicians, however, offered an opinion as to the cause of the diagnosed left knee conditions. Medical evidence that does not offer an opinion on the cause of an employee's condition is of no probative value on the issue of causal relationship.⁷ These reports, therefore, are insufficient to meet appellant's burden of proof regarding expansion of her

⁶ See *V.T.*, Docket No. 18-0881 (issued November 19, 2018); *T.M.*, Docket No. 08-0975 (February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

⁷ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

claim.⁸ Likewise, the January 8, 2018 left knee MRI scan also failed to establish appellant's claim as diagnostic tests do not provide an opinion on causal relationship and thus, lack probative value.⁹

The November 20 and 24, 2017 urgent care reports by Ms. Megaro, a nurse practitioner, are also of no probative value because nurse practitioners are not considered physicians as defined under FECA.¹⁰ These reports, therefore, are insufficient to establish appellant's claim.

The Board finds that appellant has not submitted the necessary rationalized medical evidence to support her claim that she sustained an additional left knee condition causally related to the accepted November 20, 2017 employment injury. Therefore, appellant has not met her burden of proof to establish her claim.

On appeal counsel argues that OWCP failed to adjudicate the claim with the proper standard of causation, failed to give due deference to the findings of the attending physician, and failed to follow the procedural manual. As discussed above, none of the medical reports appellant submitted contained a rationalized opinion establishing causal relationship between the accepted November 20, 2017 employment incident and a left knee condition. Furthermore, OWCP properly followed its procedures in denying appellant's claim. Thus, the Board finds that appellant has not met her burden of proof with respect to her claim for expansion of the accepted conditions.¹¹

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 expand the acceptance of her claim to include a left knee condition causally related to the accepted November 20, 2017 employment injury.

⁸ See *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

⁹ See *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

¹⁰ 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 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). 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See *George H. Clark*, 56 ECAB 162 (2004) (physician assistant),

¹¹ See *E.B.*, Docket No. 17-1497 (issued March 19, 2019); see also *T.F.*, Docket No. 17-0645 (issued August 15, 2018).

ORDER

IT IS HEREBY ORDERED THAT the December 6, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 13, 2020
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board