United States Department of Labor
Employees' Compensation Appeals Board

C.R., Appellant	)	
	)	**Docket No. 19-1427**
and	)	**Issued: January 3, 2020**
	)	
DEPARTMENT OF VETERANS AFFAIRS, WEST LOS ANGELES VETERANS ADMINISTRATION MEDICAL CENTER, Los Angeles, CA, Employer	)	

Appearances:
Brett E. Blumstein, Esq., for the appellant[1]
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 18, 2019 appellant, through counsel, filed a timely appeal from a February 28, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

[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.

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.[3]

ISSUE

The issue is whether appellant has met her burden of proof to establish disability commencing June 10, 2018 causally related to her accepted January 29, 2018 employment injuries.

FACTUAL HISTORY

On February 1, 2018 appellant, then a 53-year-old supervisor medical supply technician, filed a traumatic injury claim (Form CA-1) alleging that on January 29, 2018 her walker became stuck under a chair and she fell to the floor while in the performance of duty.[4] She stopped work on January 30, 2018 and has not returned. OWCP accepted the claim for contusions of the knees, initial encounter.

On July 31, 2018 appellant filed a claim for compensation (Form CA-7) for leave without pay (LWOP) for the period June 10 through July 27, 2018.

OWCP, in an August 7, 2018 development letter, informed appellant of the evidence deficiencies of her claim for compensation. It advised her of the type of medical evidence needed and afforded her 30 days to provide the necessary evidence.

On August 10, 2018 appellant filed an additional Form CA-7 requesting LWOP for the period July 27 through August 10, 2018.

In an industrial work status report and a form report dated August 10, 2018, Dr. Breda Whelan Carroll, an attending occupational medicine specialist, noted a history of the accepted January 29, 2018 employment injuries and that appellant was status post March 23, 2017 left hip surgery performed following her fall at home. She diagnosed bilateral knee contusions, subsequent. Dr. Carroll placed appellant on modified activity at work and home from the date of her examination through August 31, 2018. She checked a box marked "yes" in response to whether the occurrence described above was the competent producing cause of the injury and disability.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that following the February 28, 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.*

[4] The record indicates that appellant underwent left hip surgery in March 2017. She returned to work using a walker and fell on her knees.

In a second development letter dated August 17, 2018, OWCP again informed appellant of the evidence needed to support her disability claim. It afforded her another 30 days to provide the necessary evidence.

Dr. Carroll, in a form report dated August 29, 2018, reiterated appellant's history of injury and her prior diagnoses of bilateral knee contusions, subsequent. She placed appellant on modified activity at home and work through September 19, 2018. Dr. Carroll again checked a box marked "yes" in response to whether the occurrence described above was the competent producing cause of the injuries and disability.

In an August 29, 2018 note, Dr. Carroll noted that, according to Dr. Monti Khatod, an attending Board-certified orthopedic surgeon, appellant's fall on January 29, 2018 exacerbated her underlying left hip pain.

On September 14, 2018 appellant filed an additional Form CA-7 requesting LWOP for the period August 31 to September 14, 2018.

In an additional industrial work status report dated June 8, 2018, Dr. Carroll released appellant to return to full capacity work. In industrial work status reports and attending physician's supplementary reports dated July 20, August 10 and 29, and September 17, 19, and 20, 2018, she continued to reiterate appellant's history of injury and her prior bilateral knee diagnoses. Dr. Carroll also diagnosed bilateral knee medial meniscus tears, subsequent. She again checked a box marked "yes" in response to whether the occurrence described above was the competent producing cause of the injuries and disability.

In magnetic resonance imaging (MRI) scan reports dated August 10, 2018, Dr. Albert Cho, a Board-certified diagnostic radiologist, provided impressions of probable tear in the posterior horn of the medial meniscus, thinning of the articular cartilage in the medial and lateral joint compartments, and mild effusion of the right and left knees. He also provided impressions of mild bone marrow edema in the tibial spine and degenerative changes in the patella of the right knee.

On September 28, 2018 appellant filed another Form CA-7 requesting LWOP for the period September 14 to 28, 2018.

OWCP, by decision dated October 4, 2018, denied appellant's claims for disability compensation commencing June 10, 2018 finding that she had not submitted rationalized medical evidence sufficient to establish that the claimed disability was causally related to her accepted January 29, 2018 employment-related injuries.

OWCP continued to receive form reports dated October 11 and November 5 and 30, 2018 from Dr. Carroll.

In an October 16, 2018 medical report, Dr. John W. Ellis, a Board-certified orthopedic surgeon, noted a history of the accepted January 29, 2018 employment injuries and appellant's nonwork-related March 2017 left hip fracture and resultant surgery. He also noted her complaints of pain in her left hip, knees, back, and iliolumbar joints, and reviewed her medical records. Dr. Ellis discussed examination findings and diagnosed medial meniscus tears of the knees, chondromalacia and traumatic arthritis of the knees, left hip total replacement, muscle tendon unit

strain of the back, and lumbosacral plexus impingement. He opined that appellant's January 29, 2018 employment-related fall caused an injury to the meniscus and cartilage in both knees, new internal injuries in the left hip, an aggravation of the prior left hip joint conditions, and a right hip strain which had resolved. Dr. Ellis reasoned that it was medically reasonable and more likely than not that the force of the fall onto appellant's knees jammed her left hip, which aggravated and contributed to her left hip condition necessitating total hip replacement. He further reasoned that it was medically reasonable that she contused the patella of each knee, as the force of the fall was so severe that it more likely than not caused tearing of the meniscus and injured the cartilage of each knee. Dr. Ellis indicated that the antalgic gait from appellant's left hip and both knees caused additional strains of her iliolumbar ligaments caused intermittent lumbosacral plexus impingement. He related that she would probably need arthroscopic surgery, repair of the meniscus, and shaving of cartilage in both knees. In addition, Dr. Ellis recommended continued use of maintenance medications for the left hip and both knees and back surgery. He requested an upgrade of appellant's accepted conditions to include medial meniscus tear and chondromalacia of the right knee, tear posterior horn medial meniscus and chondromalacia medial and lateral compartments of the left knee, aggravation of the previous left hip fracture, muscle tendon unit strain of the back, and left lumbosacral plexus impingement abased on the August 10, 2018 MRI scan findings. Dr. Ellis opined that appellant had been temporarily totally disabled since January 29, 2018 and remained temporarily totally disabled. He reviewed a description of her medical supply technician position and opined that she was unable to successfully perform the requirements of the position. Dr. Ellis advised that appellant could perform sedentary work with restrictions, but noted that no such a position had been offered to her. He maintained that continued work in her current position would aggravate her left hip and bilateral knee conditions.

On December 7, 2018 appellant requested reconsideration of the October 4, 2018 decision.

On December 13, 2018 appellant filed a Form CA-7 claim for compensation for LWOP from November 9 to 23, 2018.

OWCP, by decision dated February 28, 2019, denied modification of its October 4, 2018 decision.

LEGAL PRECEDENT

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.[5] Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.[6]

[5] *See M.B.*, Docket No. 18-1455 (issued March 11, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

[6] *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.[7] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.[8]

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.[9] The opinion of the physician 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 employee.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability commencing June 10, 2018 causally related to her accepted January 29, 2018 employment injuries.

In an October 16, 2018 report, Dr. Ellis opined that appellant's medial meniscus tears, chondromalacia, and traumatic arthritis of the right and left knees, left hip total replacement, muscle tendon unit strain of the back, and lumbosacral plexus impingement were caused by her January 29, 2018 employment-related fall. While Dr. Ellis noted that the August 10, 2018 bilateral knee MRI scans demonstrated that appellant had additional employment-related bilateral knee conditions and that these conditions caused strains of the iliolumbar ligaments and resulted in intermittent lumbosacral plexus impingement, he did not otherwise provide medical rationale explaining how the accepted January 29, 2018 employment injuries caused disability from work. Dr. Ellis also opined that appellant had been temporarily totally disabled since January 29, 2018 and that she remained temporarily totally disabled. He maintained that continued work in her current medical supply technician position would aggravate her left hip and bilateral knee conditions. Dr. Ellis did not, however, provide medical rationale explaining how the accepted employment injuries caused appellant's disability from work. The Board has held that medical evidence that does not provide an opinion as to whether a period of disability is due to an accepted employment condition is insufficient to meet a claimant's burden of proof.[11] Therefore the October 16, 2018 report of Dr. Ellis is insufficient to establish appellant's claim. For these reasons, the Board finds that his report is insufficient to establish appellant's claim.

[7] *Id*. at § 10.5(f); *see e.g.*, *G.T.*, *supra* note 8; *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[8] *See G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Merle J. Marceau*, 53 ECAB 197 (2001).

[9] *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

[10] *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[11] *M.A.*, Docket No. 19-1119 (issued November 25, 2019); *S.I.*, Docket No. 18-1582 (issued June 20, 2019).

Dr. Carroll's reports related a history of appellant's accepted January 29, 2018 employment injuries and nonemployment-related fall at home and resultant March 23, 2017 left hip surgery. She diagnosed bilateral knee contusions, subsequent, and bilateral knee medial meniscus tears, subsequent. Dr. Carroll restricted appellant to modified duty work commencing August 10, 2018. She checked a box marked "yes" in response to whether the occurrence described above was the competent producing cause of the injuries and disability. While Dr. Carroll indicated that appellant was partially disabled, she did not specifically explain how her accepted and other conditions had caused or contributed to the claimed period of disability beginning June 10, 2018. The Board has held that when a physician's opinion consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[12]

In her August 29, 2018 note, Dr. Carroll merely referenced Dr. Khatod's opinion that appellant's employment-related January 29, 2018 fall exacerbated her underlying left hip pain, rather than provided her own opinion relative to causal relationship. The Board finds, therefore, that Dr. Carroll's note is insufficient to establish appellant's claim.

Dr. Cho's August 10, 2018 bilateral knee MRI scan reports did offer diagnoses of bilateral knee conditions, however, the Board has held that diagnostic studies lack probative value as they do not address whether the employment injury caused the claimed period of disability.[13]

The Board finds that appellant failed to submit sufficient medical evidence to establish employment-related disability for the period claimed due to her accepted January 29, 2018 employment injuries.[14]

On appeal counsel contends that Dr. Ellis' report is sufficient to establish employment-related disability commencing June 10, 2018. However, for the reasons noted above, Dr. Ellis' medical report failed to contain a rationalized medical opinion explaining how appellant's inability to work beginning June 10, 2018 resulted from her accepted January 29, 2018 employment injuries. Therefore, his opinion is insufficient to establish that appellant's total disability was caused by the accepted employment injuries.

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 disability commencing June 10, 2018 causally related to her accepted January 29, 2018 employment injuries.

[12] *See M.O.*, Docket No. 18-1056 (issued November 6, 2018); *Deborah L. Beatty*, 54 ECAB 3234 (2003).

[13] *See R.B.*, Docket No. 18-0048 (issued June 24, 2019); *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[14] *See L.G.*, Docket No. 18-0140 (issued August 6, 2019); *Alfredo Rodriguez*, 47 ECAB 437 (1996).

ORDER

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

Issued: January 3, 2020
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board