United States Department of Labor
Employees' Compensation Appeals Board

Y.C., Appellant	)	
and	)	**Docket No. 19-0366**
	)	**Issued: May 20, 2020**
DEPARTMENT OF VETERANS AFFAIRS, EDWARD HINES, JR. VA MEDICAL CENTER, Hines, IL, 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:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On December 10, 2018 appellant, through counsel, filed a timely appeal from a September 20, 2018 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 June 10, 2017 employment incident.

FACTUAL HISTORY

On June 13, 2017 appellant, then a 46-year-old pharmacy technician, filed a traumatic injury claim (Form CA-1) alleging that on June 10, 2017 she injured her left knee when she slipped on a cluttered floor and hit her knee on a shelf while in the performance of duty. She stopped work on June 11, 2017.

In an employing establishment's emergency treatment note dated June 14, 2017, Dr. Stephen Kalmar, Board-certified in family medicine, checked form boxes indicating that appellant had been treated for a work-related left knee bruise. He noted that she was able to lift 300 pounds and that she could return to work with no restrictions on June 14, 2017.

In a treatment note dated June 20, 2017, Dr. Catherine Yi, a Board-certified internist, noted appellant's complaint of left knee pain and that she had a history of a right knee meniscal tear. She indicated that appellant told her that she had injured herself at work on June 10, 2017 when she stepped on a piece of rug and fell, hitting her left knee on the corner of a shelf. Dr. Yi described examination findings of a hyperextended, severely inverted left knee with inflammatory changes, medial joint line tenderness, and crepitus. She diagnosed acute pain of the left knee and referred appellant for an orthopedic consult.[3] On an attending physician's report (Form CA-20) of even date, Dr. Yi diagnosed a meniscal tear and checked a box marked "yes," indicating that the condition was employment related.

In reports dated June 28, 2017, Patrick Graham, a nurse practitioner, noted a history that appellant slipped and fell on June 10, 2017, injuring her left knee, on June 10, 2017 and that she had returned to work earlier that week. He described examination findings of knee tenderness and noted osteoarthritis seen on x-ray. Mr. Graham diagnosed a contusion and advised that appellant was able to return to full-duty work.

On September 15, 2017 Dr. Yi reported appellant's complaint of knee pain. She noted that appellant told her that she had an acute onset of left knee pain on June 12, 2017 when she tripped over a rug at work and hit her knee on a filing cabinet. Dr. Yi observed examination findings of inflammatory changes, medial joint line tenderness, crepitus, warmth, and decreased range of motion, with positive valgus stress patellar grind tests. She diagnosed bilateral chronic knee pain and recommended a left knee MRI scan.

A September 27, 2017 MRI scan of the left knee demonstrated a complex tear of the body and posterior horn of the medial meniscus with extrusion, a small radial tear of the free edge of the body of the lateral meniscus, high-grade cartilage loss in the medial and patellofemoral compartments, a grade 1 sprain of the medial collateral ligament, large complex joint effusion, a

[3] Dr. Yi also reported findings from a May 2014 magnetic resonance imaging (MRI) scan that demonstrated a meniscal tear. However, she did not indicate if the MRI scan was of the right or left knee.

tiny partially-ruptured Baker's cyst, reactive posteromedial bursitis, low-grade vastus medialis muscle strain, diffuse muscle atrophy, and edema of the superolateral Hoffa's fat pad.

On October 3, 2017 Mr. Graham noted appellant's complaint of continued left knee pain. He described examination findings, reviewed the MRI scan, and diagnosed left knee pain, medial meniscus derangement, and primary osteoarthritis of the left knee.

On October 27, 2017 Dr. Imran Omar, a Board-certified radiologist, performed a left knee ultrasound-guided left knee aspiration/injection. Intraprocedural images demonstrated a moderately-sized joint effusion with scattered patellofemoral marginal osteophytes and mild progressive distention of the suprapatellar joint recess.

In a development letter dated January 22, 2018, OWCP informed appellant that she had submitted insufficient factual or medical evidence to establish her claim. It advised her of the type of evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In correspondence dated February 6, 2018, Dr. Yi wrote that appellant had been seen on January 5, 2018 for an acute meniscal tear of the left knee, confirmed by MRI scan. She indicated that appellant had been referred to physical therapy and would follow up with orthopedics.

By decision dated February 23, 2018, OWCP accepted that the June 10, 2017 employment incident occurred as alleged. It denied the claim, however, finding that appellant had not submitted sufficient evidence to establish causal relationship between her diagnosed conditions and the accepted June 10, 2017 employment incident.

On March 26, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. During the July 30, 2018 hearing, appellant described the June 10, 2017 incident and her subsequent medical treatment. Counsel stated that he would attempt to obtain a narrative medical report from Dr. Yi. The hearing representative afforded at least 30 days to submit additional evidence. No additional evidence was submitted.

By decision dated September 20, 2018, OWCP's hearing representative affirmed the February 23, 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 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

[4] *Supra* note 2.

[5] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[8]

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[9] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left knee condition causally related to the accepted June 10, 2017 employment incident.

On June 14, 2017 Dr. Kalmar checked form boxes indicating that appellant had been treated for a work-related left knee bruise. In a June 20, 2017 Form CA-20 report, Dr. Yi diagnosed a meniscal tear and checked a form box marked "yes," indicating that the condition was caused or aggravated by falling and hitting her knee at work. She provided no further explanation. The Board has held, however, that when a physician's opinion on causal relationship consists only of a checkmark on a form, without further explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[11]

In additional reports dated June 20, 2017 to February 6, 2018, Dr. Yi noted treatment for a left knee condition, but failed to provide an opinion as to the cause of appellant's left knee condition. The Board has held, however, that medical evidence that does not offer an opinion

[6] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *Gary J. Watling*, 52 ECAB 278 (2001).

regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[12] Dr. Yi's opinion is, therefore, insufficient to establish appellant's claim.

Appellant submitted reports from Mr. Graham, a nurse practitioner, dated June 28, 2017 and October 3, 2017. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers however are not considered "physician[s]" as defined under FECA.[13] Consequently, Mr. Graham's medical findings and/or opinions will are of no probative value and insufficient to establish the claim.[14]

The September 27, 2017 left knee MRI scan and October 27, 2017 left knee ultrasound-guided aspiration/injection also do not constitute probative medical evidence. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion on the relationship between the employment incident and a claimant's diagnosed condition.[15]

As appellant has not submitted rationalized medical evidence to establish an injury causally related to the incident of June 10, 2017, the Board finds that she 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 left knee condition causally related to the accepted June 10, 2017 employment incident.

[12] *P.L.*, Docket No. 19-1750 (issued March 26, 2020); *Willie M. Miller*, 53 ECAB 697 (2002).

[13] Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as 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 S.K.*, Docket No. 18-1414 (issued April 29, 2020); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); *see also S.L.*, Docket No. 19-0603 (issued January 28, 2020) (nurse practitioners are not considered physicians as defined under FECA).

[14] *Id.*

[15] *See P.L.*, *supra* note 12; *C.F.*, Docket No. 18-1156 (issued January 22, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

ORDER

IT IS HEREBY ORDERED THAT the September 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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