

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

_____)	
W.R., Appellant)	
)	
and)	Docket No. 19-0460
)	Issued: May 18, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
New York, NY, Employer)	
_____)	

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 December 27, 2018 appellant, through counsel, filed a timely appeal from a November 21, 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.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 November 21, 2018 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 right knee condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On March 30, 2016 appellant, then a 30-year-old city carrier associate, filed an occupational disease claim (Form CA-2) alleging that she developed a right knee condition due to factors of her federal employment including prolonged repetitive use of her knee. She noted that she first became aware of her condition on November 5, 2014 and realized it was causally related to her federal employment on January 2, 2015. Appellant stopped work on January 20, 2016.

In a certificate of health care provider form dated March 21, 2016, Dr. Jill Groves, Board-certified in family practice, noted that appellant's job required heavy lifting, extensive walking, and delivering parcels. She indicated that her right knee condition had begun in November 2014 and since that time she had experienced flare-ups and was unable to walk long distances, lift heavy objects, bend, or stand for prolonged periods of time.

In an August 4, 2016 development letter, OWCP advised appellant of the deficiencies of her claim. It requested that she submit additional factual and medical evidence, including a reasoned report from her physician addressing causal relationship between a diagnosed medical condition and the identified work factors. OWCP further provided a questionnaire for her completion to substantiate the factual allegations of her claim. It afforded her 30 days to submit the necessary evidence.

Subsequently, OWCP received a June 10, 2015 report from Dr. Frank Maselli, a Board-certified family practitioner, who noted that appellant was incapacitated from work from June 9 to 14, 2015.

On June 15, 2015 Dr. Groves found that appellant was unable to work from June 9 to 16, 2015.⁴

On October 26 and November 5, 2015 Dr. I Martin Levy, a Board-certified orthopedic surgeon, found that appellant was disabled from work until further evaluation.⁵

A magnetic resonance imaging (MRI) scan of the right knee dated November 2, 2015 revealed localized edema, a Hoffa's fat pad impingement possibly causing abnormal patellofemoral dynamics, low-grade chondromalacia at the medial patella facet, and no evidence of a meniscal tear.

Appellant attended physical therapy treatment on February 8, 2016.

⁴ Dr. Grove also provided a work excuse note on August 22, 2015.

⁵ Dr. Levy indicated that he had treated appellant on April 4, 2016.

On August 9, 2016 Dr. Soo Yeon Kim, a Board-certified physiatrist, diagnosed patellofemoral syndrome and recommended physical therapy.

In response to OWCP's development questionnaire, on September 3, 2016 appellant indicated that she had no prior knee condition and had worked for the employing establishment since 2014. She attributed her right knee condition to performing repetitive work duties, running up and down truck stairs, and working in excess of 12 hours a day six days a week.

By decision dated September 28, 2016, OWCP denied appellant's occupational disease claim finding that the factual evidence of record was insufficient to establish that the alleged factors occurred as described. It noted that she had not adequately responded to its request for a detailed explanation of the work factors that she felt caused or contributed to her claimed condition.

Thereafter, appellant submitted a September 16, 2016 report from Dr. Jacob Hascalovici, a Board-certified anesthesiologist, who diagnosed patellofemoral syndrome of the right knee. Dr. Hascalovici noted that her injury "may be related to her prior work at the [employing establishment]."⁶

On October 18, 2016 Dr. Lee H. Trosterman, a Board-certified physiatrist, treated appellant for right knee pain which reportedly developed on November 5, 2014 after repetitive heavy lifting as a mail carrier. Examination of the right knee revealed restricted range of motion, tenderness at the lateral joint line and supra patella tendon, a negative varus and valgus stress tests, and intact strength. Dr. Trosterman diagnosed right knee strain/sprain and right knee derangement. He noted, "With reasonable degree of medical certainty, I conclude that the accident that occurred on November 5, 2014 is the competent producing cause of [appellant's] injuries and there is a causal relationship between the accident and the injuries." Dr. Trosterman opined that she was unable to work due to pain.

On October 18, 2016 Dr. Orsuville Cabatu, a Board-certified physiatrist, diagnosed right knee strain, sprain, and derangement. He found that appellant was totally disabled from work until November 15, 2016.

In a letter dated October 18, 2016, Dr. Carl Franzetti, an osteopath, advised that appellant's work conditions had exacerbated her knee injury and indicated that she was unable to work due to increased pain and swelling. Dr. Maselli provided a similar letter on October 24, 2016.

Appellant attended physical therapy treatment on October 24, 2016.

On October 26, 2016 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

On November 7, 2016 Dr. David Capiola, a Board-certified orthopedist, evaluated appellant for right knee pain. He obtained a history that she sustained an accident on November 5,

⁶ On April 18, 2016 appellant filed a notice of traumatic injury (Form CA-1) alleging that on November 5, 2014 she developed Hoffa's fat pad impingement as a result of excessive use of the right knee while in the performance of duty.

2014 and right knee pain as a result of repetitively lifting heavy objects at work. Dr. Capiola diagnosed right knee derangement and recommended physical therapy.

In reports dated November 17 and December 20, 2016, Dr. Cabatu provided examination findings of restricted range of motion, tenderness at the lateral joint line and supra patella tendon, and antalgic gait. He diagnosed right knee strain, sprain, and derangement and opined that appellant was totally disabled.

By decision dated February 15, 2017, an OWCP hearing representative affirmed the September 28, 2016 decision. She found that appellant had established that the employment factors identified as causing her condition occurred as alleged, but that the medical evidence of record was insufficient to establish a diagnosed condition as a result of the accepted employment factors.

In progress reports dated February 24 to May 12, 2017, Dr. Cabatu treated appellant for right knee pain. He provided examination findings and diagnosed right knee strain/sprain and internal derangement of the right knee. Dr. Cabatu found that appellant was totally disabled from work.

A March 29, 2017 MRI scan of the right knee revealed an intrasubstance tear of the posterior horn of the medial meniscus and a partial tear of the anterior cruciate ligament.

On March 6, 2017 Dr. Capiola provided a history of appellant sustaining an injury at work on November 5, 2014 with right knee pain due to repetitive lifting at work. He diagnosed right knee derangement. On April 17, 2017 Dr. Capiola provided the same history of injury and reviewed the results of the right knee MRI scan. He diagnosed right knee derangement with a symptomatic meniscal tear and quadriceps atrophy and recommended surgery.

On May 31, 2017 appellant requested reconsideration. She submitted an employing establishment report of unsafe condition or practice dated July 2, 2015. Appellant asserted that from July 27, 2014 to July 5, 2015 she worked consecutive Sundays without proper rotation.

OWCP subsequently received additional evidence including a note from a physician assistant noting evaluation of appellant on May 22, 2017 and a May 24, 2017 report wherein Dr. Cabatu advised that he was treating appellant for employment injuries sustained on November 5, 2014. Dr. Cabatu noted that she had worked three and a half years for the employing establishment and, "While at work she experienced right knee pain due to repetitive heavy lifting as a mail carrier. As a direct result of the accident she sustained the following injuries: right knee strain/sprain." He discussed his treatment of appellant beginning October 18, 2016 and his examination findings. Dr. Cabatu opined that within a reasonable degree of medical certainty the November 5, 2014 accident was "the competent producing cause of [her] injuries and there is a causal relationship between the accident and the injuries."

By decision dated December 19, 2017, OWCP denied modification of its February 15, 2017 decision.

Thereafter, OWCP received a May 22, 2017 report from Dr. Cabatu in which he noted that appellant had worked as a carrier since September 2013 and that she worked 10 to 13 hours a day, six days a week, on her feet for 8 hours, driving 2 to 5 hours, and lifting 30 to over 50 pounds.

Dr. Cabatu diagnosed right knee strain/sprain and right knee derangement. He opined that appellant was totally disabled from employment.

On August 28, 2018 appellant, through counsel, requested reconsideration.

In support of her request, appellant submitted a June 1, 2018 report from Dr. Cabatu. Dr. Cabatu noted that she had sustained “a repetitive stress injury to her right knee while employed at [the employing establishment].” He described her employment duties, including working long hours on her feet, driving, and lifting up to 50 pounds. Dr. Cabatu advised that a right knee MRI scan showed a tear of the medial meniscus and a partial tear of the anterior cruciate ligament. He noted that appellant indicated that her right knee began hurting while working full time with overtime and that she denied prior injury to her right knee. Dr. Cabatu indicated that she was totally disabled pending surgery.

On August 28, 2018 Dr. Cabatu again diagnosed right knee strain, sprain, and derangement and found that appellant was totally disabled from work.

By decision dated November 21, 2018, OWCP denied modification of the December 19, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ 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 filed within the applicable time limitation period of FECA,⁸ that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁹ 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.¹⁰

In an occupational disease claim, appellant’s burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.¹¹

⁷ *Supra* note 2.

⁸ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁹ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

¹⁰ *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).

¹¹ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.¹² 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.¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right knee condition causally related to the accepted factors of her federal employment.

In a report dated May 24, 2017, Dr. Cabatu advised that he had treated appellant after a November 5, 2014 employment injury. He diagnosed right knee strain and sprain due to repetitive heavy lifting in the course of her employment, noting that she had worked for the employing establishment for three and a half years. Dr. Cabatu, however, failed to provide medical rationale supporting his opinion. The Board has held that a medical opinion is of limited value if it is conclusory in nature.¹⁴ A medical opinion must explain how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions.¹⁵ Without this explanation, Dr. Cabatu's report is insufficient to meet appellant's burden of proof to establish her claim.¹⁶

On October 18, 2016 Dr. Trosterman diagnosed right knee strain/sprain and right knee derangement. He noted that appellant had a history of an accident on November 5, 2014 and had experienced right knee pain as a result of heavy lifting at work. Dr. Trosterman opined that, to a reasonable degree of medical certainty, the November 5, 2014 accident caused appellant's injuries. He did not, however, provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's right knee condition and the factors of employment.¹⁷ As Dr. Trosterman's opinion lacks the necessary medical rationale explaining how or why the accepted employment factors were sufficient to result in the diagnosed medical conditions, his report is insufficient to establish her claim.¹⁸

On June 1, 2018 Dr. Cabatu described appellant's employment duties, including lifting up to 50 pounds. He noted that she had experienced right knee pain while working overtime without

¹² *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

¹³ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

¹⁴ *R.S.*, Docket No. 19-1774 (issued April 3, 2020); *C.M.*, Docket No. 19-0360 (issued February 25, 2020).

¹⁵ *K.G.*, Docket No. 18-1598 (issued January 7, 2020).

¹⁶ *Id.*

¹⁷ *See C.M.*, Docket No. 19-0360 (issued February 25, 2020); *T.M.*, Docket No. 08-0975 (issued February 6, 2009) (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).

¹⁸ *L.S.*, Docket No. 18-0518 (issued February 19, 2020); *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

a history of a prior right knee injury. Dr. Cabatu opined that a right knee MRI scan showed a tear of the medial meniscus and a partial tear of the anterior cruciate ligament. He advised that appellant had sustained a repetitive stress injury to her right knee while working at the employing establishment. While Dr. Cabatu provided a description of the employment factors believed to have either caused or contributed to her condition, and supported causal relationship, he failed to provide any rationale in support of his opinion.¹⁹ Consequently, as previously explained, his report is insufficient to meet appellant's burden of proof.²⁰

On October 18, 2016 Dr. Franzetti opined that appellant's working conditions had aggravated her knee injury. On October 24, 2016 Dr. Maselli provided a similar report. Dr. Franzetti and Dr. Maselli, however, failed to identify specific factors of appellant's federal employment responsible for a diagnosed right knee condition. To be of probative value, a physician's opinion must explain the nature of the relationship between a diagnosed medical condition and the accepted employment factors.²¹

In a report dated September 16, 2016, Dr. Hascalovici diagnosed patellofemoral syndrome of the right knee. He advised that appellant's injury may be related to her work at the employing establishment. The Board has held that a medical opinion supporting causal relationship must be one of reasonable medical certainty and not speculative or equivocal in character.²² As Dr. Hascalovici's opinion regarding causation is couched in speculative terms, it is of limited probative value.²³

In a March 21, 2016 certificate of health care provider form, Dr. Groves noted that appellant's job required lifting, walking, and delivering parcels. She indicated that appellant's condition had begun in November 2014 and that she was unable to lift heavy objects, walk long distances, or bend and stand for prolonged periods. On November 7, 2016 and March 6, 2017 Dr. Capiola advised that appellant had a history of a November 5, 2014 accident and right knee pain due to performing repetitive heavy lifting at work. He diagnosed right knee derangement. On April 17, 2017 Dr. Capiola provided a history of injury and diagnosed right knee derangement with a symptomatic meniscal tear and quadriceps atrophy. On May 22, 2017 Dr. Cabatu discussed appellant's employment duties and diagnosed a right knee strain/sprain and right knee derangement. While the physicians described appellant's employment duties, they failed to specifically address whether her work duties caused or aggravated a diagnosed medical condition. 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.²⁴

Appellant submitted a June 9, 2015 report from Dr. Maselli, a June 15, 2015 report from Dr. Groves, and October 26 and November 5, 2015 reports from Dr. Levy finding that she was

¹⁹ *D.S.*, Docket No. 19-1814 (issued April 1, 2020).

²⁰ *Supra* note 15.

²¹ *A.S.*, Docket No. 19-1766 (issued March 26, 2020); *Victor J. Woodhams*, 41 ECAB 345 (1989).

²² *D.S.*, *supra* note 19; *A.M.*, Docket No. 19-1138 (issued February 18, 2020).

²³ *Id.*

²⁴ *P.L.*, Docket No. 19-1750 (issued March 26, 2020); *L.A.*, Docket No. 18-0819 (issued March 17, 2020).

disabled from employment. On August 9, 2016 Dr. Kim diagnosed patellofemoral syndrome. In reports dated October 18, 2016 to May 12, 2017 and August 28, 2018, Dr. Cabatu diagnosed right knee strain/sprain and internal derangement and found that appellant was totally disabled from work. None of these physicians, however, addressed the issue of causation in their reports. Their opinions are, therefore, of no probative value.²⁵

Appellant also submitted the results of diagnostic testing. The Board has held, however, that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.²⁶

The record also contains reports authored by physical therapists and a physician assistant. The Board has held that medical reports signed solely by a physical therapist or a physician assistant are of no probative value as such health care providers are not considered “physician[s]” as defined under FECA and are therefore not competent to provide medical opinions.²⁷

As the medical evidence of record is insufficient to establish causal relationship, the Board finds that appellant 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.

²⁵ *Id.*

²⁶ *K.S.*, Docket No. 19-1623 (issued March 19, 2020); *J.M.*, Docket No. 18-0853 (issued March 9, 2020).

²⁷ *See T.T.*, Docket No. 19-1121 (issued November 29, 2019); *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) (this subsection 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). *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA); *J.M.*, 58 ECAB 448 (2007) (physical therapists are not considered physicians under FECA).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right knee condition causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 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