

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

C.P., Appellant	)	
	)	
and	)	<b>Docket No. 19-1716</b>
	)	<b>Issued: March 11, 2020</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Mamaroneck, NY, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
*Alan J. Shapiro, Esq.,* for the appellant<sup>1</sup>  
*Office of Solicitor,* for the Director

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 12, 2019 appellant, through counsel, filed a timely appeal from a June 13, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> Pursuant to the

---

<sup>1</sup> 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.

<sup>2</sup> The Board notes that, following the June 13, 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.*

Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### **ISSUE**

The issue is whether appellant has met her burden of proof to establish that she was disabled commencing May 18, 2018 causally related to her March 29, 2018 employment injury.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>4</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 6, 2018 appellant, then a 43-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on March 29, 2018 she injured her left knee when she was struck by a metal object while in the performance of duty. She stopped work on March 30, 2018 and returned to work on April 1, 2018. OWCP accepted appellant's claim for a left knee contusion.

In a state workers' compensation form dated June 20, 2018, Dr. Arnold B. Wilson, a Board-certified orthopedic surgeon, diagnosed unspecified internal derangement of the left knee and opined that appellant was disabled from employment.<sup>5</sup> He checked a box marked "yes" indicating that the incident, described on the form as a door striking her left knee, was the competent cause of illness.

On July 11, 2018 appellant filed a claim for compensation (Form CA-7) requesting wage-loss compensation from May 18 to June 22, 2018.

By decision dated July 20, 2018, OWCP found that appellant had not established internal derangement of the left knee causally related to her March 29, 2018 employment injury.

In a July 20, 2018 development letter, OWCP advised appellant that the evidence was currently insufficient to establish that she was disabled from employment beginning May 12, 2018. It noted that she had stopped work on March 30, 2018 and did not return. OWCP requested that appellant submit a comprehensive medical report from her physician addressing how her accepted condition had worsened such that she could no longer perform the duties of her position. It afforded her 30 days to submit the necessary evidence.

Thereafter, OWCP received a June 1, 2018 report from Dr. Wilson. Dr. Wilson discussed appellant's history of injury on March 29, 2018 when she was struck on the left knee by a door.

---

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> Docket No. 18-1645 (issued March 8, 2019).

<sup>5</sup> In state workers' compensation forms dated June 7, 2018, Dr. Cathleen L. Bechan-Dugan, Board-certified in family medicine and Dr. Juan Gonzalez Board-certified in emergency medicine, provided diagnoses in the form of diagnostic codes.

He diagnosed internal derangement of the left knee following trauma at work and opined that she was disabled from employment. In a disability certificate of even date, Dr. Wilson advised that appellant was totally disabled pending reevaluation on July 19, 2018.

A July 28, 2018 magnetic resonance imaging (MRI) scan of appellant's left knee revealed a sprain of the medial cruciate ligament (MCL), insertional tendinosis of the distal quadriceps tendon, lateral patellar tilt, and trace fluid.

A physician assistant provided a progress report on August 6, 2018.

On August 15, 2018 appellant telephoned OWCP and advised that she had initially stopped work on March 29, 2018 to seek medical treatment. She had returned to work later on April 2, 2018, but had stopped work again on April 6, 2018 and had not returned.

On August 30, 2018 appellant appealed OWCP's July 20, 2018 decision, finding that she had not established left knee internal derangement due to her employment injury, to the Board.

By decision dated September 4, 2018, OWCP denied appellant's claim for wage-loss compensation beginning May 18, 2018. It found that the medical evidence was insufficient to establish that she was disabled during the claimed period causally related to her accepted left knee contusion.

Thereafter, OWCP received an attending physician's report (Form CA-20) from Dr. Wilson, who diagnosed a left knee MCL sprain, quadriceps tendinosis, and a contusion. Dr. Wilson checked a box marked "yes" that the condition was caused or aggravated by the described employment activity of a door striking appellant's left knee.

In state workers' compensation form reports dated August 6 to October 13, 2018, Dr. Wilson diagnosed internal derangement of the left knee and found that appellant was disabled from employment. He indicated by checking a box marked "yes" that her complaints were consistent with the history of illness and that the incident was a competent cause of the injury. In a form dated September 12, 2018, Dr. Wilson diagnosed a left knee sprain in addition to internal derangement of the left knee.

A physician assistant completed a state workers' compensation form report on August 6, 2018.

The record contains physical therapy reports dated August through September 2018.

Dr. Wilson on September 14, 2018 discussed appellant's history of left knee injuries sustained at work on March 29, 2018 when a door struck her knee causing direct trauma. He related that she was "out of work because of a limited ability to ambulate upon [appellant's] left knee." Dr. Wilson attributed appellant's complaints of left knee pain to her employment injury. On examination, he found tenderness over the medial joint line with mild effusion, atrophy of the quadriceps, and weakness. Dr. Wilson noted that an MRI scan demonstrated tendinosis of the quadriceps and an MCL sprain. He diagnosed status post left knee trauma due to a work accident and an MCL injury. Dr. Wilson advised that appellant had continued disability. In a disability certificate of even date, he found that she was disabled until October 10, 2018.

On September 18, 2018 appellant requested reconsideration of OWCP's September 4, 2018 decision.

In an October 12, 2018 work capacity evaluation (Form OWCP-5c), Dr. Wilson found that appellant could work for eight hours per day with restrictions beginning October 20, 2018.

A physician assistant provided reports on October 12 and November 9, 2018. He also completed a November 9, 2018 work capacity evaluation (Form OWCP-5c).

On December 6, 2018 the employing establishment informed OWCP that appellant had returned to work for four hours per day with restrictions on October 20 to 23, 2018, but had then been sent home. Appellant again resumed modified employment on December 6, 2018.

By decision dated January 2, 2019, OWCP denied modification of its September 4, 2018 decision.

Thereafter, OWCP received a report dated December 21, 2018 from Dr. Wilson. Dr. Wilson indicated that appellant had sustained left knee trauma approximately nine months prior at work, and currently was performing modified duty for four hours per day. On examination, he found tenderness and crepitus at the patellofemoral joint and atrophy and weakness of the quad as opposed to the unaffected side. Dr. Wilson diagnosed "symptoms of significant left knee chondromalacia patella, this is caused by trauma at work." In a disability certificate of even date, he provided work restrictions.

The record contains reports from a physical therapist dated November 17, 2018 to May 1, 2019.

On January 18, 2019 Dr. Wilson opined that appellant had sustained an injury to the MCL of her left knee due to trauma sustained at work. He advised that she was recovering slowly and should remain on modified duty.

In a progress report dated February 22, 2019, signed on March 1, 2019, Dr. Wilson found slow recovery after an MCL injury and opined that appellant could perform modified duty, noting that she was working four hours per day.

By decision dated March 8, 2019, the Board affirmed OWCP's July 20, 2018 decision finding that appellant had not met her burden of proof to establish left knee internal derangement causally related to the accepted March 29, 2018 employment injury.<sup>6</sup>

On March 18, 2019 appellant, through counsel, requested reconsideration of the January 2, 2019 decision.<sup>7</sup> She submitted additional reports from a physician assistant dated March 27 and April 25, 2019.

---

<sup>6</sup> *Supra* note 4.

<sup>7</sup> On April 29, 2019 OWCP referred appellant for a second opinion examination to determine whether she continued to have residuals of her accepted left knee contusion.

By decision dated June 13, 2019, OWCP denied modification of its January 2, 2019 decision. It found that appellant had not submitted medical evidence sufficient to establish that she was disabled from employment during the claimed period due to her accepted condition of a left knee contusion.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>8</sup> has the burden of proof to establish the essential elements of his or her claim.<sup>9</sup> Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>13</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish that she was disabled commencing May 18, 2018 causally related to her March 29, 2018 employment injury.

On June 1, 2018 Dr. Wilson obtained a history of appellant's injury of her left knee on March 29, 2018 when it was struck by a door. He diagnosed internal derangement of the left knee after work trauma and found that she was disabled from employment. While Dr. Wilson opined that appellant was totally disabled from work, he diagnosed internal derangement of the left knee, a condition not accepted by OWCP as employment related.<sup>14</sup> As he did not attribute her disability

---

<sup>8</sup> *Supra* note 3.

<sup>9</sup> See *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *B.O.*, Docket No. 19-0392 (issued July 12, 2019).

<sup>10</sup> 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

<sup>11</sup> *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

<sup>12</sup> *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>13</sup> See *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *William A. Archer*, 55 ECAB 674 (2004).

<sup>14</sup> 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. *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

to the accepted condition of a left knee contusion, his opinion is insufficient to meet her burden of proof.<sup>15</sup>

In state workers' compensation forms dated June through October 2018, Dr. Wilson diagnosed internal derangement of the left knee and indicated that appellant was disabled from employment. He checked a box marked "yes" that the described employment incident of a door striking her left knee was competent to produce the injury. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking a box marked "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and insufficient to meet appellant's burden of proof.<sup>16</sup>

In a September 14, 2018 report, Dr. Wilson discussed appellant's history of a March 29, 2018 employment injury. He noted that an MRI scan demonstrated tendinosis of the quadriceps and an MCL sprain. Dr. Wilson diagnosed status post left knee trauma due to an accident at work and an MCL injury. He opined that appellant was unable to work because of difficulty with ambulation. Dr. Wilson did not, however, provide rationale explaining how her inability to work was causally related to her March 29, 2018 accepted left knee contusion.<sup>17</sup> A mere conclusion without medical rationale supporting a period of disability due to the accepted employment condition is insufficient to meet appellant's burden of proof.<sup>18</sup>

On October 12, 2018 Dr. Wilson completed a work capacity evaluation (Form OWCP-5c) providing work restrictions. He did not, however, provide any rationale explaining the causal relationship between any disability for work and the March 29, 2018 employment injury; thus, his opinion is of diminished probative value.<sup>19</sup>

On December 21, 2018 Dr. Wilson diagnosed left knee chondromalacia patella due to left knee trauma that had occurred nine months prior. He provided work restrictions. Dr. Wilson did not address whether appellant was disabled due to her accepted condition of a left knee contusion for a specific period on or after May 18, 2018. The Board has held that medical evidence that does not provide an opinion regarding whether a period of disability is due to an accepted employment condition is insufficient to establish a claim.<sup>20</sup>

In January 18 and February 22, 2019 progress reports, Dr. Wilson advised that appellant was recovering from an MCL injury and should perform modified employment. He did not address whether she was totally disabled beginning May 18, 2018 due to her accepted employment injury.

---

<sup>15</sup> See *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

<sup>16</sup> *K.G.*, Docket No. 18-1598 (issued January 7, 2020).

<sup>17</sup> *M.L.*, Docket Nos. 18-1058, 18-1224 (issued November 21, 2019).

<sup>18</sup> *A.A.*, Docket No. 19-1165 (issued December 16, 2019); *S.H.*, Docket No. 19-1128 (issued December 2, 2019).

<sup>19</sup> *O.W.*, Docket No. 17-1881 (issued May 1, 2018).

<sup>20</sup> *C.R.*, Docket No. 19-1427 (issued January 3, 2020).

As noted, evidence that does not address appellant's accepted condition and the dates of disability claimed is insufficient to meet her burden of proof.<sup>21</sup>

OWCP received an Form CA-20 from Dr. Wilson who diagnosed a left knee MCL sprain, quadriceps tendinosis, and a contusion. Dr. Wilson checked a box marked "yes" that the condition was caused or aggravated by the described employment activity of a door striking appellant's left knee. However, the checking of a box marked "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.<sup>22</sup>

Appellant submitted a July 28, 2018 MRI scan. Diagnostic studies lack probative value as they do not address whether the employment injury caused the claimed period of disability.<sup>23</sup>

The record contains numerous reports from physician assistants and physical therapists. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered "physician[s]" as defined under FECA.<sup>24</sup> Therefore, these reports are insufficient to meet appellant's burden of proof.<sup>25</sup>

On appeal counsel contends that OWCP failed to utilize the appropriate causation standard or give deference to appellant's attending physician. As explained above, however, the medical evidence is insufficient to establish that appellant was totally disabled beginning May 18, 2018 due to her accepted employment injury. Consequently, 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 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 that she was disabled commencing May 18, 2018 causally related to her March 29, 2018 employment injury.

---

<sup>21</sup> *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>22</sup> *M.D.*, Docket No. 18-0195 (issued September 13, 2018).

<sup>23</sup> *See L.C.*, Docket No. 19-1301 (issued January 29, 2020); *C.R.*, *supra* note 20.

<sup>24</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(f).

<sup>25</sup> *K.G.*, *supra* note 16; *K.W.*, 59 ECAB 271 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 13, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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