

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

P.R., Appellant)	
)	
and)	Docket No. 20-0596
)	Issued: October 6, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Plainfield, IN, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 23, 2020 appellant, through counsel, filed a timely appeal from an October 24, 2019 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 establish a recurrence of disability commencing December 21, 2017 causally related to her accepted February 5, 2014 employment injury.

FACTUAL HISTORY

On February 10, 2014 appellant, then a 53-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 5, 2014 she injured her knee while in the performance of duty. She explained that she was in the loading area when she fell over a chunk of ice and landed on her knee. Appellant stopped work on February 6, 2014. On May 8, 2014 OWCP accepted her claim for a right knee sprain/strain.

OWCP subsequently received an April 15, 2014 work status report with an illegible signature indicating that appellant could return to work with the restrictions of performing desk work only.

In a May 22, 2014 medical report, Dr. Kyle Ritter, a Board-certified orthopedic surgeon, evaluated appellant for right knee pain related to the February 5, 2014 employment incident. He made note of her previous 2006 right knee arthroscopy and her preexisting medical conditions of hypertension, anxiety, fibromyalgia and degenerative arthritis.³ Dr. Ritter diagnosed right knee arthritis and recommended that she undergo a right knee total arthroplasty to treat her condition.

In an August 13, 2014 letter, the employing establishment noted that appellant had been receiving treatment and light-duty assignment related to right knee arthritis and not the accepted right knee sprain/strain. It terminated her limited-duty assignment and instructed her to apply for light duty.

In a May 27, 2014 diagnostic report, Dr. Joseph Mulholland, a Board-certified diagnostic radiologist, performed a magnetic resonance imaging (MRI) scan of appellant's right knee and diagnosed a degenerative tear of the posterior horn and midbody of the medial meniscus with displaced meniscal fragments in the intercondylar notch, a chronic tear of the anterior cruciate ligament, degenerative changes with articular cartilage loss diffusely in the medial compartment, thinning of the undersurface of the patella and focal cartilage loss over the articular surface of the lateral femoral condyle and a large Baker's cyst.⁴

³ The Board notes that appellant has a prior claim under OWCP File No. xxxxxx298 which was accepted for the conditions of open wound of the hip and thigh without complications. Appellant also has a prior claim under OWCP File No. xxxxxx656 which was accepted for the conditions of neck and back (lumbar) sprains and contusion of the shoulder and upper arm.

⁴ On March 29, 2016 appellant filed a schedule award claim (Form CA-7). In a May 3, 2016 development letter, OWCP requested that she submit an impairment evaluation from her attending physician addressing whether she had reached maximum medical improvement (MMI) and evaluating the extent of permanent impairment, if any, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (2009).

In a March 2, 2016 medical note, Dr. Anthony Mimms, Board-certified in physical medicine, provided that he had treated appellant for her fibromyalgia, sacroiliitis, back spasms, facet syndrome, and right knee pain. He opined that she was no longer able to maintain gainful employment as a result of her conditions and recommended that she file for disability.

In a March 17, 2016 medical report, Dr. Ritter noted that appellant was unable to be approved for her right knee arthroplasty and that she utilized a cane in order to ambulate. He diagnosed right knee arthritis and opined that she would be unable to return to work without restrictions without surgical treatment.

In a November 11, 2016 prescription, Dr. Nilda Durany, Board-certified in family medicine, indicated that appellant would undergo therapy in order to treat her right knee sprain.

In a December 14, 2017 medical report, Dr. Ritter diagnosed primary osteoarthritis of the right knee and indicated that appellant was unable to return to her previous work duties due to the increased pain and limitations directly related to her work injury. He opined that appellant's employment injury caused her arthritis symptoms to worsen and that it was unlikely she would improve without surgical treatment.

On January 5, 2018 appellant filed a Form CA-7 for leave without pay (LWOP) for disability from work for the period December 21, 2017 to January 5, 2018.⁵

In a January 22, 2018 development letter, OWCP advised appellant of the type of evidence needed to establish her recurrence claim. It requested that she submit a detailed medical report from her physician that clearly established how her claimed disability from work was causally related to her accepted employment injury of a right knee sprain/strain in contrast to her nonwork-related diagnosis of right knee osteoarthritis. OWCP provided appellant 30 days to submit the necessary evidence.

In a February 16, 2018 letter, Dr. Ritter explained that appellant's symptoms of knee soreness, locking, catching, and worsening range of motion were all related to her February 5, 2014⁶ employment injury. He noted that the injury appellant sustained was a sprain of the ligaments surrounding the knee as well as a significant flare up and aggravation of her arthritis. Dr. Ritter opined that, due to the severity of her arthritis and the significance of the injury she sustained, she was unable to return to her baseline. He noted that appellant's ability to ambulate at work had significantly decreased since her injury and opined that a total knee arthroscopy was necessary as nonsurgical treatment had failed to improve her condition.

By decision dated February 22, 2018, OWCP denied appellant's claims for compensation finding that she failed to submit sufficient medical evidence to establish causal relationship between the claimed period of disability and her accepted employment conditions.

⁵ Appellant also submitted separate Form CA-7 claims for compensation dated January 20 and February 13, 2018 for LWOP for disability from work for the period beginning January 8, 2018 and continuing.

⁶ Dr. Ritter's letter provides February 6, 2014 as the date of injury, however this appears to be a typographical error.

On March 19, 2018 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted a December 14, 2017 diagnostic report in which Dr. Michael Flood, a Board-certified podiatrist, performed an x-ray of appellant's knees. Dr. Flood diagnosed advanced medial and patellofemoral arthritis of both knees with mild lateral joint space arthritis of both knees.

By decision dated August 17, 2018, OWCP's hearing representative affirmed OWCP's February 22, 2018 decision, finding that the medical evidence of record was insufficient to establish a material worsening of the accepted condition or to provide medical rationale explaining why appellant was no longer able to perform her job duties due to an injury occurring four years earlier.

On April 19, 2019 appellant, through counsel, requested reconsideration of OWCP's August 17, 2018 decision.

By decision dated April 22, 2019, OWCP denied appellant's request for reconsideration finding that she neither raised substantive legal questions nor included any new and relevant evidence.

In an April 17, 2019 medical note, Dr. Ritter noted that appellant had reached MMI on December 14, 2017.

On July 29, 2019 appellant, through counsel, again requested reconsideration of OWCP's August 17, 2018 decision.

In a July 24, 2019 letter, Dr. Ritter explained that, on evaluation of appellant's right knee injury due to the February 5, 2014 employment incident, her findings were consistent with significant long-term severe arthritic changes aggravated directly by her employment injury. He indicated that her symptoms prior to her injury were mild and manageable and opined that appellant's February 5, 2014 injury led to a direct aggravation of her arthritic condition. Dr. Ritter reasoned that her underlying arthritis and cartilage loss made her joint more susceptible to direct trauma and impact like the injury appellant sustained. He further reasoned that the resulting damage could lead to destabilization of the remaining articular structural cartilage and deterioration of the joint with persistent symptoms, as appellant has demonstrated. Dr. Ritter concluded by opining that it was more likely than not and reasonably medically certain that appellant's injury aggravated her preexisting condition.

By decision dated October 24, 2019, OWCP denied modification of its August 17, 2018 decision.

LEGAL PRECEDENT

OWCP's implementing regulations define a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition,

which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment.⁷

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁸ Where no such rationale is present, the medical evidence is of diminished probative value.⁹

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing December 21, 2017 causally related to her accepted February 5, 2014 employment injury.

In his July 24, 2019 letter, Dr. Ritter noted appellant's history of significant long-term severe arthritic changes and cartilage loss and opined that her February 5, 2014 employment injury directly aggravated her existing conditions. He continued by explaining that the resulting damage could lead to the destabilization of the remaining articular structural cartilage and deterioration of the joint with persistent symptoms, as she has demonstrated. Dr. Ritter concluded by opining that it was more likely than not and reasonably medically certain that appellant's injury aggravated her preexisting condition. He did not, however, address the period of claimed recurrence or indicate that appellant was totally disabled for any specific period. 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-related condition is insufficient to meet a claimant's burden of proof.¹¹ 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,

⁷ 20 C.F.R. § 10.5(x).

⁸ See *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

⁹ *Id.*

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *D.T.*, Docket No. 19-1064 (issued February 20, 2020).

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

would essentially allow an employee to self-certify their disability and entitlement to compensation.¹² Thus, Dr. Ritter's July 24, 2019 letter is insufficient to meet appellant's burden of proof.

Similarly, in his February 16, 2018 letter, Dr. Ritter explained that appellant's February 5, 2014 knee sprain and associated symptoms caused a significant flare up and aggravation of her arthritis. He opined that, due to the severity of her arthritis and the injury she sustained, appellant was unable to return to her baseline. Dr. Ritter recommended that she undergo a total knee arthroscopy as her ability to ambulate at work had significantly decreased and nonsurgical treatment had failed to improve her condition. The Board finds that he failed to provide a rationalized medical opinion explaining why appellant's employment injury prevented her from working for the claimed period. Rather, Dr. Ritter's mere conclusory opinion, without the necessary rationale explaining how and why the employment injury caused disability from work, is insufficient to establish appellant's claim.¹³

In a December 14, 2017 medical report, Dr. Ritter diagnosed primary osteoarthritis of the right knee and provided that appellant was unable to return to her previous work duties due to the increased pain and limitations directly related to her work injury. He opined that her work injury caused her arthritis symptoms to worsen and that it was unlikely she would improve without surgical treatment. As stated above, a mere conclusory opinion, without the necessary rationale explaining how and why the employment injury caused disability from work, is insufficient to establish appellant's claim.¹⁴ Further, as Dr. Ritter attributed appellant's disability to a medical diagnosis not accepted by OWCP, his opinion on recurrent disability is insufficient to establish the claim.¹⁵

The remaining medical evidence of record predates the claimed period of disability. As it does not provide an opinion concerning appellant's recurrence of disability commencing December 21, 2017, it is of no probative value and insufficient to establish the recurrence claim.¹⁶

As appellant has not submitted medical evidence establishing a recurrence of disability commencing December 21, 2017 causally related to her accepted employment injury, 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.

¹² *D.P.*, Docket No. 18-1439 (issued April 20, 2020); *William A. Archer*, 55 ECAB 674 (2004).

¹³ *M.N.*, Docket No. 18-0741 (issued April 2, 2020).

¹⁴ *Id.*

¹⁵ *See V.H.*, Docket No. 18-0456 (issued August 9, 2019); *J.L.*, Docket No. 15-1951 (issued May 16, 2016).

¹⁶ *M.L.*, Docket No. 18-1058 (issued November 21, 2019); *D.J.*, Docket No. 18-0200 (issued August 12, 2019).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing December 21, 2017 causally related to her accepted February 5, 2014 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 6, 2020
Washington, DC

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

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

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