United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 20-0613**
	)	**Issued: September 25, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Reisterstown, MD, Employer	)	

Appearances:
Appellant, pro se
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 January 6, 2020 appellant filed a timely appeal from a July 9, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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.[3]

[1] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One-hundred eighty days from July 9, 2019, the date of OWCP's last merit decision, was January 5, 2020. As this fell on a Sunday, the time period for filing her appeal did not expire until the next business day, which was Monday, January 6, 2020, rendering the appeal timely filed. *See M.H.*, Docket No. 13-1901 (issued January 8, 2014); *Debra McDavid*, 57 ECAB 149, 150 (2005); *Angel M. Lebron, Jr.*, 51 ECAB 488, 490 (2000); *Gary J. Martinez*, 41 ECAB 427, 427-28 (1990).

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the July 9, 2019 decision, OWCP received additional evidence on appeal. 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a right knee injury causally related to the accepted January 23, 2019 employment incident.

FACTUAL HISTORY

On January 24, 2019 appellant, then a 39-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 23, 2019, while walking, her right knee locked up when delivering mail in the performance of duty. She attempted to finish her route, but stated that her knee was not moving well. Appellant sought treatment at the emergency room where she indicated that the doctor stated "the meniscus was torn." She stopped work on January 24, 2019.

In a January 23, 2019 medical note, Deena Najera, a physician assistant, requested that appellant be excused from work from January 24 through 28, 2019.

In a January 28, 2019 medical report, Jesse Bortell, a physician assistant, treated appellant for a January 23, 2019 right knee injury in which she felt it lock up while she was at work. Appellant informed him that she went to the emergency room and that she possibly tore her meniscus, but did not undergo a magnetic resonance imaging (MRI) scan. After evaluation of an x-ray, Mr. Bortell diagnosed a sprain of an unspecified site of the right knee. He recommended light duty consisting of sedentary work with no walking and provided treatment instructions for her to follow. The same day, appellant accepted an offer of modified-duty work at the employing establishment.

In a development letter dated February 14, 2019, OWCP informed appellant that her claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that continuation of pay was not controverted by the employing establishment and, thus, limited expenses had therefore been authorized. However, a formal decision was now required. OWCP advised appellant of the type of factual and medical evidence required to establish her traumatic injury claim and provided a questionnaire for her completion to provide further details regarding the circumstances of the claimed January 23, 2019 employment incident. It also requested a narrative medical report from appellant's physician, which provided the physician's rationalized medical explanation as to how the alleged employment incident caused her diagnosed condition. OWCP afforded her 30 days to respond.

In a January 23, 2019 medical report, Dr. Douglas Weber, Board-certified in emergency medicine, evaluated appellant's stiffness of the right knee that began while she was delivering mail and diagnosed a sprain of an unspecified site of the right knee. He also provided her with a series of home exercises to perform in order to treat her condition. In a diagnostic report of even date, Dr. Angela Yim, a Board-certified diagnostic radiologist, performed an x-ray of appellant's right knee finding no acute fracture or dislocation.

Appellant submitted a January 28, 2019 duty status report (Form CA-17) with an illegible signature which diagnosed a right knee sprain due to the January 23, 2019 employment incident in which her right knee locked up while delivering mail.

In response to OWCP's development questionnaire, appellant submitted a February 21, 2019 statement in which she detailed the history of her January 23, 2019 injury. She provided the

name of two potential witnesses and gave a detailed review of her daily employment duties since the day of her injury.

By decision dated March 19, 2019, OWCP accepted that the January 23, 2019 incident occurred as alleged and that a diagnosis had been provided. It denied the claim, however, finding that the medical evidence of record was insufficient to establish a right knee injury causally related to the accepted employment incident.

On April 15, 2019 appellant requested reconsideration of OWCP's March 19, 2019 decision and submitted additional medical evidence.

In an April 7, 2019 light-duty medical certification, Dr. Dana Bebu, Board-certified in internal medicine, provided light-duty instructions related to appellant's right knee sprain.

In an April 7, 2019 medical report, Dr. Bebu evaluated appellant's right knee and noted her treatment for right knee pain related to the January 23, 2019 employment incident. She diagnosed a sprain of an unspecified site of the right knee and referred appellant to a specialist for further evaluation.

In medical notes dated April 24 and May 13, 2019, Ruth Odachowski, a physician assistant, certified that appellant was seen on those days and recommended four hours of light-duty work starting May 20, 2019.

In a May 13, 2019 medical report, Ms. Odachowski reviewed a right knee MRI scan and found that it revealed no medial or lateral meniscus tears. She did note that her knee had a "mallet alignment" of her patella due to a laterally patella tilt. Ms. Odachowski diagnosed right knee patella malalignment syndrome and recommended that appellant return to work with light-duty restrictions.

In a May 16, 2019 medical information and restriction assessment, Ms. Odachowski diagnosed right knee patella malalignment syndrome and restricted appellant to four hours of work per day on limited duty.

By decision dated July 9, 2019, OWCP denied modification of its March 19, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact 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 period of FECA,[4] 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 employment injury.[5] These are the essential elements of each and every

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

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

compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.[7] First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[8] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[9]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.[10] The opinion of the physician must be based on a complete factual and medical background, 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.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right knee injury causally related to the accepted January 23, 2019 employment incident.

In an April 7, 2019 medical report, Dr. Bebu evaluated appellant's right knee and diagnosed a sprain of an unspecified site of the right knee and referred appellant to a specialist for further evaluation. She did not offer any medical opinion on causal relationship. The Board has held that 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.[12] Therefore it is of no probative value and insufficient to establish the claim.

In a January 23, 2019 medical report, Dr. Weber evaluated appellant for stiffness of the right knee that began while she was delivering mail. He diagnosed a sprain of an unspecified site of the right knee and provided her with a series of home exercises to perform in order to treat her condition. However, Dr. Weber offers no opinion as to how appellant's right knee condition was causally related to the January 23, 2019 employment incident. As noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's

[6] *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).

[7] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[8] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

[11] *I.J.*, 59 ECAB 408 (2008).

[12] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

condition is of no probative value on the issue of causal relationship.[13] Accordingly, Dr. Weber's January 23, 2019 medical report is insufficient to meet appellant's burden of proof.

In a January 23, 2019 diagnostic report, Dr. Yim performed an x-ray of appellant's right knee and noted no finding of acute fracture or dislocation. The Board has held that medical evidence lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.[14] Additionally, diagnostic studies, such as an x-ray, standing alone lack probative value as to the issue of causal relationship as they do not address whether the employment incident caused the diagnosed condition.[15]

Appellant submitted medical evidence dated from January 23 to May 16, 2019 from physician assistants. Certain healthcare providers such as physical therapists, nurses, physician assistants, and social workers are not considered physicians as defined under FECA.[16] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[17] Thus, this evidence is insufficient to establish the claim.

Lastly, appellant submitted a January 28, 2019 Form CA-17 with an illegible signature. The Board has held that medical evidence that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[18] For this reason, the remaining medical evidence is insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence establishing that her right knee injury is causally related to the accepted January 23, 2019 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

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 right knee injury causally related to the accepted January 23, 2019 employment incident.

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[13] *Id.*

[14] *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

[15] *M.L.*, Docket No. 18-0153 (issued January 22, 2020); *see J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[16] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[17] Section 8101(2) of FECA provides that physician includes 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). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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); *R.K.*, Docket No. 20-0049 (issued April 10, 2020) (a physician assistant is not considered a physician as defined under FECA).

[18] *K.C.*, Docket No. 18-1330 (issued March 11, 2019).

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 25, 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