

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

S.K., Appellant)	
)	
and)	Docket No. 20-1049
)	Issued: June 28, 2021
DEPARTMENT OF VETERANS AFFAIRS,)	
WILKES-BARRE VA MEDICAL CENTER,)	
Wilkes-Barre, PA, Employer)	
)	

Appearances:
Aaron B. Aumiller, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 14, 2020 appellant filed a timely appeal from an April 2, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees'

¹ Counsel submitted an authorization of representation dated March 1, 2021 and a brief dated March 31, 2021 in support of appellant's appeal. 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.

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

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted June 17, 2019 employment incident.

FACTUAL HISTORY

On July 17, 2019 appellant, then a 61-year-old medical supply technician, filed a traumatic injury claim (Form CA-1) alleging that on June 17, 2019 she sustained a left tibia fracture when she slipped on a wet spot while walking and hit a garbage can with her left knee while in the performance of duty. She stopped work on July 10, 2019.

In a June 17, 2019 emergency department report, Dr. Mohammad Ashraf, a physician specializing in emergency room medicine, noted that appellant was seen that day for complaints of left knee pain. Appellant stated that she hit her left knee against a trash can after she lost her balance after walking on a small area that was wet. Physical examination revealed slight discomfort on palpation of left knee suprapatellar area, no edema, erythema, or ecchymosis, no abrasion and laceration, and normal hip, knee, and ankle range of motion. Dr. Ashraf diagnosed a minor left knee contusion and applied an ace wrap to the left knee. Discharge instructions from the employing establishment's hospital dated June 17, 2019 noted that appellant had been treated by Dr. Ashraf and had been given instructions and information regarding the diagnosed contusion.

OWCP also received an unsigned June 19, 2019 progress note from a nurse practitioner who related that appellant was seen for evaluation of left knee pain. The nurse practitioner noted appellant's history of left knee arthroscopy in March 2018 and noted that appellant had woken with a swollen and hot left knee on Monday. Appellant had denied any new injury.

In a progress note dated June 25, 2019, Dr. Sreehari Cherukuki, a Board-certified internist, noted tenderness and swelling of the left knee. He noted that appellant developed left knee pain approximately a week ago and had undergone total knee replacement last year. Dr. Cherukuki diagnosed left knee bursitis. He, in a disability note dated June 25, 2019, recommended appellant be provided with light-duty work for two weeks with walking limited to no more than four hours per day.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, by decision dated September 3, 2020, OWCP denied appellant's request for an oral hearing before an OWCP hearing representative. However, appellant had filed the current appeal to the Board on April 14, 2020, prior to the issuance of the September 3, 2020 decision. The Board notes that, as OWCP issued its September 3, 2020 decision during the pendency of this appeal that decision is null and void as the Board and OWCP may not simultaneously have jurisdiction over the same issue. *See L.F.*, Docket No. 19-1275 (issued October 29, 2020); *Terry L. Smith*, 51 ECAB 182 (1999); *Arlonia B. Taylor*, 44 ECAB 591 (1993) (Alternate Member, Groom concurring in part and dissenting in part); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

In a disability note dated July 11, 2019, Dr. James Mattucci, a Board-certified orthopedic surgeon, requested appellant be excused from work until July 31, 2019, noting a diagnosis of left lower leg fracture. He, in a July 24, 2019 employing establishment work capacity evaluation form, found appellant temporarily totally disabled. Dr. Mattucci diagnosed left tibia fracture with an injury date of June 17, 2019.

OWCP advised appellant in a July 25, 2019 development letter of the deficiencies of her claim, requested additional factual and medical evidence, and provided a questionnaire for her completion. It afforded her 30 days to respond.

In response, appellant submitted a disability note dated July 10, 2019 from Dr. Mattucci wherein he diagnosed tibia fracture and opined that appellant remained disabled until July 31, 2019.

In a July 31, 2019 disability note, Dr. Mattucci advised that appellant had an appointment that day and requested she be excused from work until August 28, 2019.

Dr. Mattucci, in a July 31, 2019 note, reported that appellant had been doing well following her left total knee arthroplasty until June 17, 2019 when she slipped at work and struck her left knee against a garbage can. He noted that he aspirated appellant's left knee for fluid and sent it to a laboratory for testing; no infection was found. Appellant complained of left tibia pain over the proximal tibia extending down toward the shaft. A review of a bone scan revealed some left knee uptake especially around the proximal tibia and medial femoral condyle extending down the tibia mid shaft, which could go along with a bone contusion.

On August 23, 2019 OWCP received an undated attending physician's report (Form CA-20) from Dr. Mattucci noting an injury date of July 10, 2019. In describing the injury history, he noted that it occurred when appellant slipped at work and struck her knee against a garbage can. Dr. Mattucci further noted that appellant underwent a total left knee replacement on March 27, 2018. A review of a bone scan revealed uptake around the medial femoral condyle. Dr. Mattucci opined that appellant was disabled from work beginning on July 10, 2019 and that it was undetermined when she could return to work. In an August 28, 2019 disability note, he placed appellant off-work until October 9, 2019.

By decision dated September 10, 2019, OWCP denied her claim, finding that the medical evidence of record was insufficient to establish that the diagnosed medical conditions were causally related to the accepted June 10, 2019 employment incident.

On October 30, 2019 appellant requested reconsideration.

In a form report dated August 26, 2019, Dr. Mattucci placed appellant off work beginning July 10, 2019 with an indeterminate return date.

In a September 4, 2019 report, Dr. James E. Murphy, a Board-certified orthopedic surgeon, diagnosed left knee pain and total knee arthroplasty instability. He noted the history of the June 17, 2019 employment incident and appellant's complaints of left knee pain, swelling, and giving out. Physical examination findings included left knee moderate effusion, severe mid flexion, mild extension, and moderate flexion instability, antalgic gait, and pain with patellofemoral

compartment palpation. A review of diagnostic testing showed old tibia fracture and in place total knee arthroplasty without evidence of loosening or fracture. Dr. Murphy reported discussing that appellant did not have any problem prior to the slip incident and suspected she became unstable afterwards.

Dr. Mattucci, in an October 9, 2019 work certificate, noted that appellant was under his care and disabled from working at that time.

In October 16, 2019 progress notes, Dr. Murphy diagnosed chronic left knee pain. Appellant complained of severe left knee pain for approximately one year. Physical examination findings of the left knee included no effusion, moderate mid-flexion instability, antalgic gait, and medial and lateral compartment pain on palpation. Dr. Murphy reviewed diagnostic imaging showing well-fixed prosthesis. He recommended total knee arthroplasty as appellant had failed conservative management.

Dr. Mattucci, in an October 24, 2019 form report, diagnosed left knee pain after injury. He found appellant totally disabled from work beginning July 10, 2019 and indeterminate date of return to work.

In an October 27, 2019 form report, Dr. Murphy diagnosed chronic left knee pain. He noted that appellant was scheduled for surgery and that she was totally disabled from work for the period September 4, 2019 through February 4, 2020.

A November 4, 2019 hospital report noted a total left knee revision arthroplasty modular tibial component procedure was performed that day by Dr. Murphy.

On November 22, 2019 appellant was seen by Sabrina A. Alles, a physician assistant, for left knee pain of unspecified chronicity. Ms. Alles indicated that appellant was to remain off work until cleared by orthopedics in a November 22, 2019 return to work/school form.

On January 3, 2020 appellant requested reconsideration.

By decision dated April 2, 2020, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,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

⁴ *Supra* note 2.

⁵ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

related to the 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 and place, and in the manner alleged. The 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 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

OWCP's procedures provide that, if a condition reported is a minor one, such as a burn, laceration, insect sting, or animal bite, which can be identified on visual inspection by a lay person, a case may be accepted without a medical report and no development of the case need be undertaken, if the injury was witnessed or reported promptly, and no dispute exists as to the occurrence of an injury; and no time was lost from work due to disability. This section of OWCP's procedures further states that in cases of serious injury (motor vehicle accidents, stabbings, shootings, *etc.*) if the employing establishment does not dispute the facts of the case, and there are no questionable circumstances, the case may be accepted for a minor condition, such as laceration, without a medical report, while simultaneously developing the case for other more serious conditions. This is true even if there is lost time due to such a serious injury.¹¹

⁶ *C.C.*, Docket No. 20-0950 (issued October 29, 2020); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1990).

⁷ *P.A.*, Docket No. 18-0559 (issued January 28, 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 *See 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 *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011).

ANALYSIS

The Board finds that appellant has met her burden of proof to establish an employment-related left knee contusion.

On June 17, 2019 appellant was treated in the emergency room after she slipped on a wet spot while walking and struck her left knee on a trash can that day. She was evaluated by Dr. Ashraf who diagnosed minor left knee contusion. Dr. Ashraf noted that appellant hit her left knee against a trash can after losing her balance that day. OWCP accepted that the June 17, 2019 employment incident occurred as alleged. The Board finds that Dr. Ashraf's history of the accepted June 17, 2019 employment incident was consistent with appellant's account. The diagnosis of minor left knee contusion was consistent with appellant's physical examination and the mechanism of injury. The Board, thus, finds that this evidence is sufficient to establish that appellant sustained a left knee contusion causally related to the accepted June 17, 2019 employment incident.¹² Upon return of the case record, OWCP shall make payment and/or reimbursement of medical expenses with regard to the accepted left knee contusion.¹³

The Board further finds, however, that appellant has not established additional conditions as causally related to the accepted employment injury.

The record also contains reports and disability notes from Dr. Cherukuki who diagnosed left knee bursitis and Dr. Mattucci who diagnosed left tibia fracture. While both physicians noted the June 17, 2019 injury history, neither physician provided an opinion as to whether the diagnosed condition was causally related to the June 17 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 condition or disability is of no probative value on the issue of causal relationship.¹⁴ The Board, thus, finds that their reports are insufficient to meet appellant's burden of proof.

Appellant also submitted progress notes, disability notes, and a surgical report from Dr. Murphy. In October 16 and 27, 2019 notes, Dr. Murphy diagnosed chronic left knee pain. The Board has held that pain is a symptom and not a compensable medical diagnosis.¹⁵ In the November 4, 2019 hospital surgical report, Dr. Murphy diagnosed left total knee arthroplasty mid

¹² See *T.U.*, Docket No. 19-1636 (issued October 29, 2020).

¹³ See *R.F.*, Docket No. 20-1181 (issued February 11, 2021) (the Board accepted right eyebrow laceration as causally related to the accepted employment incident); *B.C.*, Docket No. 20-0498 (issued August 27, 2020) (the Board accepted lumbar contusion as causally related to the accepted employment incident); *S.H.*, Docket No. 20-0113 (issued June 24, 2020) (the Board accepted a right ankle contusion as causally related to the accepted employment incident); *M.A.*, Docket No. 13-1630 (issued June 18, 2014).

¹⁴ *Id.*

¹⁵ See *C.C.*, Docket No. 19-1071 (issued August 26, 2020); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

flexion. However, he provided no opinion on causal relationship.¹⁶ For the above reasons, the reports and disability notes from Dr. Murphy are insufficient to meet appellant's burden of proof.

The remaining medical evidence pertaining to appellant's additional conditions consists of progress notes and disability from a physician assistant. The Board has held that certain healthcare providers such as physician assistants are not considered physicians as defined under FECA.¹⁷ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁸

On appeal counsel asserts that appellant's claim should be accepted for left knee contusion and other possible left knee conditions. As discussed above, the Board found that the evidence of record was sufficient to warrant acceptance of a left knee contusion, but insufficient to establish any additional conditions as causally related to the accepted June 17, 2019 employment injury.

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 a left knee contusion as causally related to the accepted June 17, 2019 employment injury. The Board further finds, however, that appellant has not established that her was additional conditions were causally related to the accepted employment injury.

¹⁶ See *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁷ Section 8101(2) of FECA provides that the term physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See also Federal (FECA) Procedure Manual, *supra* note 11 at 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) (physician assistant).

¹⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 2, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 28, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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