

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

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A.M., Appellant)	
)	
and)	Docket No. 20-0545
)	Issued: May 20, 2021
U.S. POSTAL SERVICE, BINGHAMTON POST)	
OFFICE, Binghamton, NY, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 13, 2020 appellant filed a timely appeal from an October 29, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.¹

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include additional bilateral knee conditions causally related to the accepted July 7, 2018 employment injury.

¹ The Board notes that, following the October 29, 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.*

FACTUAL HISTORY

On July 7, 2018 appellant, then a 34-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained bilateral knee trauma from a fall while in the performance of duty. She stopped work on July 8, 2018. OWCP initially denied the claim on October 3, 2018. However, after further development, it accepted the claim on July 3, 2019 for bilateral knee abrasions and contusions. The evidence related to appellant's claim for expansion of the claim is as follows.

A July 7, 2018 report by Dr. Matthew Miskimon, a Board-certified emergency room physician, noted that appellant was injured that day when she fell on her knees and sustained bilateral knee abrasions. Appellant's physical examination findings were provided and her diagnosis was listed as bilateral knee pain. A July 7, 2018 x-ray interpretation of appellant's bilateral knees indicated no right or left tibia-fibula acute fracture, no significant degenerative changes, and no suspicious sclerotic or lytic lesion.

In a report dated July 9, 2018, Dr. Michael Lischak, Board-certified in occupational medicine, related that on July 7, 2018 appellant landed hard on her right knee when it gave way and also smashed her left knee hard on the concrete sidewalk. He reported that appellant had been seen at an emergency room following the injury where an x-ray had been performed showing no dislocation or acute fracture. Appellant's physical examination revealed left knee patellar area abrasion, decreased left knee range of motion due to swelling and pain, and right knee decreased range of motion due to pain. He diagnosed bilateral knee contusion.

In a visit summary dated July 9, 2018, Allen Geller, a certified physician assistant, noted appellant's history of injury and diagnosis of bilateral knee contusions. In an attending physician's report (Form CA-20) dated July 9, 2018 and in a duty status report (Form CA-17) of even date, he again related a diagnosis of bilateral knee contusions.

Appellant was again seen by Dr. Lischak on July 12 and August 13, 2018 for her bilateral knee contusions.

In a July 18, 2018 report, Dr. Stephen G. Federowicz,² a Board-certified orthopedic surgeon, related appellant's history of injury. He thereafter diagnosed bilateral knee contusion and left knee medial collateral ligament sprain.³

Reports dated July 18, and 25, 2018, signed by Dr. Lischak noted appellant's history of injury, physical examination findings, and diagnosis of bilateral knee contusions.

In a July 31, 2018 form report, Dr. Lischak related a diagnosis of left knee sprain.

² Mr. Geller's name was crossed out and replaced with Dr. Federowicz's name. The record also contains a report dated July 18, 2018 with Dr. Federowicz listed as the provider and cosigned by Dr. Lischak on July 20, 2018.

³ A diagnosis of left knee medial collateral ligament sprain was listed in the July 18, 2018 report where Dr. Federowicz's name replaced Mr. Geller's as the provider.

In an August 27, 2018 report, Dr. Federowicz diagnosed bilateral patellofemoral contusions and patellofemoral syndrome. He reported that appellant fell at work while delivering mail and immediately noticed left knee anterior swelling. Dr. Federowicz also related that appellant had experienced persistent bilateral knee pain since the injury. A review of appellant's August 14, 2018 MRI scan revealed medial collateral ligament (MCL) sprain. Dr. Federowicz checked "Yes" to the question of whether the incident was competent medically to cause the injury/illness.

In a September 27, 2018 report, Dr. Federowicz diagnosed bilateral patellofemoral disorders and left knee pain. He checked "yes" to the question of whether the incident described by appellant was competent to cause the illness/medical condition.

OWCP also received a Form CA-17 dated September 28, 2018 from Dr. Federowicz which indicated a diagnosis of bilateral patellofemoral disorders, and an injury date of July 7, 2018.

Dr. Federowicz, in reports dated October 18 and November 29, 2018, diagnosed bilateral patellofemoral contusion and patellofemoral syndrome. He checked "Yes" to the question of whether the incident described by appellant was competent to cause the illness/medical condition. In a Form CA-17 dated November 29, 2018, Dr. Federowicz diagnosed bilateral patellofemoral syndrome, and noted an injury date of July 7, 2018.

On January 24, 2019 Dr. Federowicz diagnosed bilateral patellofemoral contusion and left knee MCL sprain. He checked "Yes" to the question of whether the incident described by appellant was competent to cause the illness/medical condition.

In a January 24, 2019 Form CA-17, Dr. Federowicz noted an injury date of July 7, 2018, and clinical findings of an MCL sprain.

The record contains bilateral knee x-ray interpretations dated February 15, 2019 finding no evidence of a fracture or significant degenerative changes.

In reports dated February 15, 18, March 12, April 23, and July 15, 2019, Dr. Federowicz noted an injury date of July 7, 2017 and diagnosed bilateral knee patellofemoral disorders. He checked "Yes" to the question of whether the incident described by appellant was competent to cause the illness/medical condition.

By decision dated July 3, 2019, OWCP accepted appellant's claim for bilateral knee abrasion and contusions. In a separate decision of the same date, it denied the claim for the conditions of bilateral patellofemoral syndrome bilateral patellofemoral disorders, and MCL sprain.

On August 5, 2019 appellant requested reconsideration.

OWCP received an October 8, 2019 form report from Dr. Federowicz wherein he noted an injury date of July 7, 2018 and diagnosed bilateral knee patellofemoral disorders. Dr. Federowicz again checked "Yes" to the question of whether the incident described by appellant was competent to cause the illness/medical condition.

By decision dated October 29, 2019, OWCP denied modification finding that the evidence of record was insufficient to warrant expansion of her claim to include the conditions of bilateral patellofemoral disorders.

LEGAL PRECEDENT

When 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.⁴

The medical evidence required to establish causal relationship between a claimed specific condition and/or period of disability and an employment injury is rationalized medical opinion evidence. 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.⁵

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional bilateral knee conditions causally related to the accepted July 7, 2018 employment injury.

OWCP accepted that appellant sustained bilateral right knee abrasions and bilateral knee contusions due to a July 7, 2018 employment injury where she fell on her knees. It denied expansion of her claim to include additional bilateral knee conditions of patellofemoral syndrome, bilateral patellofemoral disorders, and left knee medial collateral ligament sprain.

Following her injury appellant was initially treated on July 7, 2018 in an emergency room by Dr. Miskimon. Dr. Miskimon noted appellant's bilateral knee abrasions and related a diagnosis of bilateral knee pain. However, the Board has held that, under FECA, the assessment of pain is not considered a diagnosis, as pain merely refers to a symptom of an underlying condition.⁶ Dr. Miskimon did not otherwise address appellant's additional bilateral knee diagnoses. Accordingly, the report from him is insufficient to meet appellant's burden of proof.

Appellant was thereafter treated by Dr. Lischak, who submitted reports dated on July 9, 12, 18, and 25, 31, and August 13, 2018. However, in his reports Dr. Lischak only noted a diagnosis of bilateral knee contusions. In a report dated July 31, 2018, Dr. Lischak noted a

⁴ *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁵ *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *I.J.* 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *D.H.*, Docket No. 20-0577 (issued August 21, 2020); *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. See *P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

diagnosis of left knee sprain. He offered no opinion regarding the cause of this diagnosis. An opinion which does not address the cause of an employee's condition is of no probative value on the issue of causal relationship.⁷ As Dr. Lischak did not offer an opinion regarding causal relationship, this report is insufficient to establish that acceptance of appellant's claim should be expanded to include the diagnosis of left knee sprain.

Appellant began treatment with Dr. Federowicz on July 18, 2018. Dr. Federowicz initially diagnosed bilateral knee contusions and left knee medial collateral ligament sprain. In subsequent reports dated August 27, 2018 through October 8, 2019, he diagnosed bilateral patellofemoral disorders, including patellofemoral contusion and patellofemoral syndrome. In reports dated August 27, 2018, September 27, October 18, November 29, 2018, and January 24, February 15, 18, March 12, April 23, July 15, and October 8, 2019, Dr. Federowicz diagnosed bilateral patellofemoral contusions, and patellofemoral syndrome and checked "Yes" to the question of whether the incident was competent medically to cause the injury/illness. However, the Board has long held that the checking of a box marked "Yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.⁸ Dr. Federowicz did not provide any rationale for his opinion. Where an employee claims that a condition not accepted by OWCP was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.⁹ The Board therefore finds that the medical reports from Dr. Federowicz are insufficient to establish that acceptance of appellant's claim should be expanded for additional bilateral knee diagnoses.

The remaining medical evidence consists of a July 9, 2018, report from Mr. Geller, a physician assistant, which were not co-signed by a physician. The Board has held that health care providers such as nurses, physician assistants, and physical therapists are not considered physicians under FECA.¹⁰ Thus, their opinions on causal relationship do not constitute rationalized medical opinions and are of no probative value.¹¹

⁷ *A.T.*, Docket No. 19-1608 (issued April 21, 2020); *S.H.*, Docket No. 19-1128 (issued December 2, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

⁸ *C.T.*, Docket No. 20-0020 (issued April 29, 2020); *M.R.*, Docket No. 17-1388 (issued November 2, 2017); *Gary J. Watling*, 52 ECAB 278 (2001).

⁹ *J.F.*, Docket No. 19-1694 (issued March 18, 2020); *Kimper Lee*, 45 ECAB 565 (1994).

¹⁰ Section 8102(2) of FECA provides that the term 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); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *D.J.*, Docket No. 18-0593 (issued February 24, 2020) (physical therapists are not considered physicians under FECA); *R.K.*, Docket No. 20-0049 (issued April 10, 2020) (physician assistants are not considered physicians under FECA); *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).

¹¹ *See J.F.*, *supra* note 9; *A.A.*, Docket No. 19-0957 (issued October 22, 2019); *Jane A. White*, 34 ECAB 515, 518 (1983).

Likewise, regarding the diagnostic reports of record, the Board has explained that diagnostic tests standing alone lack probative value on the issue of causal relationship, as they do not address whether the employment incident caused a diagnosed condition.¹²

As the medical evidence of record is insufficient to establish causal relationship, the Board finds that appellant has not met her burden of proof to establish that her claim should be expanded to accept additional bilateral knee conditions.¹³

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 expand the acceptance of her claim to include additional bilateral knee conditions causally related to the accepted July 7, 2018 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 2021
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

¹² *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

¹³ *A.T.*, *supra* note 7.