United States Department of Labor
Employees' Compensation Appeals Board

K.C., Appellant	)	
and	)	**Docket No. 20-1325**
	)	**Issued: May 5, 2021**
U.S. POSTAL SERVICE, POST OFFICE, East Stroudsburg, PA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On June 11, 2020 appellant, through counsel, filed a timely appeal from a December 18, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).[2] Pursuant to the

[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] Pursuant to the Board's *Rules of Procedure*, an appeal is considered filed when received by the Clerk of the Appellate Boards. 20 C.F.R. § 501.3(f). However, when the date of receipt would result in a loss of appeal rights, the appeal will be considered to have been filed as of the date of the U.S. Postal Service postmark or other carriers date markings. *Id.* at § 501.3(f)(1). The 180th day following OWCP's December 18, 2019 decision was Monday, June 15, 2020. Because using June 17, 2020, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is June 11, 2020, rendering the appeal timely filed. *Id.*

Federal Employees' Compensation Act[3] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[4]

ISSUE

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

FACTUAL HISTORY

On May 2, 2019 appellant, then a 33-year-old carrier, filed a notice of traumatic injury claim (Form CA-1) alleging that on April 29, 2019 another vehicle struck her vehicle from behind, in the performance of duty. She indicated that her "back felt sore and her right leg hurt." On the reverse side of the claim form the employing establishment controverted the claim, noting that appellant waited four days to file a claim and had continued to work without apparent difficulty.[5]

In development letters dated May 6, 2019, OWCP requested additional factual and medical evidence from appellant and the employing establishment. It advised appellant of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded both parties 30 days to respond.

OWCP subsequently received a May 3, 2019 a hospital emergency department report from Dr. Marc Kolpon, an osteopath Board-certified in emergency medicine. Dr. Kolpon noted that appellant was seen for right leg and lower back injuries. He explained that appellant had no discomfort until two days following the motor vehicle accident. Dr. Kolpon related that appellant experienced soreness in the mid-to-lower lumbar region and pain in the right knee because she struck it on the dash during the accident. He noted that the accident occurred in a parking lot at an unknown speed, appellant was wearing a seatbelt, and there was no airbag deployment. Dr. Kolpon examined appellant and diagnosed musculoskeletal pain.

In a June 7, 2019 response to the questionnaire, appellant related that she made a right hand turn when her vehicle was struck from behind. She indicated that she had sharp pain in her right leg when it hit the steering wheel shaft and her back started hurting two days later. Along with the completed questionnaire, appellant resubmitted May 3, 2019 medical records from Dr. Kolpon.

[3] 5 U.S.C. § 8101 *et seq.*

[4] The Board notes that appellant submitted 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. *Id.*

[5] The record reflects that appellant had previously filed a traumatic injury claim (Form CA-1) on December 14, 2016 alleging that she sustained a right leg tear when she stepped into a hole while delivering mail. This claim was assigned OWCP File No. xxxxxx097. OWCP initially denied the claim by decision dated January 25, 2017 and the claim remains in denied status. Appellant's claims have not been administratively combined.

Also on June 7, 2019, OWCP received a copy of an April 29, 2019 police report, indicating that on April 29, 2019 at 2:28 p.m., appellant had stopped for traffic when her vehicle was rear-ended by another vehicle.

By decision dated June 7, 2019, OWCP denied appellant's claim. It noted that appellant had not returned the completed questionnaire and, therefore, she had not established that the incident occurred as alleged. It concluded, therefore, that she had not met the requirements to establish an injury as defined by FECA.

On June 25, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on October 18, 2019. Appellant testified that she was involved in a motor vehicle accident on April 29, 2019. She explained that she was in a long life vehicle (LLV) pulling out of a parking lot to make a right-hand turn when her vehicle was rear-ended. Appellant noted that she made a police report, but did not seek treatment on the date of injury. Regarding the mechanism of injury, she testified that "my body did jerk up towards the front and I banged my knee like on the shaft of the driving wheel." Appellant indicated that she sought initial treatment at a hospital a few days after the incident and she was told that she had a pinched nerve. She confirmed that she had not suffered any other injuries to the neck or back since the motor vehicle accident. Appellant also indicated that she had a prior history of right knee problems and clarified that her injury in the instant case was more in the thigh area.

In a November 20, 2019 letter, T.S., a human resource specialist, controverted the claim and argued that appellant did not file the claim for four days and continued to work following the injury. She also noted that appellant had a prior knee injury.

In a September 23, 2019 report, Dr. Gregory Menio, a Board-certified orthopedic surgeon, noted that he saw appellant on November 30, 2018 for right knee pain, which she related that she had had for approximately one year. He noted that her knee pain caused her to limp. Dr. Menio advised that he then saw appellant for a magnetic resonance imaging (MRI) scan of the right knee on December 6, 2016, which revealed arthritis at the patellofemoral joint with a large full thickness cartilage defect. He advised that appellant underwent operative intervention to include Euflexxa injections, which somewhat improved appellant's symptoms, although her pain continued on walking long distances. Dr. Menio noted that he recommended arthroscopy. It was delayed due to a pregnancy, and then performed on August 15, 2018. He advised that he performed a partial medial and lateral menisectomy and drilling of the femoral condyle, that appellant did well post-surgery, and returned to work delivering mail. Dr. Menio noted that appellant was last seen on July 8, 2019 for persistent pain. He opined that appellant presented with right knee pain without specific injury and that there were arthritic changes which "could be related to her work situation."

A September 25, 2019 MRI scan of the lumbar spine, read by Dr. Francesco Priamo, a diagnostic radiologist, revealed a right paramedian disc protrusion at L5-S1.

In an October 14, 2019 report, Dr. Allister Williams, a Board-certified orthopedic surgeon, examined appellant and determined that appellant had a right paramedian disc protrusion at L5-S1, low back pain, status post motor vehicle accident at work, and lumbar radiculopathy.

By decision dated December 18, 2019, OWCP's hearing representative modified the June 7, 2019 decision to find that the factual component of the claim was established; however,

the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical condition and the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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,[7] 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.[8] 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.[9]

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, 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.[10]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[11] 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.[12]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a back or right knee condition causally related to the accepted April 29, 2019 employment incident.

OWCP initially received a May 3, 2019 report from Dr. Kolpon. Dr. Koplon noted that appellant was seen for right leg and lower back injuries. He related appellant's explanation that

[6] *Supra* note 3.

[7] *C.D.*, Docket No. 20-0858 (issued November 30, 2020); *R.M.*, Docket No. 20-0342 (issued July 30, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[8] *V.P.*, Docket No. 20-0415 (issued July 30, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[9] 20 C.F.R. § 10.115; *S.A.*, Docket No. 20-0458 (issued July 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[10] *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).

[11] *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[12] *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

she experienced soreness in the mid-to-lower lumbar region and pain in the right knee because she struck it on the dash during the April 29, 2019 incident. Dr. Kolpon examined appellant and diagnosed musculoskeletal pain. The Board has held that pain is not considered a diagnosis under FECA, as pain merely refers to a symptom of an underlying condition.[13] Furthermore, Dr. Kolpon provided no opinion on causal relationship. The Board has also 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.[14] Therefore, this report is insufficient to establish the claim.

In a September 23, 2019 report, Dr. Menio addressed appellant's prior right knee condition and noted that appellant had arthritis at the patellofemoral joint with a large full thickness cartilage defect. He also noted that appellant had undergone right knee arthroscopy on August 15, 2018. Dr. Menio indicated that he saw appellant on July 8, 2019 for right knee pain without specific injury and opined that there were arthritic changes, which "could be related to her work situation." He offered no opinion as to whether appellant's diagnosed condition was causally related to the accepted April 29, 2109 employment incident. Accordingly, this report is of no probative value on the issue of causal relationship and is insufficient to establish appellant's claim.[15]

In an October 14, 2019 report, Dr. Williams diagnosed lumbar radiculopathy and a right paramedian disc protrusion at L5-S1. However, he did not provide an opinion on causal relationship. As previously explained, 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.[16] This report is, therefore, also insufficient to establish appellant's claim.

The record also contains a September 25, 2019 MRI scan. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship, as they do not provide an opinion as to whether the employment incident caused any of the diagnosed conditions.[17] This evidence is, therefore, insufficient to establish appellant's claim.

As the medical evidence of record does not contain a rationalized medical opinion establishing causal relationship between appellant's diagnosed conditions and the accepted factors of her federal employment, the Board finds that 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

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[13] *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, not 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).

[14] *A.O.*, Docket No. 20-1395 (issued February 23, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[15] *L.B.*, Docket No. 19-1907 (issued August 14, 2020).

[16] *B.W.*, Docket No. 20-1032 (issued November 17, 2020); *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, *supra* note 14; *D.K.*, *supra* note 14.

[17] *See C.B.*, Docket No. 20-0464 (issued July 21, 2020).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a back or right knee condition causally related to the accepted employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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