

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

_____)
D.H., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Cleveland, OH, Employer)
_____)

Docket No. 21-0537
Issued: October 18, 2021

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 24, 2021 appellant, through counsel, filed a timely appeal from a November 20, 2020 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 right knee condition causally related to the accepted November 30, 2019 employment incident.

FACTUAL HISTORY

On December 11, 2019 appellant, then a 62-year-old letter carrier,³ submitted a traumatic injury claim (Form CA-1) alleging that she injured her right knee on November 30, 2019 when she fell while carrying mail on her route in the performance of duty. On the reverse side of the claim form appellant's supervisor acknowledged that appellant was injured in the performance of duty.

Appellant submitted a report dated December 3, 2019 from Jean Szorady, a nurse practitioner. Ms. Szorady related that appellant tripped while carrying mail on November 30, 2019 and injured her right knee. She diagnosed an injury to the right knee and completed a work status report listing appellant's work restrictions.

In a report dated December 5, 2019, Erik Johnson, a physician assistant, related that appellant was following up regarding an injury to her right knee and that her right knee swelling had increased. He diagnosed contusion of the right knee.

In a report dated December 6, 2019, Maureen Doolan, a physician assistant, diagnosed right knee contusion. She provided appellant with work restrictions and completed a work status report.

On December 11, 2019 appellant was seen again by Mr. Johnson who related appellant's physical examination findings and diagnosed right knee contusion. In a duty status report (Form CA17) dated December 11, 2019, he related appellant's diagnosis as right knee medial meniscus tear and noted appellant's work restrictions.

In a development letter dated December 17, 2019, OWCP informed appellant that additional evidence was necessary to establish her claim. It advised appellant of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted a medical report dated December 10, 2019 from Dr. Matthew Levy, a Board-certified orthopedic surgeon. Dr. Levy noted an assessment of right knee contusion and also related that appellant fell on gravel and that the x-ray evaluation indicated a medial meniscus tear. He indicated that appellant should continue her work restrictions.

³ Appellant did not list her occupation on the Form CA-1. However, in subsequent statements she alleged that her injury occurred while she was delivering mail on her route.

In a report dated December 24, 2019, Melissa T. Khan, a physician assistant, noted that appellant presented in the office for a follow up and that her symptoms remained the same. Appellant's diagnosis was listed as right knee contusion.

In a medical report dated January 7, 2020, Dr. Levy related that appellant had a medial meniscus tear and was waiting for approval for surgery. He also completed a work status report, which outlined appellant's work restrictions.

By decision dated January 24, 2020, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the incident occurred as alleged. It noted that appellant had not responded to the development questionnaire. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP thereafter received a report dated January 16, 2020 from Ms. Doolan regarding appellant's follow-up appointment for her right knee injury. Appellant's diagnosis was again listed as right knee contusion. Ms. Doolan also completed a work status report, which listed appellant's work restrictions.

OWCP received a statement from appellant on February 3, 2020. Appellant attested that on November 30, 2019 she was delivering mail and she slipped and fell in the driveway.

Appellant submitted a work status report dated February 11, 2020 from Dr. Levy, which noted a diagnosis of right knee contusion and listed appellant's work restrictions.

On February 21, 2020 appellant, through counsel, timely requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on June 11, 2020.

OWCP received a more legible copy of appellant's traumatic injury claim (Form CA-1), which indicated that on November 30, 2019 appellant fell on her route and tore her right knee meniscus.

By decision dated August 5, 2020, OWCP's hearing representative modified OWCP's January 24, 2020 decision, finding that the incident occurred as alleged. However, the claim remained denied as causal relationship had not been established.

On August 24, 2020 appellant, through counsel, requested reconsideration.

OWCP subsequently received a letter dated July 9, 2020 from Dr. Levy, which stated that appellant was first seen on December 10, 2019 after falling on both of her knees during the course of her work duties and was diagnosed with a medial meniscus tear. Dr. Levy stated that appellant had no prior injuries and that her diagnosis was a direct and proximate result of a work injury, which occurred on "1/1/1."

By decision dated November 20, 2020, OWCP denied modification of its August 5, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including 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 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 must first be determined whether a fact of injury has been established. There are two components involved in establishing fact of injury. The first component to be established is that 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.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 bum, 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

⁴ *Id.*

⁵ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *P.A.*, Docket No. 18-0559 (issued January 29, 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 *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).

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

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a right knee contusion.

On November 30, 2019 appellant tripped while carrying mail and injured her right knee. She was seen and evaluated by Mr. Johnson, Ms. Doolan and Ms. Khan, all physician assistants. All three individuals related that appellant tripped on November 30, 2019 and diagnosed her with a right knee contusion. In his report dated December 10, 2019, Dr. Levy also noted a right knee contusion and related that appellant had fallen on gravel on November 30, 2019 while delivering her mail route. The Board, thus, finds that this evidence is sufficient to establish that appellant sustained a right knee contusion during the accepted November 30, 2019 employment incident.¹² Upon return of the case record, OWCP shall make payment and/or reimbursement of medical expenses and wage-loss compensation, if any, with regard to the accepted right 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 contains medical reports dated December 10, 2019 and January 7, 2020 wherein Dr. Levy diagnosed medial meniscus tear. However, Dr. Levy did not provide a medical opinion explaining the cause of appellant's diagnosed condition. 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.¹⁴ As such, these reports are insufficient to establish appellant's claim.

OWCP also received a letter dated July 9, 2020 wherein Dr. Levy diagnosed medial meniscus tear. Dr. Levy stated that appellant had no prior injuries and that her diagnosis was a

¹¹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011).

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

¹³ See *S.K.*, Docket No. 20-1049 (issued June 28, 2021) (the Board accepted a left knee contusion 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 *D.C.*, Docket No. 19-1093 (issued June 25, 2020); see *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

direct and proximate result of a work injury, which occurred on January 1, 2001. The factors that determine the probative value of medical evidence include the opportunity for and thoroughness of examination performed by the physician, the accuracy or completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed by the physician on the issues addressed to him by OWCP.¹⁵ Appellant has alleged that she injured her right knee on November 30, 2019. She did not allege a January 1, 2001 injury. Dr. Levy's opinion is, therefore, based on an inaccurate history of injury. It is well established that medical reports must be based on a complete and accurate factual and medical background and that medical opinions based on an incomplete or inaccurate history are of limited probative value.¹⁶ This letter is, therefore, insufficient to establish causal relationship.

The evidence from the nurse practitioner and physician assistants noted above is also insufficient to establish additional conditions as causally related to the accepted employment injury. They are not considered physicians under FECA. As such their reports are of no probative value.¹⁷

As discussed above, the Board finds that the evidence of record is sufficient to warrant acceptance of a right knee contusion, but insufficient to establish any additional conditions as causally related to the accepted November 30, 2019 employment incident.

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 met her burden of proof to establish a right knee contusion as causally related to the accepted November 30, 2019 employment incident. The Board further finds, however, that appellant has not established additional conditions causally related to the accepted employment injury.

¹⁵ A.G., Docket No. 19-0220 (issued August 1, 2019); *James T. Johnson*, 39 ECAB 1252 (1988).

¹⁶ A.C., Docket No. 19-1522 (issued July 27, 2020); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

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); 20 C.F.R. § 10.5(t). See 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); see also *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2020 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 18, 2021
Washington, DC

Alec J. Koromilas, 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