United States Department of Labor
Employees' Compensation Appeals Board

E.A., Appellant	)	
and	)	**Docket No. 22-0035**
	)	**Issued: April 8, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Kansas City, MO, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On October 11, 2021 appellant, through counsel, filed a timely appeal from a July 6, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the 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 diagnosed medical condition causally related to the accepted January 30, 2021 employment incident.

FACTUAL HISTORY

On February 23, 2021 appellant, then a 49-year-old mail handler assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 30, 2021 she sustained chondromalacia and a patella meniscus tear of the left knee when lifting a heavy parcel out of a pallet box while in the performance of duty. On the reverse side of the claim form, appellant's employing establishment supervisor, B.R., acknowledged that appellant was injured in the performance of duty, but challenged the factual basis of the claim because appellant did not notify management that her injury was work related until February 19, 2021. Appellant stopped work on February 2, 2021 and returned to work on February 10, 2021.

In support of her claim, appellant submitted an undated statement relating that she was sent to a dispatch center for her January 29 through 30, 2021 shift. She attempted to lift a very large, heavy box out of a pallet box and into the appropriate container, but was unable to lift it and injured her knee in the process. Appellant noted that she had no idea how badly she had injured her left knee until she was unable to put any weight on it when walking and had to "call in" on Monday night. She went to urgent care where she was seen by an orthopedist and underwent x-ray scans and an ultrasound, which revealed a meniscus tear and Baker's cyst. Appellant returned to work on February 10, 2021 in a knee brace and worked until she stopped work early during her February 12 and 13, 2021 shift due to crippling pain in her right knee. She again saw an orthopedist who recommended job restrictions, braces on both knees, physical therapy, and magnetic resonance imaging scans.

Appellant also submitted a February 2, 2021 work excuse note from Dr. Shannon Woods, a Board-certified orthopedic surgeon specializing in sports medicine, who indicated that she was under his care. Dr. Woods diagnosed left knee chondromalacia patella and meniscus tear and held her off work until February 9, 2021. In a February 17, 2021 work restriction note, he noted that appellant was seen for a knee condition and advised that she could return to work with restrictions, including allowing time for physical therapy, sedentary duty as needed, and a 25-pound weight limit.

In a development letter dated February 25, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond. No further evidence was received.

By decision dated April 6, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the claimed incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant subsequently submitted an attending physician's report (Form CA-20) bearing an illegible signature, which diagnosed a knee injury caused by lifting.

Unsigned February 2, 2021 clinic notes indicated that an x-ray scan revealed some irregularity to the medial facet, noting that appellant had pain over the medial joint line and over a Baker's cyst. The provider diagnosed a left knee medial meniscus tear and documented intra-articular injections to the left knee.

Unsigned February 17, 2021 clinic notes noted that appellant had started physical therapy, was using a reaction brace, and had started using a walker to unload the joint. The provider again diagnosed a left knee medial meniscus tear and noted that she reported that her employing establishment threatened to fire her if she had prolonged work modifications.

In a February 23, 2021 report by Dr. Mary Hogan, a Board-certified physician specializing in family medicine, related that appellant injured her left knee while lifting a very heavy box at work on January 30, 2021 and reported a diagnosis of a mild torn meniscus. She noted that appellant was wearing a knee brace and continued to have pain. Dr. Hogan diagnosed left and right knee injuries, noting that examination favored medial collateral ligament strain. She advised that appellant should continue to wear a brace and not work until released.

In several office notes of even date, Joseph Follis, a family nurse practitioner also advised that appellant should continue to wear a brace and not work until released. In a May 25, 2021 addendum, he diagnosed a left medial meniscus tear.

On May 31, 2021 appellant requested reconsideration. In a statement of even date she further described her January 30, 2021 injury. Appellant explained that the box that she tried to lift was roughly the size of a five-drawer file cabinet and felt like it weighed over 100 pounds. She noted that when she went to the physician on February 2, 2021 she did not say that she was injured at work because she worried the incident would prevent her from being able to convert from a noncareer employee to a career employee. Appellant completed an injury report on February 18, 2021. She related that the employing establishment had directed her to see "Dr. Joe Follis" for clearance to work, rather than her own physician. Appellant reported that "Dr. Follis" treated her on February 23, 2021 and told her that he agreed with the diagnoses provided by her own physician. Dr. Follis requested that she be referred to an orthopedist.

By decision dated July 6, 2021, OWCP modified the April 6, 2021 decision to find that appellant had established that the incident occurred on January 30, 2021 as alleged. However, the claim remained denied as the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted January 30, 2021 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[7] The second component is whether the employment incident caused a personal injury.[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 incident identified by the employee.[10]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted January 30, 2021 employment incident.

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[3] *Id*.

[4] *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *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).

In a February 2, 2021 work excuse note, Dr. Woods diagnosed left knee chondromalacia patella and meniscus tear. In a February 23, 2021 report, Dr. Hogan diagnosed mild torn meniscus. The Board, therefore, finds that the record establishes left knee chondromalacia patella and meniscus tear as diagnosed medical conditions.[11]

The Board further finds, however, that this case is not in posture for decision with regard to whether the diagnosed medical conditions are causally related to the accepted January 30, 2020 employment incident. As the medical evidence of record establishes diagnosed medical conditions, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship.[12] Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted January 20, 2020 employment incident.

The Board further finds that the case is not in posture for decision with regard to whether the diagnosed medical condition is causally related to the accepted January 20, 2020 employment incident.

[11] *See S.A.*, Docket No. 20-1498 (issued March 11, 2021); *A.H.*, Docket No. 20-0730 (issued October 27, 2020); *B.C.*, Docket No. 20-0079 (issued October 16, 2020).

[12] *See F.D.*, Docket No. 21-1045 (issued December 22, 2021).

ORDER

IT IS HEREBY ORDERED THAT the July 6, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 8, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board