United States Department of Labor
Employees' Compensation Appeals Board

A.T., Appellant	)	
and	)	**Docket No. 21-0766**
	)	**Issued: January 6, 2022**
U.S. POSTAL SERVICE, BROCKTON POST OFFICE, Brockton, MA, 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, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 26, 2021 appellant, through counsel, filed a timely appeal from an April 9, 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 this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a left knee condition causally related to the accepted July 20, 2016 employment incident.

[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*.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 18, 2017 appellant, then a 34-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 20, 2016 she injured her left knee when she was struck by a vehicle when delivering mail on foot while in the performance of duty. She alleged that she developed persistent back pain and a left knee injury that required surgery. Appellant did not stop work at the time of the claimed injury.

In an April 3, 2017 medical note, Dr. Michael V. Elman, a Board-certified orthopedic surgeon, noted that appellant had been a patient of his since November 30, 2016 concerning complaints of left knee pain as well as low back pain subsequent to being hit by a vehicle while walking as a mail carrier. He indicated that a magnetic resonance imaging (MRI) scan of the left knee revealed a torn lateral meniscus. Dr. Elman recommended arthroscopic surgery.

On April 28, 2017 the employing establishment controverted appellant's claim.

Appellant also submitted an April 6, 2017 letter from a physical therapist, who noted that she was waiting for left knee surgery due to her work-related injury.

By decision dated June 16, 2017, OWCP denied appellant's claim, finding that she had not submitted sufficient medical evidence to establish causal relationship between the accepted July 20, 2016 employment incident and her left knee injury.

Following the June 16, 2017 decision, OWCP received a physical therapy note dated March 9, 2010, showing that appellant was treated for a previous, separate knee condition, and physical therapy notes dated February 2 through April 28, 2017, showing that she was treated for a left knee injury subsequent to the accepted July 20, 2016 employment incident.

On July 12, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. OWCP received a police report regarding the July 20, 2016 employment incident.

A hearing was held on December 6, 2017. Following the December 6, 2017 hearing, OWCP received additional evidence.

A December 7, 2016 left knee MRI scan demonstrated a torn lateral meniscus as well as medial collateral ligament sprain. A February 26, 2017 lumbar spine MRI scan report demonstrated a small disc herniation at L5-S1 and no significant nerve root compromise.

In a January 2, 2018 medical report, Dr. Elman reported that appellant was hit by a vehicle from behind and fell and might have twisted her knee at the time of injury. He diagnosed a left

[3] Docket No. 19-1632 (issued February 17, 2021).

lateral meniscus tear. Dr. Elman opined that being hit by a car and falling "could have" led to a meniscus tear in the left knee. He again recommended arthroscopic surgery.

By decision dated February 8, 2018, OWCP's hearing representative affirmed the June 16, 2017 decision.

OWCP subsequently received copies of appellant's physical therapy records previously of record.

On January 15, 2019 appellant, through counsel, requested reconsideration. Counsel submitted a January 14, 2019 report from Dr. Elman, who noted that appellant was struck by a vehicle at a relatively slow speed while delivering mail on July 20, 2016. He related that a left knee MRI scan demonstrated a torn lateral meniscus. Dr. Elman opined that appellant's left knee injury "could have" been caused by her work accident in being struck by a motor vehicle whether it was a twisting mechanism or fall. He also noted that she was previously asymptomatic and had no arthritic findings.

By decision dated January 30, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board and, by decision dated February 17, 2021,[4] the Board set aside OWCP's January 30, 2019 decision, noting that OWCP improperly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). The Board remanded the case to OWCP and directed it to conduct a merit review of her claim followed by an appropriate merit decision regarding her claim that her diagnosed left knee condition was causally related to the accepted July 20, 2016 employment incident.

Following the Board's February 17, 2021 remand, by decision dated April 9, 2021, OWCP reviewed the merits of the claim, but denied modification of the February 8, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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,[6] 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

[4] *Id.*

[5] *Supra* note 2.

[6] *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.[7] 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.[8]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[9] There are 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.[10] The second component is whether the employment incident caused a personal injury.[11]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[12] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.[13] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition, and appellant's specific employment incident.[14]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[15]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left knee condition causally related to the accepted July 20, 2016 employment incident.

In medical reports dated January 2, 2018 and January 14, 2019, Dr. Elman described the accepted July 20, 2016 employment incident and diagnosed a lateral meniscus tear in the left knee. He opined that being struck by a motor vehicle, whether it was a twisting mechanism or fall, "could have" caused appellant's diagnosed left knee condition. The Board has held that medical opinions that suggest a condition "could have" been caused by work activities are speculative or equivocal

[7] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[8] *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[9] *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[10] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[11] *E.M., id.*; *John J. Carlone*, 41 ECAB 354 (1989).

[12] *S.S., supra* note 9; *Robert G. Morris*, 48 ECAB 238 (1996).

[13] *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[14] *Id.*

[15] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

in character and have limited probative value.[16] Dr. Elman also noted that her knee was previously asymptomatic and had no arthritic findings. He did not, however, explain with sufficient rationale how the accepted employment incident would cause or result in the diagnosed condition. The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.[17] Moreover, Dr. Elman failed to distinguish between the effects of the work-related injury and appellant's preexisting left knee conditions. The Board has consistently held that complete medical rationalization is particularly necessary when there is a preexisting condition involving the same body part, and has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.[18] Therefore, these reports are insufficient to meet appellant's burden of proof.

In an April 3, 2017 medical note, Dr. Elman noted that, while delivering mail, appellant was hit by a vehicle. He indicated that the left knee MRI scan demonstrated a torn lateral meniscus. Dr. Elman, however, did not offer an opinion as to whether the diagnosed condition was causally related to the accepted July 20, 2016 employment incident.[19] Thus, this note is of no probative value and insufficient to establish appellant's claim.

OWCP also received a letter and reports from physical therapists. The Board has long held that certain healthcare providers such as physician assistants, nurses, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA.[20] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[21]

Lastly, appellant submitted a December 7, 2016 left knee MRI scan and a February 26, 2017 lumbar spine MRI scan. However, the Board has explained that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[22] Thus, these reports are also insufficient to establish appellant's claim.

[16] *See D.A.*, Docket No. 20-0951 (issued November 6, 2020).

[17] *See J.I.*, Docket No. 20-1374 (issued March 3, 2021); *D.M.*, Docket No. 20-0266 (issued January 8, 2021); *H.A.*, Docket No. 18-1466 (issued August 23, 2019); *R.V.*, Docket No. 18-1037 (issued March 26, 2019).

[18] *J.A.*, Docket No. 20-1195 (issued February 3, 2021); *V.S.*, Docket No. 20-1034 (issued November 25, 2020).

[19] *D.S.*, Docket No. 20-0584 (issued June 15, 2021); *L.G.*, Docket No. 20-0433 (issued August 6, 2020); *S.D.*, Docket No. 20-0413 (issued July 28, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[20] 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 A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not considered physicians under FECA).

[21] *Id*.

[22] *M.B.*, Docket No. 19-1638 (issued July 17, 2020); *T.S.*, Docket No. 18-0150 (issued April 12, 2019).

As the medical evidence of record is insufficient to establish a left knee condition causally related to the accepted July 20, 2016 employment incident, 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left knee condition causally related to the accepted July 20, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2022
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