United States Department of Labor
Employees' Compensation Appeals Board

E.R., Appellant	)	
and	)	**Docket No. 21-1197**
	)	**Issued: January 14, 2022**
U.S. POSTAL SERVICE, LUDLAM BRANCH, Miami, FL, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 2, 2021 appellant, through counsel, filed a timely appeal from a July 19, 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.[3]

[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*.

[3] The Board notes that, following the July 19, 2021 decision, appellant submitted additional evidence to the Board. 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.*

ISSUE

The issue is whether appellant has established a right knee condition causally related to the accepted December 30, 2020 employment incident.

FACTUAL HISTORY

On January 11, 2021 appellant, then a 54-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 30, 2020 she injured her right knee when she entangled her foot in a mail strap and fell while in the performance of duty. She reported that she could hardly walk because of the pain and swelling in her right knee. On the reverse side of the claim form the employing establishment acknowledged that appellant was injured while in the performance of duty. Appellant stopped work on December 31, 2020.

In support of her claim, appellant submitted a December 30, 2020 statement relating her history of injury.

In an emergency department note of even date, Drs. Jessica Quinones De Echegaray and Richard Bocchio, both Board-certified physicians specializing in emergency medicine, diagnosed a knee contusion and advised that appellant could return to work in three days. A work excuse note of even date signed by Dr. Bocchio related that appellant was seen on December 30, 2020 and could return to work on January 3, 2021, as tolerated with her pain.

In a development letter dated January 20, 2021, OWCP advised appellant of the factual and medical deficiencies of her claim. It asked her to complete a questionnaire to provide further details regarding the circumstances of her claimed injury and requested a narrative medical report from her treating physician, which contained a detailed description of findings and diagnoses, explaining how her work activities caused, contributed to, or aggravated her medical condition. OWCP afforded appellant 30 days to respond.

In a January 14, 2021 medical report, Dr. Arturo Corces, a Board-certified orthopedic surgeon, related that appellant fell at work on December 30, 2020 and experienced constant pain, mostly in the medial joint line, as well as popping and clicking. He noted that appellant failed all conservative treatment. An examination of appellant's right knee revealed mild effusion, pain with flexion past 90 degrees, and significant medial joint line tenderness. X-rays of the right knee revealed no evidence of fracture, bone lesions, deformity, or arthritic change. Dr. Corces diagnosed pain in the right knee and noted that the physical examination was consistent with a meniscal tear. In a work capacity evaluation (Form OWCP-5c) and duty status report (Form CA-17) of even date, he indicated that appellant was unable to work. On the Form CA-17 Dr. Corces also diagnosed right knee pain.

On February 4, 2021 Dr. Corces again related appellant's history of injury and symptoms. He diagnosed a complex tear of the lateral meniscus and noted an impression of a medial meniscal tear. Dr. Corces also reported that appellant had arthritic changes in her knee, but explained that her symptoms seemed more related to the meniscal pathology. In a Form OWCP-5c of even date, he indicated that appellant was unable to work and diagnosed a lateral meniscus tear. Dr. Corces advised that appellant needed a right knee arthroscopy and should use crutches.

Appellant responded to OWCP's development questionnaire on February 8, 2021, relating her history of injury. She reported that her employing establishment supervisor, T.M., and other coworkers witnessed the incident, and T.M. executed an authorization for examination and/or treatment (Form CA-16). Appellant further reported that she could not continue working due to the pain and swelling in her right knee, so she went to the doctor with the Form CA-16. The doctor told her she could return to work on January 3, 2021, as tolerated with her pain. Appellant was advised that she would need a magnetic resonance imaging (MRI) scan and should follow up with an orthopedist if the pain persisted. She noted that she reported all of this to her supervisor on January 4, 2021. Appellant indicated that she had no prior injuries to her right knee.

OWCP also received four witness statements from appellant's coworkers corroborating appellant's account of the claimed December 30, 2020 employment incident.

By decision dated February 22, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a medical diagnosis in connection with the accepted December 30, 2020 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 2, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant subsequently submitted a January 27, 2021 MRI scan for her right knee that revealed a horizontal cleavage tear of the anterior horn and anterior mid-body of the lateral meniscus of indeterminate age, chondromalacia along the medial patellar facet, apex, and trochlear groove of the femur of indeterminate age, mild osteoarthritis in the medial femorotibial compartment with chondromalacia of indeterminate age, slight anterior translation of the tibia, and mild marrow edema along the posterior lateral tibial plateau.

During the telephonic hearing held before an OWCP hearing representative on May 26, 2021, appellant testified that she was diagnosed with a meniscal tear and that she needed surgery. She explained that she had been off work since the accepted December 30, 2020 employment incident and had not experienced any further injury to her right knee since that date. The hearing representative advised appellant of the type of medical evidence necessary to establish her claim and held the case record open for 30 days for the submission of additional evidence. OWCP did not receive any further evidence.

By decision dated July 19, 2021, OWCP's hearing representative affirmed the February 22, 2021 decision, as modified, finding that the evidence of record contained a medical diagnosis. The claim remained denied, however, as the evidence of record was insufficient to establish causal relationship between appellant's diagnosed condition and the accepted December 30, 2020 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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

[4] *Supra* note 2.

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 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.[8] The second component is whether the employment incident caused a personal injury.[9]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[10] 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.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right knee condition causally related to the accepted December 30, 2020 employment incident.

In a January 14, 2021 medical report, Dr. Corces related that appellant fell at work and diagnosed pain in the right knee and a probable meniscal tear. On February 4, 2021 he again related appellant's history of injury and diagnosed a complex tear of the lateral meniscus. Dr. Corces also reported that appellant had arthritic changes in her knee, but explained that her symptoms seemed more related to the meniscal pathology. Although he suggested a work-related cause for appellant's knee condition, he did not provide a rationalized medical opinion relating the specific diagnosed condition to the employment incident. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale

[5] *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).

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

[7] *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).

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

[9] *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *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).

[11] *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).

explaining how an employment activity could have caused or aggravated a medical condition.[12] Therefore, these reports are insufficient to establish appellant's traumatic injury claim.

In a December 30, 2020 emergency department note, Drs. Quinones De Echegaray and Bocchio diagnosed a knee contusion and advised that appellant could return to work in three days. In a work excuse note of even date, Dr. Bocchio advised that appellant could return to work on January 3, 2021. However, neither note discussed the accepted December 30, 2020 employment incident or offered an opinion on causal relationship. 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.[13] For this reason, this medical evidence is insufficient to meet appellant's burden of proof.

Similarly, in a Form OWCP-5c and Form CA-17 dated January 14, 2021, as well as, in a Form OWCP-5c dated February 4, 2021, Dr. Corces indicated that appellant was unable to return to work due to her knee condition. However, as above, he did not discuss the accepted December 30, 2020 employment incident or offer an opinion on causal relationship. Thus, Dr. Corces' medical evidence is also insufficient to meet appellant's burden of proof.[14]

The remaining medical evidence consisted of a January 27, 2021 MRI scan. The Board has held, however, that diagnostic testing reports, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and a diagnosed condition.[15] For this reason, this evidence is also insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence establishing that her right knee meniscal tear is causally related to the accepted December 30, 2020 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

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 right knee condition causally related to the accepted December 30, 2020 employment incident.

[12] *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[13] *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[14] *Id*.

[15] *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

ORDER

IT IS HEREBY ORDERED THAT the July 19, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 14, 2022
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