United States Department of Labor
Employees' Compensation Appeals Board

G.D., Appellant	)	
and	)	**Docket No. 20-0966**
	)	**Issued: July 21, 2022**
DEPARTMENT OF THE AIR FORCE, McGUIRE AIR FORCE BASE, NJ, Employer	)	

Appearances:
Aaron B. Aumiller, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On March 23, 2020 appellant, through counsel, filed a timely appeal from a January 24, 2020 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] The Board notes that, following the January 24, 2020 decision, OWCP received additional evidence. 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*.

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.

ISSUE

The issue is whether appellant has met her burden of proof to establish that acceptance of her claim should be expanded to include additional conditions as causally related to her accepted April 11, 2018 employment injury.

FACTUAL HISTORY

On April 11, 2018 appellant, then a 50-year-old housing referral assistant, filed a traumatic injury claim (Form CA-1) alleging that she injured her shins, left calf, hands, and back on that date when she struck her shins on an open dishwasher door and tripped and fell to the floor, landing on her knees while in the performance of duty. She asserted that her right shin was scraped, her left calf was bruised, her upper and lower back felt tight and achy with prolonged sitting, and that her hands hurt. Appellant did not stop work.

On April 17, 2018 Dr. Andrew S. Gieger, a family practitioner, completed an attending physician's report (Form CA-20) and noted that appellant fell at work on April 11, 2018. He diagnosed multiple contusions and muscle sprains. Dr. Gieger indicated by checking a box marked "Yes" that appellant's conditions were caused by an employment activity.

On April 25, 2018 Dr. Wilbor Wong, a Board-certified family practitioner, completed Form CA-20 noting appellant's history of injury. He diagnosed right hand swelling, right shin contusion, and tenderness in the right wrist snuffbox. Dr. Wong indicated by checking a box marked "Yes" indicating that appellant's condition was caused or aggravated by her employment activity. He further noted that the onset of symptoms was close in time to the incident. In a note of even date, Dr. Wong diagnosed right wrist sprain versus fracture. He completed an additional Form CA-20 on June 6, 2018 and diagnosed left leg contusion and left ankle strain. Dr. Wong again described appellant's trip over a dishwasher door. He answered, "Yes" to the question of whether her conditions were due to her employment activity and further opined that the findings presented directly after the incident. In a June 6, 2018 note, Dr. Wong noted a left lower leg lump, contusion or hematoma, and left ankle strain.

OWCP subsequently received a May 1, 2018 note, wherein Dr. Laura E. Ross, an osteopath and a Board-certified orthopedic surgeon, noted that she examined appellant on that date due to right shoulder pain. She noted that appellant had previously received a cortisone injection and had requested another. Dr. Ross diagnosed primary osteoarthritis of the right shoulder. In notes dated June 7, 2018, she diagnosed bilateral wrist sprain.

In a June 25, 2018 note, Dr. Efrain Paz, an osteopath specializing in orthopedic surgery, diagnosed left knee pain and cracking.

[3] 5 U.S.C. § 8101 *et seq*.

On June 26, 2018 appellant underwent a magnetic resonance imaging (MRI) scan, which demonstrated a small vertical tear of the medial meniscus, degenerative change in the lateral meniscus and mild tibiofemoral and patellofemoral chondrosis.

On July 2, 2018 Dr. Ross noted appellant's April 11, 2018 employment injury and diagnosed possible carpal tunnel syndrome, traumatically induced. On July 9, 2018 she completed a Form CA-20 and diagnosed bilateral wrist sprain. Dr. Ross noted that appellant tripped over an open dishwasher door and fell onto her hands and knees.

On July 9, 2018 Dr. Paz examined appellant and diagnosed mild degenerative joint disease, left knee, and possible medial meniscal tear, left knee. In a note of even date, he diagnosed medial meniscal tear and mild degenerative joint disease of the right knee.

By decision dated July 18, 2018, OWCP denied appellant's claim, finding that she had not established that the April 11, 2018 employment incident occurred as alleged. Thus, it concluded that the requirements for establishing an injury under FECA had not been met.

On July 31, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

On September 10, 2018 Dr. Ross examined appellant for complaints of increasing right wrist pain related to the April 11, 2018 employment incident.

By decision dated November 1, 2018, OWCP's hearing representative remanded the case for further development, noting that OWCP had not considered all the evidence submitted prior to the issuance of its July 18, 2018 decision.

In a November 15, 2018 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested information.

In a December 11, 2018 response to OWCP's development questionnaire, appellant indicated that there was no scheduled times for breaks, with the exception of the lunch break, and that there was no designated breakroom on the second floor and thus employees, use the first floor kitchen area throughout the workday. Appellant further contended that she was not injured when she fell into her seat while attending a movie while off duty two days following the April 11, 2018 employment incident.

By decision dated January 31, 2019, OWCP again denied appellant's claim, finding that she had not established the factual component of her claim. It concluded that the requirements had not been met to establish an injury as defined by FECA.

On February 19, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated June 26, 2019, OWCP's hearing representative modified the January 31, 2019 decision to find that the medical evidence of record was sufficient to establish bilateral wrist

sprains and multiple contusions as causally related to the accepted employment injury. However, the claim remained denied with regard to the additional claimed conditions.

By decision dated July 26, 2019, OWCP formally accepted bilateral wrist sprains and multiple contusions.

By separate decision dated July 26, 2019, OWCP denied expansion of the acceptance of appellant's claim for the additional conditions of bilateral traumatic carpal tunnel syndrome, left knee degenerative joint disease, degenerative right knee, right shoulder impingement, and left knee meniscal tear.

On August 5, 2019 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. He subsequently submitted additional evidence, including a left wrist MRI scan dated June 26, 2018, which demonstrated that the median nerve within the carpal tunnel was mildly thickened, raising the possibility of carpal tunnel syndrome. OWCP also received a June 26, 2018 MRI scan of the left knee.

In a September 11, 2019 report, Dr. Ross noted appellant's history of injury and diagnosed traumatically-induced bilateral carpal tunnel syndrome. She opined that that the injury was sustained as a direct result of the April 11, 2018 employment injury. Dr. Ross explained that "[c]arpal tunnel syndrome occurs when the tunnel becomes narrowed or when tissues surrounding the flexor tendons swell, putting pressure on the median nerve. Over time, synovial tissue swells and takes up space in the carpal tunnel, crowding the nerve. This places abnormal pressure on the nerve, which can result in pain, tingling, numbness and weakness in the hand. [Appellant] has experienced these symptoms in her bilateral wrists consistently, since her injury occurred. Carpal tunnel syndrome can be caused by a combination of factors, including a traumatic incident that causes blunt force involving flexion or extension of the hand and wrist. This is the case with [appellant], as I have clinically correlated this throughout multiple physical examinations. I directly attribute her traumatically induced bilateral carpal tunnel syndrome to the work-related incident that occurred on April 11, 2018."

A hearing was held on November 13, 2019. Counsel argued that appellant had developed carpal tunnel syndrome and a knee condition as a result of her accepted employment injury.

Following the oral hearing, appellant submitted additional medical evidence. In a June 25, 2018 report, Dr. Paz noted that she had injured her legs on April 11, 2018 at work when she tripped over an open dishwasher door. He diagnosed contusion of the bilateral lower legs. Dr. Paz completed a note on August 13, 2018 and diagnosed left knee degenerative joint disease with small medial meniscus tear. In a September 19, 2018 report, he described appellant's persistent left knee symptoms as well as pain, clicking, and catching in the right knee. Dr. Paz diagnosed degenerative joint disease with medial meniscal tear, left knee, and rule out medial meniscal tear, right knee. He completed a note on October 5, 2018 and diagnosed right knee possible medial meniscal tear, left knee mild degenerative joint disease, and left knee medial meniscal tear. On October 31, 2018 Dr. Paz diagnosed trochanteric bursitis, right hip. In a November 28, 2018 note, he provided an additional diagnosis of possible lumbar disc disease.

On September 28, 2018 appellant underwent a right knee MRI scan, which demonstrated mild degeneration of the posterior horn of the medial meniscus, but no evidence of a discrete tear.

In a January 18, 2019 note, Dr. Paz diagnosed trochanteric bursitis, left hip.

On February 23, 2019 appellant underwent a knee MRI scan, which demonstrated signal abnormality in the posterior horn of the medial meniscus.

On February 15, 2019 Dr. Paz diagnosed patellofemoral syndrome right knee and possible medial meniscal tear right knee. In a March 8, 2019 note, he diagnosed possible medial meniscal tear, right knee, patellofemoral syndrome right knee, and bilateral trochanteric bursitis. On July 3, 2019 Dr. Paz reiterated his bilateral trochanteric bursitis diagnosis.

On September 21, 2019 appellant underwent a left ankle MRI scan, which demonstrated tendinosis of the peroneal longus tendon, and a partial tear and split configuration peroneal brevis tendon and a ganglion cyst adjacent to the talonavicular joint.

In an October 2, 2019 report, Dr. Paz reported appellant's symptoms of increased left knee pain. He diagnosed rule out meniscal tear, left knee.

Appellant underwent a left knee MRI scan on October 5, 2019. On October 11, 2019 Dr. Paz examined appellant and added the diagnosis of chondromalacia patella, left knee.

On October 25, 2019 Dr. Robert Filoramo, a podiatrist, related the history of injury regarding appellant's April 11, 2018 employment incident. He noted that she had previously sought treatment for left foot paresthesia secondary to S1 disc compression. Dr Filoramo found possible peroneal nerve entrapment in the left foot. On June 25, 2019 appellant had increased pain along the lateral peroneal tendons of the left ankle which had persisted since April 11, 2018, as well as left foot and ankle pain. He diagnosed preexisting flatfoot deformity, plantar plate symptoms, radiculopathy-type symptoms as well as peroneal tendon strain, posterior tibial tendon discomfort, and tarsal tunnel symptoms arising since her fall on April 11, 2018. Dr. Filoramo reviewed an MRI scan of the left ankle, which demonstrated tendinosis of the peroneus longus tendon, partial split tear of the peroneal brevis tendon, and a ganglion cyst adjacent to the talonavicular joint. He opined, to a reasonable degree of medical certainty, that appellant's existing pathologies prior to the fall had progressed and were aggravated.

On November 1, 2019 Dr. Paz diagnosed right quadriceps tendinitis. He performed a surgical arthroscopy of appellant's left knee on November 14, 2019 with partial synovectomy and resection of the medial synovial plica. Dr. Paz found that her medial meniscus was intact.

In a January 16, 2019 report, Dr. Raymond Ragland, a Board-certified hand surgeon, diagnosed arthritis of the carpometacarpal (CMC) joint of both thumbs. He noted that appellant had a fall at work approximately a year earlier and experienced bilateral hand pain as a result. On March 18, 2019 Dr. Ragland performed right carpal tunnel release.

By decision dated January 24, 2020, OWCP's hearing representative modified the July 26, 2019 OWCP decision to expand the acceptance of the claim to include contusion of the left leg and right knee, left leg abrasion, and low back strain; however, she denied any further conditions

as causally related to appellant's accepted April 11, 2018 employment injury, including carpal tunnel syndrome, right shoulder impingement, left knee tear, degenerative joint disease of the left knee, and degenerative joint disease of the right knee.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[4]

To establish causal relationship between a condition and the employment event or factors, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[5] 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.[6]

In a case in which 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.[7]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include the additional conditions of right shoulder impingement, left knee tear, degenerative joint disease of the left knee, and degenerative joint disease of the right knee as causally related to her accepted April 11, 2018 employment injury.

On June 6, 2018 Dr. Wong diagnosed left ankle strain. In reports dated June 25, 2018 through November 1, 2019, Dr. Paz diagnosed lower extremity conditions including left knee pain, degenerative joint disease of both knees, medial meniscal tears of both knees, bilateral trochanteric bursitis, right quadriceps tendinitis, and left knee chondromalacia. None of these reports, however, provided an opinion regarding causal relationship between appellant's accepted employment injury and the additional diagnosed conditions. The Board has held that a report is of no probative

[4] *T.D.*, Docket No. 19-1506 (issued November 4, 2020); *S.L.*, Docket No. 19-0603 (issued January 28, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[5] *T.D., id.*; *S.L., id.*; *S.A.*, Docket No. 18-0399 (issued October 16, 2018).

[6] *M.M.*, Docket No. 19-0061 (issued November 21, 2019); *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

[7] *R.C.*, Docket No. 19-0376 (issued July 15, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

value regarding causal relationship if it does not provide an opinion on causal relationship.[8] As such, neither the June 6, 2018 report from Dr. Wong, nor the reports dated June 25, 2018 through November 1, 2019 from Dr. Paz are sufficient to meet appellant's burden of proof.

In an October 25, 2019 report, Dr. Filoramo diagnosed preexisting flatfoot deformity, plantar plate symptoms, radiculopathy-type symptoms as well as peroneal tendon strain, posterior tibial tendon discomfort, and tarsal tunnel symptoms since appellant's fall on April 11, 2018. He opined that her existing pathologies prior to the accepted fall progressed and were aggravated since the fall to a reasonable degree of medical certainty. While Dr. Filoramo provided an affirmative opinion supporting causal relationship, he did not offer a rationalized medical explanation to support his opinion. A mere conclusion regarding causation without supporting medical rationale is insufficient to meet appellant's burden of proof.[9] Thus, the Board finds that his reports are insufficient to meet appellant's burden of proof.

On May 1, 2018 Dr. Ross diagnosed preexisting right shoulder primary osteoarthritis. On January 16, 2019 Dr. Ragland diagnosed arthritis of the CMC joint of both thumbs. He noted that appellant had a fall at work approximately one year earlier and experienced bilateral hand pain as a result. As noted previously, the Board has held that a report is of no probative value regarding causal relationship if it does not contain and opinion as to how the accepted employment incident relates to the diagnosed conditions.[10] Neither Dr. Ross, nor Dr. Ragland, provided an opinion regarding how appellant's accepted employment injury caused or aggravated additional diagnosed conditions.[11] As such, these reports are insufficient to meet her burden of proof.

As the medical evidence of record is insufficient to establish causal relationship, the Board finds that she has not met her burden of proof to establish the additional conditions of right shoulder impingement, left knee tear, degenerative joint disease of the left knee, and degenerative joint disease of the right knee.

The Board further finds, however, that this case is not in posture for decision with regard to whether the acceptance of appellant's claim should be expanded to include the additional condition of bilateral carpal tunnel syndrome.

In a September 11, 2019 report, Dr. Ross noted appellant's history of injury and diagnosed traumatically induced bilateral carpal tunnel syndrome. She opined that appellant's carpal tunnel syndrome was a direct result of the April 11, 2018 employment injury. Dr. Ross explained that "[c]arpal tunnel syndrome occurs when the tunnel becomes narrowed or when tissues surrounding the flexor tendons swell, putting pressure on the median nerve. Over time, synovial tissue swells and takes up space in the carpal tunnel, crowding the nerve. This places abnormal pressure on the nerve, which can result in pain, tingling, numbness and weakness in the hand. [Appellant] has

[8] *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[9] *T.D., supra* note 5; *L.G.*, Docket No. 19-0142 (issued August 8, 2019).

[10] *Supra* note 9.

[11] *Supra* note 8.

experienced these symptoms in her bilateral wrists consistently, since her injury occurred. Carpal tunnel syndrome can be caused by a combination of factors, including a traumatic incident that causes blunt force involving flexion or extension of the hand and wrist. This is the case with [appellant], as I have clinically correlated this throughout multiple physical examinations. I directly attribute her traumatically-induced bilateral carpal tunnel syndrome to the work-related incident that occurred on April 11, 2018."

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[12] OWCP has an obligation to see that justice is done.[13]

Dr. Ross, in his September 11, 2019 report, provided a pathophysiological explanation as to how the accepted employment incident could have caused or contributed to appellant's bilateral carpal tunnel syndrome.[14] Although the report is insufficient to meet appellant's burden of proof to establish her claim, it is sufficient to require OWCP to further develop the medical evidence.[15]

On remand OWCP shall prepare a statement of accepted facts and obtain a rationalized opinion from a physician in the appropriate field of medicine as to whether the accepted employment injury caused, contributed to, or aggravated the diagnosed bilateral carpal tunnel syndrome. If the physician opines that the diagnosed bilateral carpal tunnel syndrome is not causally related, he or she must explain, with rationale, how or why the opinion differs from that of Dr. Ross. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include additional conditions of right shoulder impingement, left knee tear, degenerative joint disease of the left knee, and degenerative joint disease of the right knee. The Board further finds that the case is not in posture for decision with regard to whether appellant's claim should be expanded to include the additional condition of bilateral carpal tunnel syndrome.

[12] *S.M., id.*; *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

[13] *Id.*

[14] *T.L.*, Docket No. 18-1187 (issued March 10, 2020).

[15] *R.M.*, Docket No. 20-0342 (issued July 30, 2020).

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 21, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board