

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

_____)	
B.A., Appellant)	
)	
and)	Docket No. 22-0213
)	Issued: July 26, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Columbus, OH, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On November 23, 2021 appellant, through counsel, filed a timely appeal from a November 3, 2021 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.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 OWCP received additional evidence following the November 3, 2021 decision. 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 met her burden of proof to establish a recurrence of disability commencing November 23, 2020, causally related to her accepted November 24, 2014 employment injury.

FACTUAL HISTORY

On December 1, 2014 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 24, 2014 she sustained an injury to her right arm and shoulder and both knees when she fell on the sidewalk trying to retrieve mail trays while in the performance of duty.⁴ She did not initially stop work.

OWCP accepted the claim under File No. xxxxxx323 for bilateral knee contusions, sprain of the right shoulder and upper arm, and right rotator cuff tear.

On July 16, 2015 appellant stopped work to undergo authorized right shoulder rotator cuff repair. On December 1, 2015 she returned to work four hours per day with restrictions and gradually increased her work hours to eight hours per day by December 12, 2015, with restrictions. OWCP paid appellant wage-loss compensation on the supplemental rolls from July 21, 2015 through January 22, 2016.

On March 1, 2016 appellant returned to full-duty work without restrictions and continued to work until November 23, 2020.

On February 17, 2021 appellant filed a notice of recurrence (Form CA-2a) for medical treatment and time loss from work due to the November 24, 2014 employment injury. She indicated that she first received medical treatment following the recurrence on June 27, 2019 and stopped work on November 23, 2020. Appellant noted on the claim form that she had difficulty walking around the job site and standing for extended periods of time. In an accompanying statement, she noted that walking was painful and she had to limit social events, household chores, and daily errands in order to be able to go to work. Appellant indicated that a double knee replacement was necessary to improve her quality of life.

OWCP received treatment notes dated June 27 and 18, and September 23, 2019, and June 10, 2020, from Dr. Jennifer Richardson, a Board-certified rheumatologist, who related that appellant was seen for musculoskeletal complaints. Dr. Richardson related that appellant received treatment for bilateral knee and hand pain.

A June 27, 2019 x-ray of appellant's knees revealed end-stage osteoarthritis of the knees, worse in the right lateral compartment, and the left medial compartment. An x-ray of her left hand was normal with some degenerative changes.

⁴ On December 22, 1997 appellant filed an occupational disease claim (Form CA-2) alleging that factors of her federal employment caused her hand and wrist condition. OWCP accepted the claim for bilateral carpal tunnel syndrome and bilateral trigger ring finger acquired. OWCP File No. xxxxxx892. It granted appellant a schedule award for 40 percent permanent impairment to the left upper extremity and 40 percent permanent impairment to the right upper extremity. OWCP combined the current claim with OWCP File No. xxxxxx892 serving as the master file.

OWCP received a March 20, 2020 report from a physician assistant, who noted that appellant continued to have pain in both knees, and that appellant required bilateral knee replacement.

A November 23, 2020 operative report from Dr. Joel Politi, a Board-certified orthopedic surgeon, related that appellant had undergone a left knee total arthroplasty on that day.

In a development letter dated February 22, 2021, OWCP advised appellant of the deficiencies of her recurrence claim. It requested additional medical evidence to substantiate that her current condition was causally related to the accepted employment injury. OWCP requested that appellant complete a questionnaire and provide bridging information from her work-related condition and all periods of disability from work. It afforded her 30 days to respond.

Appellant provided a March 1, 2021 statement indicating that her condition had worsened over the past six years. In a response to the questionnaire, she explained that on June 12, 2019 both of her knees were swollen and her ability to move and bend was limited. Appellant described her work duties which included allocating the employees (carriers/clerks) daily for mail delivery. Her work activities included lifting, bending, and walking to oversee the processing of mail for delivery. Appellant indicated that she believed that her disability was due to the accepted work-related condition because on November 24, 2014 she fell on concrete which caused a blunt force trauma to both knees. She related that the injury changed her life, as she limited social events, household chores, and daily errands to be able to go to work.

In a letter dated March 4, 2021, the employing establishment controverted the recurrence claim.

OWCP received treatment notes and diagnostic reports from Dr. Steven Tanzer, an osteopath specializing in family medicine, dated April 13, July 21, September 19, and November 17, 2016, February 9, 2017, and December 30, 2020, which related that appellant was treated for bilateral knee pain.

OWCP also received September 30, 2020 treatment notes from Dr. Richardson who noted assessments of left hand rheumatoid arthritis and pain, and bilateral knee pain.

OWCP received a December 15, 2017 treatment note from a nurse practitioner, who noted appellant's complaints of bilateral knee pain.

By decision dated April 21, 2021, OWCP denied appellant's claimed recurrence commencing November 23, 2020. It found that the medical evidence of record was insufficient to establish that she was disabled or/further disabled due to a material change or worsening of her accepted work-related conditions without an intervening cause.

On May 3, 2021 appellant, through counsel, requested a telephonic oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on August 19, 2021. During the hearing appellant explained that on June 12, 2019 both knees were swollen, stiff, and her mobility to bend was limited. She testified that she had undergone bilateral knee replacements, the first surgery was performed on November 24, 2020 and the second surgery was performed on March 19, 2021.

OWCP received medical records, treatment notes, and physical therapy notes dating intermittently from November 25, 2014 to May 4, 2015.

By decision dated November 3, 2021, an OWCP hearing representative affirmed the April 21, 2021 decision. The hearing representative explained that there was no rationalized medical evidence to support disability for the period on and after November 23, 2020, causally related to the accepted work injury. Additionally, the records did not explain how the work-related condition worsened to the point that appellant could no longer work beginning November 23, 2020.⁵

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.⁶

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.⁷

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁸ Where no such rationale is present, the medical evidence is of diminished probative value.⁹

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹⁰ The Board will not require OWCP to pay compensation for disability in the absence of medical evidence

⁵ OWCP indicated August 23, 2020, but this appears to be a typographical error, as appellant worked until November 23, 2020.

⁶ 20 C.F.R. § 10.5(x); *see W.H.*, Docket No. 21-0139 (issued October 26, 2021); *A.E.*, Docket No. 20-0259 (issued April 28, 2021); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

⁸ *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *see C.C.*, Docket No. 18-0719 (issued November 9, 2018).

⁹ *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

¹⁰ *See B.D.*, Docket No. 18-0426 (issued July 17, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify their disability and entitlement to compensation.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing November 23, 2020, causally related to her accepted November 24, 2014 employment injury.

OWCP accepted appellant's claim for bilateral knee contusions, sprain of the right shoulder and upper arm, and right shoulder rotator cuff tear due to the November 24, 2014 employment injury. Appellant returned to full-duty work with no restrictions on March 1, 2016 and stopped work on November 23, 2020. On February 17, 2021 she filed a Form CA-2a for medical treatment and disability from work.

OWCP received notes from Dr. Richardson dated June 27, July 18, and September 23, 2019, and June 10, September 30, and December 20, 2020, in which he noted appellant's knee and hand pain. It also received notes from Dr. Tanzer intermittently from April 13, 2016 to December 30, 2020, in which he indicated that he was treating her for knee pain. The Board has consistently held that pain is a symptom, not a compensable medical diagnosis.¹² Further, the reports from Dr. Richardson and Dr. Tanzer failed to explain how the accepted work-related conditions worsened to the point that appellant could no longer work as of November 23, 2020.

A November 23, 2020 operative report from Dr. Politi related that appellant had undergone left knee total arthroplasty. However, Dr. Politi did not offer any medical explanation of how the accepted knee contusion resulted in the need for left knee surgery six years after the accepted November 24, 2014 employment injury. To be of probative medical value, the medical opinion must provide an opinion that the employment injury caused or contributed to the diagnosed medical condition, supported by medical reasoning sufficient to demonstrate that the conclusion reached is sound, logical, and rational.¹³ Dr. Politi did not offer any opinion regarding causal relationship between appellant's left knee condition which required total arthroplasty and the accepted employment injury, his report was therefore of no probative value.¹⁴

OWCP received a December 15, 2017 treatment note from a nurse practitioner, and a March 20, 2020 report from a physician assistant. Nurse practitioners and physician assistants are

¹¹ *Id.*; *Fereideoon Kharabi*, 52 ECAB 291 (2001).

¹² *R.C.*, Docket No. 20-1321 (issued July 7, 2021); *J.S.*, Docket No. 0764 (issued January 21, 2021).

¹³ *A.C.*, *id.*; *John W. Montoya*, 54 ECAB 306 (2003).

¹⁴ *See L.B.*, *supra* note 7; *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

not considered physicians as defined under FECA, and their medical findings and opinions are insufficient to establish entitlement to compensation benefits.¹⁵

OWCP also received diagnostic testing reports which included June 27, 2019 x-rays of the bilateral knees and hands. The Board has held that diagnostic tests, 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.¹⁶ For this reason, these reports are insufficient to meet appellant's burden of proof.

As appellant has not submitted medical evidence sufficient to establish a recurrence of the need for medical treatment and disability on November 23, 2020 causally related to her accepted November 24, 2014 employment injury, the Board finds that she 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 recurrence of disability commencing November 23, 2020, causally related to her accepted November 24, 2014 employment injury.

¹⁵ Section 8101(2) of FECA provides that a 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 supra* note 7 at Chapter 2.805.3a(1) (January 2013); *N.C.*, Docket No. 21-0934 (issued February 7, 2022); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *P.H.*, Docket No. 19-0119 (issued July 5, 2019); *T.K.*, Docket No. 19-0055 (issued May 2, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA). *See also* *W.Z.*, Docket No. 20-0191 (issued July 31, 2020) (a nurse practitioner is not considered a physician under FECA).

¹⁶ *See S.O.*, Docket No. 21-0332 (issued September 24, 2021); *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 November 3, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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