

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

K.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bedford Park, IL, Employer**

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**Docket No. 22-0212
Issued: June 14, 2022**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
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 November 23, 2021 appellant, through counsel, filed a timely appeal from a November 5, 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, following the November 5, 2021 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include left knee effusion, left knee medial and lateral meniscus tears, and left knee loose body, causally related to the accepted May 7, 2020 employment injury.

FACTUAL HISTORY

On May 12, 2020 appellant, then a 35-year-old postal collections and delivery carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 7, 2020 she twisted her left knee when she slipped and fell downstairs after being startled by a homeowner's dogs, while in the performance of duty. She stopped work on May 12, 2020 and returned on May 13, 2020.

In a May 12, 2020 duty status report (Form CA-17), Dr. Ijaz Ahmad, a Board-certified internist, diagnosed left knee sprain as a result of falling downstairs.

A May 12, 2020 left knee x-ray read by Dr. Howard A. Pinchcofsky, a Board-certified diagnostic radiologist, revealed no acute fracture or dislocation; however, there was mild left knee osteoarthritis with intra-articular loose body.

In a May 15, 2020 Form CA-17, Dr. Ahmad, noted diagnoses of left knee sprain and left knee joint effusion as a result of falling downstairs.

In a development letter dated May 28, 2020, OWCP informed appellant regarding the deficiencies of her claim. It explained the type of factual and medical evidence necessary to establish her traumatic injury claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

OWCP received a May 12, 2020 report from Dr. Ahmad, in which he noted appellant's history of injury and diagnosed her with left knee sprain. Dr. Ahmad indicated that a tear or other abnormalities could not be ruled out until further imaging was completed.

By decision dated July 1, 2020, OWCP denied the claim. It found that the medical evidence was insufficient to establish that the diagnosed medical condition was caused by the accepted employment incident.

On September 24, 2020 appellant requested reconsideration. In a supplemental statement she explained that she injured her left knee when she fell downstairs on May 7, 2020 resulting in left knee torn meniscus and loose body. Appellant indicated that she had undergone left knee surgery on August 20, 2020 and remained off work.

OWCP received a June 8, 2020 report from Queenester Gray, a nurse practitioner, that noted diagnoses of left knee sprain, effusion, and loose body.

In a Form CA-17 dated July 27, 2020, Dr. Ahmad noted diagnoses of left knee loose body and left knee sprain. In an August 24, 2020 Form CA-17, he related a diagnosis of left knee tear and loose bodies. In a September 21, 2020 Form CA-17, Dr. Ahmad noted that appellant had undergone left knee tear repair.

Appellant underwent left knee arthroscopy performed by Dr. Michael Maday, a Board-certified orthopedic surgeon, on August 20, 2020 for left knee medial meniscus tear with loose body and lateral meniscal tear.

By decision dated October 30, 2020, OWCP modified the July 1, 2020 decision finding that the evidence was sufficient to accept appellant's left knee sprain as causally related to the accepted May 7, 2020 employment incident. However, it further found that the medical evidence was insufficient to establish that her left knee effusion, left knee medial and lateral meniscus tears, and loose body were causally related to the accepted work-related injury.

Appellant continued to submit medical evidence. In June 26, 2020 treatment notes, Dr. Maday noted her history of injury and treatment. He assessed a possible meniscal tear of the left knee with small possibility of loose body and requested a magnetic resonance imaging (MRI) scan of appellant's left knee. Dr. Maday treated her on August 7, 2020 and confirmed that an MRI scan revealed an undersurface tear of the posterior horn of the medial meniscus and degeneration of a loose body. In a December 11, 2020 treatment note, he indicated that appellant was post knee arthroscopy with residual weakness and new onset of pain following a recent fall with a new onset of swelling. In a January 15, 2021 treatment note, Dr. Maday noted that she was post knee arthroscopy with improved residual weakness. In February 19, March 19, and April 30, 2021 notes he repeated his findings that appellant was post knee arthroscopy with residual weakness.

On April 30, 2021 appellant requested reconsideration.

OWCP received a May 28, 2021 treatment note from Dr. Maday, who indicated that appellant was post knee arthroscopy with quadricep weakness. In a June 25, 2021 treatment note, Dr. Maday assessed persistent quadricep weakness.

OWCP received a June 25, 2021 Form CA-17 from Dr. Ahmad who noted that appellant had left knee tear and loose bodies, had undergone a left knee tear repair, and had residual left knee weakness.

By decision dated July 29, 2021, OWCP denied modification of the prior decision.

On October 5, 2021 appellant requested reconsideration.

Dr. Maday continued to treat appellant and submitted July 30 and September 3, 2021 reports relating that she was status post knee arthroscopy with residual weakness and normal electromyography (EMG).

In a September 3, 2021 Form CA-17, Dr. Maday diagnosed a superior labrum anterior to posterior tear of the left knee.

In a report dated October 1, 2021, Dr. Maday noted that appellant originally was evaluated on June 26, 2020 for a left knee injury. He noted that she described a work injury on May 7, 2020 when she fell onto her left knee, twisted her knee as she fell, and had onset of pain and mechanical symptoms. Dr. Maday explained that an MRI scan revealed a loose body and that he performed an arthroscopy on August 8, 2020 which revealed a medial and lateral meniscus tear with a loose body. He also noted that, at the time of surgery, appellant's findings were consistent with her mechanism of injury and her symptoms. Dr. Maday opined that, "there was a direct causal

relationship between the injury [appellant] described, findings on MRI [scan], and the findings at the time of surgery.”

Dr. Maday completed an October 1, 2021 Form CA-17 noting appellant’s continued left knee weakness.

In a development letter dated October 15, 2021, OWCP requested that Dr. Maday provide further rationale to explain how the claimed work injury caused the diagnosed condition of medial and lateral meniscus tear and loose body. A copy of the development letter was sent to appellant. Dr. Maday did not respond.

On October 28, 2021 appellant contacted OWCP to inform them that Dr. Maday did not receive the letter and needed more time to respond.

By decision dated November 5, 2021, OWCP denied modification of the July 29, 2021 decision.

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

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁵ A physician’s opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁶ 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 employment injury.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 a left knee effusion, left knee medial and lateral meniscus tear, and loose body of the left knee, causally related to the accepted May 7, 2020 employment injury.

In a report dated October 1, 2021, Dr. Maday explained that appellant was evaluated on June 26, 2020, following a May 7, 2020 fall at work, and that an MRI scan revealed a medial and

⁴ See *J.L.*, Docket No. 10-1162 (issued October 7, 2021); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁵ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁶ *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *Id.*

lateral meniscus tear and a loose body. He opined that “there was a direct causal relationship between the injury [appellant] described, findings on MRI [scan], and the findings at the time of surgery.” However, Dr. Maday did not explain how the additional diagnosed conditions of medial and lateral meniscus tear and a loose body occurred physiologically as a result of the accepted employment injury. The Board has held that a medical opinion that is conclusory in nature is of limited probative value.⁸ The Board finds that, as this report related a conclusion, but failed to provide a rationalized medical opinion to explain how the additional conditions were caused by the accepted employment-related injury, it is insufficient to meet appellant’s burden of proof.⁹

In a June 26, 2020 treatment note, Dr. Maday assessed a possible meniscal tear of the left knee with small possibility of loose body and opined that appellant’s condition was possibly caused by the work incident. This note was speculative and equivocal and, therefore, insufficient to meet her burden of proof.¹⁰ Dr. Maday provided an August 20, 2020 operative report which reflected that appellant had undergone arthroscopy for left knee meniscal tear with loose body and lateral meniscal tear, an August 7, 2021 treatment note which confirmed that an MRI scan revealed an undersurface tear of the posterior horn of the medial meniscus as well as degeneration of a loose body. He concluded that the mechanism of injury was consistent with a meniscal tear as well as a degeneration of a loose body. However, Dr. Maday did not offer sufficient rationale explaining the causal relationship.¹¹ In postoperative reports dated December 11, 2020, January 15, February 19, March 19, April 30, May 28, and June 25, 2021, and July 30, September 3 and October 4, 2021, he assessed status post knee arthroscopy with residual weakness and normal EMG. These reports, however, did not offer an opinion explaining how the diagnosed conditions resulted from the accepted May 7, 2020 work injury and, therefore, are of limited probative value.¹²

In a May 12, 2020 Form CA-17, Dr. Ahmad diagnosed left knee sprain as a result of falling down some stairs. A May 15, 2020 Form CA-17 provided an additional diagnosis of left knee joint effusion as a result of falling downstairs. Dr. Ahmad provided additional reports including a July 27, 2020 Form CA-17 with a diagnosis of left knee loose body and left knee sprain as a result of falling downstairs, an August 24, 2020 Form C-17 with a diagnosis of left knee tear and loose bodies as a result of falling downstairs, and a September 21, 2020 Form CA-17 with a diagnosis of left knee tear repair as a result of falling down some stairs. He also submitted CA-17 forms and disability certificates dated August 24 and September 21, 2020 and June 25, 2021. However, these reports from Dr. Ahmad merely provided conclusory opinions regarding causal relationship by

⁸ *C.M.*, Docket No. 19-0360 (issued February 25, 2020); *C.D.*, Docket No. 17-0292 (issued June 19, 2008); *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁹ 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).

¹⁰ The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value. *J.J.*, Docket No. 21-0992 (issued December 16, 2021); *R.C.*, Docket No. 18-1695 (issued March 12, 2019); see *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

¹¹ *Supra* note 8.

¹² *R.G.*, Docket No. 18-0792 (issued March 11, 2020); see *L.C.*, Docket No. 19-1301 (issued January 29, 2020).

noting the diagnoses were the result of falling downstairs he did not explain with medical rationale how the diagnoses of left knee effusion, left knee tear, and loose body of the left knee were caused by the accepted work injury.¹³ Therefore, these reports are insufficient to establish appellant's claim.¹⁴

OWCP also received a number of diagnostic reports. However, the Board has held that diagnostic tests, standing alone, lack probative value as they do not provide an opinion on causal relationship between diagnosed conditions, and an employment injury.¹⁵ Therefore, this evidence also is insufficient to establish appellant's claim.

The record also contains a report from Ms. Gray, a nurse practitioner. The Board has long held that certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered qualified physicians as defined under FECA.¹⁶ Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹⁷ Consequently, the nurse practitioner's note is insufficient to meet appellant's burden of proof.

As appellant has not submitted any rationalized medical evidence establishing that the acceptance of her claim should be expanded to include a left knee effusion, left knee medial and lateral meniscus tears, and loose body of the left knee, causally related to the accepted May 7, 2020 employment injury, she has failed to meet 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 that the acceptance of her claim should be expanded to include a left knee effusion, left knee medial and lateral meniscus tears, and loose body of the left knee, causally related to the accepted May 7, 2020 employment injury.

¹³ *Id.*; see also *R.D.*, *supra* note 9.

¹⁴ *Id.*

¹⁵ *S.K.*, Docket No. 19-0272 (issued July 21, 2020); *A.V.*, Docket No. 19-1575 (issued June 11, 2020).

¹⁶ Section 8102(2) of FECA provides as follows: "(2) 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 also *supra* note 9 at 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); *E.W.*, Docket No. 20-0338 (issued October 9, 2020).

¹⁷ *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007).

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 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