United States Department of Labor
Employees' Compensation Appeals Board

A.W., Appellant	)	
and	)	**Docket No. 22-1196**
	)	**Issued: November 23, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Richmond, VA, Employer,	)	

Appearances:
Appellant, pro se
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 August 1, 2022 appellant filed a timely appeal from a June 27, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a right knee condition causally related to the accepted March 17, 2022 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the June 27, 2022, 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*.

FACTUAL HISTORY

On March 23, 2022 appellant, then a 35-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 17, 2022 she injured her right knee while in the performance of duty. She explained that, while delivering mail, she slipped and fell down a concrete stairway, hitting the pavement, causing a swollen right knee, bruised skin, and a possible ligament tear. On the reverse side of the claim form the employing establishment indicated that she did not stop work.

In support of her claim, appellant submitted a March 17, 2022 note from Kathy Cole, a family nurse practitioner, noting that she was treated in the emergency room that day. Ms. Cole related that appellant presented with acute right knee, lower leg, left ankle and right shoulder pain. She held appellant off work the following day. In a work excuse note of even date, Ms. Cole reiterated her instructions for appellant to refrain from work and other activities the following day.

A diagnostic report also dated March 17, 2022, from Dr. James Lutz, a Board-certified radiologist, related that appellant underwent an x-ray scan of her right knee due to a clinical indication of blunt trauma to the knee, lower leg, and ankle caused by a fall. Dr. Lutz noted that there were no acute findings.

On March 21, 2022 Juanita Kay Keen, a family nurse practitioner, held appellant off work from March 28 through April 11, 2022.

In encounter notes dated March 21, 28, and April 11, 2022, Ms. Keen noted that appellant initially presented with complaints of injuring her right knee, left ankle, and both hands as a result of a fall on March 17, 2022. On physical examination on March 21, 2022 she observed a one-inch abrasion on the right anterior lower leg with swelling and continued pain in the right knee upon ambulation, flexion, and extension. In her March 28, 2022 note, Ms. Keen indicated that appellant had undergone a magnetic resonance imaging (MRI) scan study of the right knee, which was questionable for medial meniscal tear. She again observed the abrasion and noted discoloration and inflammation about the area. On April 11, 2022 Ms. Keen reported that appellant continued to present with ongoing right knee and leg pain and noted one-inch scabbing about the right anterior lower leg and no bilateral edema.

In a March 22, 2022 diagnostic report, Dr. Fozail Alvi, a Board-certified radiologist, detailed the findings of a right knee MRI scan, which revealed trace effusion with mild capsular thickening, as well as a popliteal cyst with mild anterior subcutaneous edema and an impression of questionable medial meniscal tear diagnosis.

In duty status reports (Form CA-17) dated April 13, 2022, Ms. Keen related that appellant was examined on March 21 and 28, and April 11, 2022. She noted that appellant was injured on March 17, 2022 when she fell downstairs and landed on her knees. Ms. Keen diagnosed right knee pain and questionable medial meniscus tear and provided work restrictions.

In an undated statement received April 19, 2022, appellant explained that she was delivering mail at a school on March 17, 2022 when she was startled by the sound of a car horn, causing her to slip and fall down concrete stairs, landing on her knees and right shin. She noted

that she also cut the palms of her hands and injured her right wrist. Appellant asserted that following the fall, she continued her route until she was able to contact the employing establishment and report the incident. Thereafter, she reported to the employing establishment where another carrier helped her pack before she left to be evaluated at the emergency room.

In a May 6, 2022 medical report, appellant sought treatment with Dr. Thomas Whitman, a Board-certified orthopedic surgeon, regarding her possible right knee medial meniscus tear. Upon examination, he noted tenderness of the lateral and medial joint lines and the patella tendon of the right knee, as well as decreased range of motion in the right leg. Dr. Whitman noted that her pain was greater than that resulting from a medial meniscus tear and was "likely" a result of a protective limp she developed following her fall. He provided work restrictions.

In a May 9, 2022 Form CA-17, an unidentifiable healthcare provider diagnosed knee pain and provided work restrictions.

In a work status note dated May 11, 2022, Ms. Keen noted that appellant was under her care beginning May 11 through June 10, 2022, due to a right medial meniscal tear. OWCP also received an illegible attending physician's report (Form CA-20) of even date, signed by Ms. Keen.

In a May 24, 2022 development letter, OWCP advised appellant of the deficiencies of her claim. It informed her of the type of factual and medical evidence needed to establish her claim. OWCP afforded her 30 days to submit the necessary evidence.

Thereafter, appellant submitted a form report dated May 5, 2022 from Dr. Whitman noting that she had sustained a work-related injury by checking a box marked "Yes."

In a progress note dated May 23, 2022, appellant presented to Dr. Whitman with continued complaints of right knee pain, swelling, popping, and buckling. Dr. Whitman noted that she had no improvement with treatment and remained out of work. Appellant agreed to proceed with surgery. In a Form CA-20 of even date, Dr. Whitman opined, by checking a box marked "Yes" that appellant's fall on March 17, 2022 caused or aggravated her medical meniscus tear.

By decision dated June 27, 2022, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between her diagnosed right knee condition and the accepted March 17, 2022 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of establishing 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 filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment

[3] *Supra* note 1.

injury.[4] 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.[5]

To determine whether an employee sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee experienced the employment incident which is alleged to have occurred at the time and place, and in the manner alleged. The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[6]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[7] 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.[8]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a one-inch abrasion on the right anterior lower leg causally related to the accepted March 17, 2022 employment incident.

OWCP found that the March 17, 2022 employment incident occurred in the performance of duty as alleged. In a March 21 2022 encounter note, Ms. Keen, a family nurse practitioner, observed a one-inch abrasion on the right anterior lower leg, accompanied by swelling, resulting from the accepted March 17, 2022 employment incident. She continued to treat appellant, noting the progress of the abrasion and dissipation of the swelling.

As the evidence of record establishes that appellant's employment incident resulted in a visible injury, the Board finds that she has met her burden of proof to establish a one-inch abrasion on the right anterior lower leg causally related to the accepted March 17, 2022 employment

[4] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[7] *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).

[8] *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).

incident.[9] The case will, therefore, be remanded for payment of medical expenses for appellant's diagnosed one-inch abrasion on the right anterior lower leg, to be followed by a *de novo* decision regarding any attendant disability.

The Board further finds, however, that appellant has not met her burden of proof to establish a right knee condition causally related to the accepted March 17, 2022 employment injury.

In support of her claim, appellant submitted a May 6, 2022 report from Dr. Whitman which noted her complaints of ongoing right knee pain. He diagnosed a possible right knee medial meniscus tear and opined that her condition was "likely" caused by a protective limp she developed from the fall at work. The Board has held that a medical opinion is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.[10] Moreover, the Board has held that medical opinions that are speculative or equivocal in nature are of diminished probative value.[11] Therefore, Dr. Whitman's May 6, 2022 report is insufficient to establish causal relationship.

In a May 5, 2022 form report, Dr. Whitman checked a box marked "Yes," indicating that appellant's right knee condition was work related. Similarly, in his May 23, 2022 Form CA-20, he checked a box marked "Yes" indicating that the fall at work on March 17, 2022 caused or aggravated appellant's diagnosed medical meniscus tear. The Board has held, however, that an opinion on causal relationship, which consists of a physician checking a box in response to a form question, without supporting medical rationale explaining how the employment activity caused the diagnosed condition, is of little probative value.[12] Therefore, Dr. Whitman's May 5 and 23, 2022 reports are also insufficient to establish appellant's burden of proof.

Appellant also submitted medical evidence from Ms. Keen and Ms. Cole, nurse practitioners. However, the Board has held that certain healthcare providers such as nurse

[9] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6a (June 2011); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3c (January 2013). *See also J.S.*, Docket No. 21-0376 (issued September 16, 2022); *A.J.*, Docket No. 20-0484 (issued September 2, 2020); *S.K.*, Docket No. 18-1411 (issued July 22, 2020).

[10] *See V.D.*, Docket No. 20-0884 (issued February 12, 2021); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[11] *A.D.*, Docket No. 21-0510 (issued September 29, 2022); *H.A.*, Docket No. 18-1455 (issued August 23, 2019).

[12] *See E.H.*, Docket No. 19-0365 (issued March 17, 2021); *B.C.*, Docket No. 16-1404 (issued April 14, 2017); *James A. Long*, 40 ECAB 538 (1989).

practitioners are not considered physicians as defined under FECA.[13] Consequently, their medical findings will not suffice for purposes of establishing entitlement to FECA benefits.

The remaining evidence of record consists of diagnostic studies, including a March 17, 2022 x-ray report and a March 22, 2022 MRI scan of the right knee. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment factors caused a diagnosed condition.[14] Consequently, these reports are insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence sufficient to establish a causal relationship between her diagnosed right knee condition and the accepted March 17, 2022 employment incident, 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 met her burden of proof to establish a one-inch abrasion on the right anterior lower leg causally related to the accepted March 17, 2022 employment incident. The Board further finds, however, that appellant has not met her burden of proof to establish a right knee condition causally related to the accepted March 17, 2022 employment injury.

[13] 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* 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 L.S.*, Docket No. 19-1231 (issued March 30, 2021) (a nurse practitioner is not considered a physician as defined under FECA).

[14] *S.W.*, Docket No. 21-1105 (issued December 17, 2021); *W.L.*, Docket No. 20-1589 (issued August 26, 2021); *A.P.*, Docket No. 18-1690 (issued December 12, 2019).

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2022 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part.

Issued: November 23, 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