United States Department of Labor
Employees' Compensation Appeals Board

K.B., Appellant	)	
and	)	**Docket No. 22-0842**
	)	**Issued: April 25, 2023**
U.S. POSTAL SERVICE, PHILADELPHIA POST OFFICE, Philadelphia, PA, 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 May 9, 2022 appellant, through counsel, filed a timely appeal from a November 8, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).[2] Pursuant to

[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] A claimant has 180 days from the date of OWCP's decision to timely file an appeal. 20 C.F.R. § 501.3(e). In this case, the 180-day period for the November 8, 2021 decision expired on Saturday, May 7, 2022. If the last day to file an appeal falls on a Saturday, Sunday, or Federal holiday, the 180-day period runs until the close of the next business day. 20 C.F.R. § 501.3(f)(2). As the appeal in this case was received by the Board on Monday, May 9, 2022, it was therefore timely filed.

the Federal Employees' Compensation Act (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to the accepted September 12, 2016 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.[4] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 13, 2016 appellant, then a 46-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on September 12, 2016, while delivering mail in an apartment complex in the performance of duty, she was verbally assaulted and locked in a hallway by a resident who held the door closed for 20 minutes. She reported experiencing stress and anxiety, as well as low back and right knee injuries. Appellant stopped work on September 14, 2016 and received continuation of pay through October 27, 2016. OWCP accepted her claim for panic disorder without agoraphobia. It paid appellant wage-loss compensation on the supplemental rolls, effective October 26, 2016.[5]

On February 2, 2017 Dr. John J. McPhilemy, an osteopath and Board-certified orthopedist, treated appellant for right knee and low back pain that radiated to the right lower extremity. Appellant reported injuring herself in a work-related accident, which occurred on September 12, 2016 when she was assaulted by an apartment resident while delivering mail. Dr. McPhilemy noted viewing a video of the altercation, which did not show any overt physical contact between the two parties. Appellant reported twisting her knee and low back while trying to pull open the door that another individual was holding closed. He diagnosed right knee sprain with underlying osteoarthritis, rule out meniscus tear, lumbar sprain, and right lumbosacral radiculitis and administered a right knee injection.

[3] The Board notes that following the November 8, 2021 decision, appellant submitted additional evidence to OWCP. 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.*

[4] Docket No. 18-1593 (issued April 16, 2019).

[5] OWCP received an electromyogram (EMG) and nerve conduction velocity (NCV) study dated February 28, 2011, which was normal. A magnetic resonance imaging (MRI) scan of the right knee dated March 13, 2014 revealed thinning of the articular cartilage, osteophytic productive spurring at the lateral compartment, a parameniscal cyst anterior to the anterior horn of the medial meniscus suggesting and underlying meniscal tear, thinning of the articular cartilage with osteophytic productive spurring, and a small joint effusion at the patellofemoral compartment.

By decision dated July 18, 2017, OWCP expanded the acceptance of appellant's claim to include major depressive disorder, single episode, severe without psychotic features.

In a letter dated August 16, 2018, appellant, through counsel, requested expansion of the acceptance of her claim to include post-traumatic lumbosacral sprain/strain and post-traumatic right knee sprain/strain.

In support of her request, appellant submitted an August 6, 2018 report from Dr. Michael Greenberg, a chiropractor, and Dr. Glenn Rosen, a Board-certified family practitioner, who treated her for middle back, low back, and right leg/knee pain. Appellant reported that on September 12, 2016 she was verbally and physically assaulted while sorting mail in an apartment building. Dr. Rosen noted findings on examination of an impaired gait, positive straight leg testing bilaterally, decreased strength in the right quadricep, hypo-sensation along the right lower extremity, and palpation of the cervical, thoracic, and lumbar spine, which revealed spasm, tenderness, and trigger points.[6] He diagnosed post-traumatic lumbosacral sprain/strain and aggravation of post-traumatic right knee sprain/strain. Dr. Rosen opined within a reasonable degree of medical certainly that appellant sustained various injuries proximately caused by the September 12, 2016 employment injury when she was verbally and physically assaulted while sorting mail. He noted his review of a video of the incident that showed an individual leave the mailroom and shut the door behind him and he visualized appellant's attempt to vigorously open the door. Dr. Rosen noted that, during this portion of the altercation, appellant aggravated her previous right knee injury and suffered a low back injury. He explained that, when appellant attempted to open the door using normal exertional force, the door did not open. Appellant then began to exert increased force in an attempt to open the door. Dr. Rosen opined that exerting increased force to perform a task that typically required little-to-no force caused appellant to twist her low back and right knee. He advised that her body simply was not prepared for the combination of excess exertional force combined with twisting. Dr. Rosen further noted that appellant's right knee had a medial compartment parameniscal cyst suggesting and underlying meniscus tear, which was aggravated by the movements and the force. He opined that appellant's low back was affected by the twisting and exertion to open a door that was held shut by another individual and referenced findings on a March 28, 2017 MRI scan of the lumbar spine in support of this opinion.

By decision dated October 1, 2019, OWCP denied appellant's request to expand the acceptance of her claim to include lumbosacral sprain, right knee sprain, aggravation of right knee arthritis, lumbar spondylosis, and right foraminal disc herniation at L5-S1, causally related to the September 12, 2016 employment injury.

On October 8, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on February 3, 2020.

[6] Dr. Rosen referenced an MRI scan dated March 28, 2017, which revealed L1-2 and L2-3 facet hypertrophy, mild bilateral neural foraminal stenosis, L3-4 infolded ligamentum flavum, mild-to-moderate bilateral foraminal stenosis, L4-5 disc osteophyte complex and facet hypertrophy, mild-to-moderate bilateral neural foraminal stenosis, L5-S1 disc osteophyte complex with superimposed right foraminal disc herniation of the protrusion type, facet hypertrophy, infolded ligamentum flavum, moderate right and mild left neural foraminal stenosis, with the herniation likely impinging the exiting right L5 nerve.

In a January 22, 2020 report, Dr. Rosen noted that, due to the September 12, 2016 employment injury, appellant was suffering from anxiety, right knee, and lumbar pain and would remain off work until January 22, 2021. In an attending physician's report (Form CA-20) dated March 10, 2020, he indicated that appellant was injured at work on September 12, 2016 when she was trapped in a room by another individual, who was holding the door shut, and she pulled the door and injured her back and knee. Dr. Rosen diagnosed knee, lumbar strain. and anxiety and checked a box marked "Yes" indicating that appellant's condition had been caused or aggravated by her federal employment.

By decision dated April 2, 2020, OWCP's hearing representative vacated the October 1, 2019 decision, finding that the August 6, 2018 report from Dr. Rosen diagnosed post-traumatic lumbosacral sprain/strain and post-traumatic right knee sprain/strain and unequivocally indicated that the employment trauma resulted in the diagnosed injuries and was sufficient to require further development of the medical evidence by referring appellant to an orthopedic surgeon. The hearing representative remanded the case to OWCP for further medical development.

On July 28, 2020 OWCP referred appellant, the case file, a statement of accepted facts (SOAF), and a series of questions to Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon, for a second opinion examination and opinion on appellant's employment-related conditions and disability. It requested that Dr. Didizian determine whether appellant incurred any injury to her right knee and or lower back due to the accepted September 12, 2016 employment injury. OWCP further requested that he determine whether appellant continued to suffer from residuals of her employment injury and whether she was capable of returning to gainful employment.[7]

In a September 2, 2020 medical report, Dr. Didizian described appellant's September 12, 2016 employment injury. He discussed appellant's medical history, reviewed diagnostic reports, and provided findings on physical examination. Dr. Didizian noted that appellant had a waddling gait without antalgic pattern, she was overweight, no trigger points over the sciatic notch or greater trochanter, negative straight leg test bilaterally for sciatica, intact neurologic examination of the lower extremities, no orthopedic deficiency of the hips, bilateral knees revealed good alignment, no effusion or synovitis, McMurray test was negative for meniscal pathology, lumbar spine examination revealed no winging of the scapula and no spasm in the paraspinous from the neck to middle back to low back. He opined that there was no injury to appellant's back or right knee. Dr. Didizian reviewed the MRI scan of the right knee, which did not reveal an acute meniscal tear or traumatic pathology with physiologic fluid. With regard to the lumbar spine, he noted no instability, negative neurologic examination, and degenerative changes without evidence of radiculopathy. Dr. Didizian attributed the low back symptoms to chronic degenerative disease documented on the MRI scan. He concluded that appellant did not sustain a low back or right knee injury as a result of the September 12, 2016 employment

[7] On July 30, 2020 OWCP also referred appellant, the case file, a SOAF, and a series of questions to Dr. Richard W. Cohen, a Board-certified psychiatrist, for a second opinion examination and opinion on appellant's employment-related conditions and disability. Dr. Cohen issued a report dated August 28, 2020 and diagnosed major depressive disorder and panic disorder with agoraphobia secondary to the September 12, 2016 work incident. He noted that appellant continued to be disabled from the employment injury and was not able to return to work at this time.

incident and she did not require any further treatment or work restrictions related to the accepted incident. In a work capacity evaluation (Form OWCP-5c) dated September 2, 2020, Dr. Didizian returned appellant to work without restrictions.

By decision dated September 24, 2020, OWCP denied expansion of the acceptance of appellant's claim, finding that the medical evidence of record was insufficient to establish that the additional conditions of lumbosacral sprain, right knee sprain, aggravation of right knee arthritis, lumbar spondylosis, and right foraminal disc herniation at L5-S1 were causally related to the September 12, 2016 employment injury. It noted that the second opinion report of Dr. Didizian established that appellant did not develop the additional lumbar and right knee conditions as a consequence of her accepted employment injury.

On October 20, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 6, 2021.

By decision dated November 8, 2021, OWCP's hearing representative affirmed the September 24, 2020 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 accepted employment injury.[8]

To establish causal relationship, the employee must submit rationalized medical opinion evidence.[9] 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 accepted employment injury.[10] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[11]

ANALYSIS

The Board finds that this case is not in posture for decision.

Dr. Rosen, appellant's treating physician, opined within a reasonable degree of medical certainly that appellant sustained a right knee and low back injury proximately caused by the September 12, 2016 employment injury. He explained that, when she began to exert increased force in an attempt to open the door, a task that typically required little to no force, it caused her

[8] *See T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[9] *See S.A.*, Docket No. 18-0399 (issued October 16, 2018).

[10] *See P.M.*, Docket No. 18-0287 (issued October 11, 2018).

[11] *Id.*

to twist her low back and right knee and her body simply was not prepared for the combination of excess exertional force combined with twisting. Dr. Rosen noted that appellant's right knee medial compartment parameniscal cyst was aggravated by the movements, force, and overexertion in attempting to open the door. He opined that her low back condition was aggravated by the twisting and exertion to open a door that was held shut by another individual. Dr. Rosen referenced findings on a March 28, 2017 MRI scan of the lumbar spine to support his conclusion.

By contrast, Dr. Didizian, the second opinion physician, opined in his September 2, 2020 report that appellant did not sustain a back or right knee injury as a result of the September 12, 2016 employment injury. He noted that the MRI scan of the right knee did not reveal an acute meniscal tear or traumatic pathology associated with the September 12, 2016 employment injury. Dr. Didizian attributed the low back symptoms to chronic degenerative disease, which was documented on the MRI scan. He opined that appellant's low back problems and right knee osteoarthritis were preexisting and consistent with chronic age-related changes.

The Board, therefore, finds that a conflict in medical opinion exists between Dr. Rosen, appellant's treating physician, and Dr. Didizian, OWCP's second opinion physician, regarding whether appellant developed lumbosacral sprain, right knee sprain, aggravation of right knee arthritis, lumbar spondylosis, and right foraminal disc herniation at L5-S1 causally related to the accepted September 12, 2016 employment injury.

OWCP's regulations provide that, if a conflict exists between the medical opinion of the employee's physicians and the medical opinion of a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination, pursuant to section 8123(a) of FECA.[12] The Board will thus remand the case to OWCP for referral to an impartial medical specialist regarding whether appellant has met her burden of proof to establish that she developed lumbosacral sprain, right knee sprain, aggravation of right knee arthritis, lumbar spondylosis, and right foraminal disc herniation at L5-S1 causally related to the accepted September 12, 2016 employment injury.[13] Following this and other such further development as may be deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

[12] 5 U.S.C. § 8123(a).

[13] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 8, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 25, 2023
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