United States Department of Labor
Employees' Compensation Appeals Board

C.D., Appellant	)	
and	)	**Docket No. 23-0841**
	)	**Issued: December 15, 2023**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Newark, NJ, Employer	)	

Appearances:
Michael D. Overman, *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 June 2, 2023 appellant, through counsel, filed a timely appeal from a December 22, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. § § 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[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*.

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances of the case as set forth in the Board's prior order and decision are incorporated herein by reference. The relevant facts are as follows.

On August 18, 2016 appellant, then a 54-year-old transportation security officer, filed an occupational disease claim (Form CA-2) alleging that she sustained an injury to her knees, hips, ankles, feet, and lower back due to factors of her federal employment, including lifting up to 70 pounds, twisting, bending, squatting, walking, and standing. She noted that she first became aware of her claimed conditions on March 1, 2015 and realized their relation to her federal employment on July 5, 2016. Appellant stopped work on July 27, 2016.

By decision dated December 5, 2016, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed medical conditions and the accepted factors of her federal employment.

On December 13, 2016 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A video hearing was held on March 1, 2017. By decision dated April 4, 2017, OWCP's hearing representative affirmed the December 5, 2016 decision.

On September 28, 2017 appellant, through counsel, appealed to the Board. By decision dated November 6, 2018, the Board affirmed the April 4, 2017 hearing decision, finding that appellant had not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

OWCP continued to receive additional medical evidence following the April 4, 2017 decision.

The additional medical evidence included reports dated April 26, 2016 and March 15, May 4, July 18, and August 3, 2017 from Dr. Mark Filippone, a Board-certified physiatrist. Dr. Filippone noted appellant's complaints and her physical examination findings relative to the knees, hips, ankles, and lumbar spine. He continued to opine that she was totally disabled. In his May 4, 2017 treatment note, Dr. Filippone opined, "In my professional medical opinion all of [appellant's] present problems are the direct and sole result of injuries sustained while working for the [employing establishment]. More than that, I cannot say." In his August 3, 2017 treatment

[3] *Order Remanding Case*, Docket No. 20-0168 (issued March 5, 2021); Docket No. 17-2011 (issued November 6, 2018).

note, Dr. Filippone indicated that he believed that he had answered all of the questions posed by OWCP.

In an August 8, 2017 report, Dr. Marc Cohen, a pain medicine specialist, noted appellant's history of injury and treatment. He noted that she was obese, had difficulty with walking across the room, and had difficulty with right and left heel toe walking. Dr. Cohen diagnosed lumbar discogenic pain with referred radiculopathy.

OWCP also received reports dated September 12 and 19 and November 7 and 21, 2017 and May 15 and June 26, 2018, from Dr. Jahnna Levy, an osteopathic physician Board-certified in physical medicine and rehabilitation. Progress reports from this clinic by Dr. Dipan Patel, a Board-certified anesthesiologist, dated August 21, 2017 and March 15, 2018 were also received. These reports related a history of injury that, in 2014, appellant injured her right foot on the job while sitting at a ticket counter when the leg of the chair broke causing her to fall backward, and her right foot struck the ground awkwardly. Appellant's diagnoses were listed as osteoarthritis of the knee, pain in right knee, pain in unspecified knee, other intervertebral disc degeneration of lumbosacral region, low back pain, and lumbar radiculopathy. The physicians also indicated that her pain was exacerbated by work activities of bending and lifting.

Treatment notes dated September 15, October 31, and December 12, 2017, and January 19 and May 29, 2018, were also received from Dr. Neil Sinha, a specialist in pain management. On September 15, 2017 Dr. Sinha reported that appellant had undergone left L4-S1 lumbar transforaminal epidural steroid and lumbar epidurography for diagnoses of lumbar radiculopathy and lumbar herniated disc.

Minesh Patel, a physician assistant, also submitted reports dated October 3, 2017 and April 30, 2018.

On February 19, 2019 appellant, through counsel, requested reconsideration.

In a January 10, 2019 report, Dr. Filippone noted appellant's history of injury and preexisting conditions. He opined that her work as a transportation security officer since October 1, 2006 increased her vulnerability to trauma of the spinal canal and a fall off of a chair in June 2014, aggravated her previously damaged back, right foot and ankle, both knees, and left hip. Dr. Filippone further explained that these injuries caused the activation of chemical mediators to release from the cell bodies of the sensory neurons and nonneurogenic mediated release from tissue played a role in initiating the perpetuating of an inflammatory response as reflected in the April 26, 2015 electromyogram (EMG) studies. He concluded that the EMG studies revealed a left L5-S1 lumbosacral radiculopathy with partial denervation in muscles innervated by the mid and lower lumbar dorsal rami on the left. Dr. Filippone further related that appellant's June 29, 2016 magnetic resonance imaging (MRI) scan of the right knee was highly abnormal and provided evidence of multiple abnormalities which were some years in the process of developing, but which were totally consistent with the history of her work incidents in 2014 and 2016, as were the MRI scan studies of her left knee and left hip.

OWCP also received a June 25, 2016 MRI scan of the lumbar spine and a June 29, 2016 MRI scan of the knees.

By decision dated May 20, 2019, OWCP denied modification of its prior decision. It noted that the evidence on reconsideration consisted only of the January 10, 2019 report from Dr. Filippone.

On October 29, 2019 appellant, through counsel, filed a timely appeal to the Board from the May 20, 2019 decision.

By decision dated March 5, 2021, the Board set aside the May 20, 2019 decision and remanded to the case to OWCP, finding that OWCP had not properly considered all of the evidence of record.

By decision dated May 14, 2021, OWCP again denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted employment factors.

On May 26, 2021 appellant, through counsel, requested an oral hearing, which was held on September 9, 2021.

By decision dated November 2, 2021, OWCP's hearing representative affirmed the May 14, 2021 decision.

In a November 5, 2021 statement, appellant described her 2014 incident at work when she fell off a chair and injured her right foot; that in 2015 she began experiencing hip, knee, and ankle problems; and that in 2016 her pain increased due to her job duties which required bending and picking up bags up to 70 pounds and patting down passengers. She also noted a new injury in March 2021 when she was riding her mobile scooter in a warehouse club. Appellant alleged that this caused more pain in her hips, knees, and legs. Counsel also enclosed new medical evidence.

In a March 4, 2021 office note, Dr. Jaswinder Chauhan, a family medicine specialist, saw appellant for body aches and a sudden onset of pain. He related that she drove a motorized cart into a pole, jarring her. Dr. Chauhan noted that appellant reported abdominal pain, bilateral lower leg bruising, and bilateral hip and lower back pain. He also noted that she reported a history of a workers' compensation injury to her knees. Dr. Chauhan examined appellant and diagnosed contusion of unspecified lower leg, initial encounter, uncomplicated, and myalgia, uncomplicated.

Emergency room notes dated March 10, 2021, by Dr. Ryan S. Slife, an emergency medicine specialist, revealed that appellant was seen for bilateral hip and knee pain, following an injury at a warehouse club nine days prior. Appellant was sore in her hips and knees, but her knee pain was improving, and she had been ambulating. Dr. Silfe noted no other concerns or complaints, no numbness, or paresthesia, x-rays of the hip and pelvis revealed severe osteoarthritis, and diagnosed minor trauma and right hip pain.

A March 10, 2021 x-ray of the right hip/pelvis, read by Dr. Lawrence R. Lough, Board-certified in diagnostic radiology, revealed severe osteoarthritis and no demonstrable fracture.

OWCP also received a January 15, 2020 x-ray of the bilateral hip and pelvis read by Dr. Evan Johnson, a radiologist, which revealed severe left hip osteoarthritis, and a September 9,

2021 x-ray of the knees read by Dr. Mira Chakravarty, a Board-certified diagnostic radiologist, which revealed right knee moderate bicompartmental degenerative changes.

With a letter dated October 27, 2021, counsel for appellant provided treatment notes from Dr. Oladapo Babatunde, Board-certified in orthopedic surgery, dating from August 21, 2018 to October 11, 2021, which indicated that he performed her February 12, 2019 left knee arthroscopy, partial medial and lateral meniscectomy, chondroplasty, and major synovectomy. Dr. Babatunde diagnosed bilateral knee osteoarthritis and opined that her weight was contributing to her knee pain. He recommended weight loss and a bariatric surgeon, home exercise, and anti-inflammatories as needed. Dr. Babatunde noted that appellant's symptoms improved following her left knee surgery.

On October 14, 2022 appellant, through counsel, requested reconsideration and enclosed an April 20, 2022 report from Dr. Babatunde.

In the April 20, 2022 report, Dr. Babatunde noted appellant's history of injury and treatment and that she suffered a work injury in 2014 when she injured her right foot. He related that, when she returned to full-duty work, she had worsening pain to the bilateral knees, hips, and lumbar spine. Dr. Babatunde noted that appellant related her conditions to her physical work duties as a transportation security officer, including lifting up to 70 pounds, twisting, bending, standing, and walking. He also noted that she reported two falls in 2019. Regarding causal relationship, Dr. Babatunde opined that, based on the available information, "there is objective medical evidence to establish within a reasonable degree of medical certainty that there was a causal connection between [appellant's] initial injuries, the required treatment including surgery to her left knee."

By decision dated December 22, 2022, OWCP denied modification of the May 14, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,[5] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the

[4] *Supra* note 2.

[5] *See S.F.*, Docket No. 23-0264 (July 5, 2023); *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.[6] 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.[7]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is casually related to the identified employment factors.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] The opinion of the physician must be based upon a complete factual and medical background, 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 incident.[10]

In any case where 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.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

Preliminarily, the Board notes that findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.[12] It is, therefore, unnecessary

[6] *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).

[7] *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).

[8] *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

[9] *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see Victor J. Woodhams*,41 ECAB 345 (1989).

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[12] *A.A.*, Docket No. 20-1399 (issued March 10, 2021); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's April 4, 2017 merit decision, as the Board considered that evidence in its November 6, 2018 decision.[13]

In an August 8, 2017 report, Dr. Cohen diagnosed symptomatic lumbar discogenic pain with referred radiculopathy, but did not provide an opinion regarding causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[14] Thus, the Board finds that this report from Dr. Cohen is insufficient to establish appellant's claim.

Medical reports dated September 12 and 19 and November 7 and 21, 2017 and May 15 and June 26, 2018, from Dr. Levy; treatment notes dated September 15, October 31, and December 12, 2017 and January 19 and May 29, 2018, from Dr. Sinha; and August 21, 2017 and March 15, 2018 progress reports from Dr. Patel, noted that appellant had chief complaints of left ankle, left knee, left hip, and low back pain which began in 2014 following a work accident. Her diagnoses were noted as osteoarthritis of the knee, other intervertebral disc degeneration of lumbosacral region, and lumbar radiculopathy. The Board notes that appellant filed an occupational disease claim, indicating that her alleged conditions began after 2015, she did not allege that her right foot injury in 2014 caused her multiple other conditions. These physicians also indicated that her pain was exacerbated by work activities of bending and lifting. The Board has held that pain is a symptom and not a compensable medical diagnosis.[15] The Board has also held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was related to accepted employment factors.[16] As such, these reports did not provide the necessary medical rationale to establish that appellant's accepted employment factors caused her diagnosed conditions. The Board finds that these reports lack probative value and are insufficient to establish the claim.[17]

OWCP also received multiple reports from Dr. Filippone. In a May 4, 2017 treatment note, Dr. Filippone opined, "In my professional medical opinion all of [appellant's] present problems are the direct and sole result of injuries sustained while working for the [employing establishment]. More than that I cannot say." However, he also failed to provide any medical rationale to support his opinion. The need for rationale is particularly important as appellant had prior injuries.[18] In a January 10, 2019 report, Dr. Filippone noted her history of injury and preexisting conditions. He opined that appellant's work as a transportation security officer since October 1, 2006 increased

[13] *See R.B.*, Docket No. 22-0954 (issued December 29, 2022); *M.S.*, Docket No. 20-1095 (issued March 29, 2022); *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020).

[14] *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[15] *K.B.*, Docket No. 21-0953 (issued October 12, 2022); *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007).

[16] *See K.K.*, Docket No. 22-0270 (issued February 14, 2023); *I.D.*, Docket No. 22-0848 (issued September 2, 2022); *V.T.*, Docket No. 18-0881 (issued November 19, 2018).

[17] *Id*.

[18] *See R.B.*, Docket No. 19-1527 (issued July 20, 2020); *R.S.*, Docket No. 19-1774 (issued April 3, 2020).

her vulnerability to trauma of the spinal canal and that her fall off of a chair in June 2014, aggravated her previously damaged back, right foot and ankle, both knees, and left hip. In attempting to explain the physiological mechanism of injury, Dr. Filippone indicated that these injuries caused the activation of chemical mediators to release from the cell bodies of the sensory neurons and nonneurogenic mediated release from tissue played a role in initiating the perpetuating of an inflammatory response as reflected in the April 26, 2015 EMG studies, which evidenced a left L5-S1 lumbosacral radiculopathy with partial denervation in muscles innervated by the mid and lower lumbar dorsal rami on the left. While he provided a partial explanation as to how release of chemical mediators initiates an inflammatory response in soft tissue, he did not provide a pathophysiological explanation as to how appellant's specific accepted employment factors either caused or contributed to the initiation of the chemical and neurologic response. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was related to accepted employment factors.[19] Dr. Filippone further related that appellant's June 29, 2016 MRI scan of the right knee provided evidence of multiple abnormalities which were some years in the process of developing, but which were totally consistent with the history of her work incidents in 2014 and 2016, as were the MRI scan studies of her left knee and left hip. His opinion in this regard is conclusory. As previously noted, the Board has held that a medical report is of limited probative value on a given medical issue if it contains an opinion which is unsupported by medical rationale.[20] Thus, these reports are insufficient to establish appellant's claim.

Appellant also submitted several reports from Dr. Babatunde. In an April 20, 2022 report, Dr. Babatunde opined that, "there is objective medical evidence to establish within a reasonable degree of medical certainty that there was a causal connection between [appellant's] initial injuries, the required treatment including surgery to her left knee." He noted that appellant related her conditions to her physical work duties, including lifting up to 70 pounds, twisting, bending, standing, and walking. In treatment notes dated August 21, 2018 to October 11, 2021, Dr. Babatunde diagnosed bilateral knee osteoarthritis. While he indicated that "there is objective medical evidence" to establish causation between appellant's diagnosed conditions and the accepted factors of her federal employment, his opinion is conclusory as he did not explain with rationale how her employment duties caused or contributed to her diagnosed medical conditions.[21] While Dr. Babatunde opined that her employment duties caused injuries that required knee surgery, he did not fully address her history and preexisting conditions and did not provide a rationalized medical opinion that differentiates between the work-related injury or disease and her other injuries and preexisting conditions.[22] The need for rationale is particularly important since he diagnosed bilateral knee osteoarthritis. As Dr. Babatunde did not provide the required

[19] *See K.K.*, *supra* note 16; *I.D.*, Docket No. 22-0848 (issued September 2, 2022); *V.T.*, Docket No. 18-0881 (issued November 19, 2018).

[20] *A.K.*, Docket No. 21-0278 (issued July 12, 2021); *J.A.*, Docket No. 20-1195 (issued February 3, 2021).

[21] *Id*.

[22] *M.B.*, Docket No. 20-1275 (issued January 29, 2021); *see R.D.*, *supra* note 11.

rationalized medical opinion explaining how appellant's accepted employment factors caused her diagnosed conditions, his reports are insufficient to establish her claim.[23]

The Board further notes that a November 5, 2021 statement from appellant indicated that she was injured in March 2021, when she was riding her mobile scooter at a warehouse club. A March 4, 2021 office note from Dr. Chauhan noted that she reported a history of a workers' compensation injury to her knees; however, he described the injury that she sustained at a warehouse club and diagnosed contusion of unspecified lower leg, initial encounter, uncomplicated, and myalgia, uncomplicated. Emergency room notes dated March 10, 2021, from Dr. Silfe, also described the injury at a warehouse club and diagnosed severe osteoarthritis and minor trauma. As these reports did not address the issue of causal relationship, they are no probative value and are, therefore, insufficient to establish appellant's claim.[24]

While OWCP received reports from Minesh Patel, a physician assistant, the Board has held that physician assistants are not considered physicians under FECA.[25]

OWCP also received diagnostic studies. However, the Board has also 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 incident caused a diagnosed condition.[26] Consequently, this evidence is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship between the diagnosed medical conditions and the accepted employment factors, the Board finds that appellant 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 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 medical condition causally related to the accepted factors of her federal employment.

[23] *Supra* note 20.

[24] *See M.G.*, Docket No. 22-1119 (issued November 15, 2022); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[25] 5 U.S.C. § 8101(2) provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law, 20 C.F.R. § 10.5(t). *See supra* note 11 at Chapter 2.805.3a(1) (January 2013); *see also M.F.*, Docket No. 19-1573 (issued March 16, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *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).

[26] *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 December 22, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 15, 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