

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

_____)
D.M., Appellant)

and)

U.S. POSTAL SERVICE, ANKENY POST)
OFFICE, Sioux Falls, SD, Employer)
_____)

Docket No. 23-0588
Issued: November 6, 2023

Appearances:

Michael Watson, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 13, 2023 appellant, through her representative, filed a timely appeal from a November 8, 2022 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.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish left knee and left shoulder conditions causally related to the accepted July 22, 2022 employment incident; and

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.*

(2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 28, 2022 appellant, then a 67-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 22, 2022 she sustained a left knee injury when she pulled a cart of packages up a flight of stairs, a package shifted in the cart, and her body twisted, causing her left knee to give way, and hitting her left shoulder, while in the performance of duty.³

In a development letter dated August 8, 2022, OWCP informed appellant that she had submitted insufficient factual and medical evidence to establish her claim. It advised her of the type of evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

Appellant submitted attending physician's reports (Form CA-20) dated August 1 and 11, 2022, wherein Mary Carr Peterson, a certified physician assistant, noted appellant's left shoulder and left knee pain.

In a Form CA-20 dated August 22, 2022, Dr. Neelima Chennupati, a family medicine specialist, diagnosed acute pain of the left knee and shoulder. She noted a preexisting condition of left knee partial arthroplasty. Dr. Chennupati checked a box indicating that the diagnosed left knee and shoulder pain was caused or aggravated by the incident of July 22, 2022, noting that movement of the left knee and arm caused pain.

By decision dated September 13, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted July 22, 2022 employment incident.

Appellant submitted reports dated July 23 and 26, 2022, wherein Andrew Tigges, a certified physician assistant, noted that appellant was seen for left knee pain.

In an urgent care visit note dated July 23, 2022, Dr. Michael Fazio, a Board-certified diagnostic radiologist, examined appellant for complaints of left knee pain. On physical examination of the left knee, he observed diffuse tenderness, full range of motion, negative McMurray and anterior drawer tests, and no laxity on valgus or varus stress. Dr. Fazio diagnosed acute pain of the left knee and mild-to-moderate patellofemoral compartment osteoarthritis with intra-articular bodies.

³ OWCP previously accepted that appellant sustained a traumatic injury on February 12, 2013. OWCP assigned that claim OWCP File No. xxxxxx470 and accepted it for left knee and leg sprain, left knee derangement of the medial meniscus, and left knee primary osteoarthritis. Appellant also filed a traumatic injury claim (Form CA-1) on January 11, 2019 alleging that she had injured her left knee and back on January 10, 2019 in the performance of duty. OWCP assigned that claim OWCP File No. xxxxxx147 but denied it by decision dated March 1, 2019. Appellant's claims have not been administratively combined.

An x-ray of the left knee obtained on July 23, 2022 revealed an uncomplicated medial tibiofemoral unicompartmental prosthesis, no acute osseous abnormality, and mild-to-moderate patellofemoral compartment osteoarthritis with intra-articular bodies.

In a report dated August 22, 2022, Dr. Chennupati diagnosed acute pain of the left knee and shoulder.

In a report dated September 2, 2022, Dr. Matthew Bollier, Board-certified in orthopedic sports medicine, evaluated appellant for complaints of left knee and shoulder pain following the incident of July 22, 2022. He noted that appellant had a history of unicompartmental arthroplasty in 2017. Dr. Bollier provided extensive physical examination findings regarding appellant's left shoulder and left knee. He assessed appellant's left shoulder condition as left shoulder pain, concerning for rotator cuff tear, and her left knee condition as left knee pain following work injury with history of unicompartmental arthroplasty. Dr. Bollier opined that the work injury was a significant factor in his causation assessment regarding the findings and diagnosis.

A magnetic resonance imaging (MRI) scan of the left shoulder obtained on September 22, 2022 demonstrated a moderate full-thickness rotator cuff tear, mild degenerative joint disease of the acromioclavicular joint, and degenerative fraying of the superior labrum.

In a letter dated October 3, 2022, Dr. Bollier explained that appellant delivered packages on July 22, 2022 when the stack became top heavy. As the top package began to fall, appellant reached to grab it, which pulled on her left arm and twisted her left knee. Dr. Bollier reviewed the physical findings of his examination on September 2, 2022. He diagnosed aggravation of appellant's preexisting unicompartmental left knee arthroplasty and a moderate full-thickness rotator cuff tear. Dr. Bollier opined that, within a reasonable degree of medical certainty, the incident of July 22, 2022 caused an aggravation of a preexisting condition to the left knee, and caused a new injury to the left shoulder.

OWCP also received additional reports from Laura Magrane, a physician assistant, dated September 23 and 26, 2023.

On October 22, 2022 appellant requested reconsideration of the September 13, 2022 decision.

By decision dated November 8, 2022, OWCP found that appellant had submitted sufficient medical evidence to establish a diagnosis in connection with the accepted incident of July 22, 2022. However, it denied her claim, finding that she had not submitted sufficient medical evidence to establish causal relationship between her diagnosed conditions and the July 22, 2022 employment incident.

On January 4, 2023 appellant again requested reconsideration. She resubmitted a copy of Dr. Bollier's September 2 and October 3, 2022 reports, a September 22, 2022 left shoulder MRI scan, and Ms. Magrane's September 23 and 26, 2022 reports.

By decision dated January 25, 2023, OWCP denied appellant's request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ 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 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 determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ 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 incident.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish left knee and left shoulder conditions causally related to the accepted July 22, 2022 employment incident.

In support of her July 28, 2022 traumatic injury claim, appellant submitted reports from Dr. Bollier. On September 2, 2022 Dr. Bollier evaluated her for complaints of left knee and

⁴ *Id.*

⁵ *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).

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.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).

⁹ *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).

¹⁰ *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).

shoulder pain following the incident of July 22, 2022. He noted that appellant had a history of unicompartmental arthroplasty in 2017. On October 3, 2022 Dr. Bollier explained that she delivered packages on July 22, 2022 when the stack became top heavy. As the top package began to fall, appellant reached to grab it, which pulled on her left arm and twisted her left knee. Dr. Bollier reviewed her physical findings from his examination on September 2, 2022. He diagnosed aggravation of appellant's preexisting unicompartmental arthroplasty and a moderate full-thickness rotator cuff tear. Dr. Bollier opined that, within a reasonable degree of medical certainty, the incident of July 22, 2022 caused an aggravation of a preexisting condition to the left knee, and caused a new injury to the shoulder. However, he did not explain with rationale how the accepted employment incident caused or contributed to appellant's diagnosed conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how, physiologically, a given medical condition was related to the accepted employment incident.¹¹ Rationale is especially important as appellant has significant preexisting conditions.¹² As such, this evidence is of limited probative value and insufficient to establish appellant's claim.

In a Form CA-20 dated August 22, 2022, Dr. Chennupati diagnosed acute pain of the left knee and shoulder. She noted a preexisting condition of left knee partial arthroplasty. Dr. Chennupati checked a box indicating that the diagnosed left knee and shoulder pain was caused or aggravated by the incident of July 22, 2022. The Board has held, however, that when a physician's opinion on causal relationship consists only of a checkmark on a form, without further explanation or rationale, that opinion is diminished and is insufficient to establish a claim.¹³ As such, the form report of Dr. Chennupati is of limited probative value and is insufficient to establish appellant's claim.

On July 23, 2022 Dr. Fazio examined appellant for complaints of left knee pain. He diagnosed acute pain of the left knee. In a report dated August 22, 2022, Dr. Chennupati diagnosed acute pain of the left knee and shoulder. However, Drs. Fazio and Chennupati failed to provide an opinion as to the cause of appellant's diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁴ These reports are, therefore, insufficient to establish appellant's claim.

Appellant also submitted reports from physician assistants. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers, however,

¹¹ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

¹² See *S.B.*, Docket No. 17-0254 (issued July 20, 2018).

¹³ *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁴ *P.L.*, Docket No. 19-1750 (issued March 26, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Willie M. Miller*, 53 ECAB 697 (2002).

are not considered “physician[s]” as defined under FECA.¹⁵ Consequently, the findings of the physician assistants will not suffice for the purpose of establishing entitlement to FECA benefits.¹⁶

The remaining evidence consists of diagnostic reports dated July 23 and September 22, 2022. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion on the relationship between the employment incident and a claimant’s diagnosed condition.¹⁷

As the medical evidence of record is insufficient to establish that the diagnosed left knee and left shoulder conditions were causally related to the accepted July 22, 2022 employment incident, 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(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 left knee and left shoulder conditions causally related to the accepted July 22, 2022 employment incident.

¹⁵ Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as 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 David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); *see also R.K.*, Docket No. 20-0049 (issued April 10, 2020) (physician assistants are not considered physicians under FECA).

¹⁶ *See M.C.*, Docket No. 19-1074 (issued June 12, 2020) (nurse practitioners are not considered physicians under FECA); *R.K.*, Docket No. 20-0049 (issued April 10, 2020) (physician assistants are not considered physicians under FECA).

¹⁷ *See C.F.*, Docket No. 18-1156 (issued January 22, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

ORDER

IT IS HEREBY ORDERED THAT the November 8, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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