United States Department of Labor
Employees' Compensation Appeals Board

D.Y., Appellant	)	
and	)	**Docket No. 23-0757**
	)	**Issued: November 22, 2023**
U.S. POSTAL SERVICE, WAUSAU POST OFFICE, Wausau, WI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 May 1, 2023 appellant, through counsel, filed a timely appeal from an April 20, 2023 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a left knee condition causally related to the accepted February 21, 2022 employment incident.

[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*.

FACTUAL HISTORY

On March 8, 2022 appellant, then a 58-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on February 21, 2022[3] she felt a tear in her left knee when she slipped on black ice and fell hitting her back and bending both knees to her chest while exiting her postal vehicle in the performance of duty. She stopped work on March 7, 2022 and returned to work on March 8, 2022.

In a development letter dated March 21, 2022, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her regarding the medical and factual evidence required to establish her claim. OWCP afforded appellant 30 days to provide the requested information.

OWCP thereafter received medical evidence.

A February 22, 2022 left knee x-ray reported no acute left knee fracture, moderate knee effusion, and advanced knee osteoarthritis with a medial femorotibial compartment predominance.

In a report dated February 22, 2022, Lori Nelson, advanced practice nurse prescriber, diagnosed left knee injury and noted a February 21, 2022 injury date. She released appellant to return to work with temporary work restrictions on February 22, 2022.

A February 25, 2022 left knee x-ray revealed severe medial femorotibial compartment osteoarthritis and osteopenia.

In a report dated March 3, 2022, Dr. Harry Cole, III, a Board-certified orthopedic surgeon, noted appellant's February 21, 2022 injury and her medical course. On physical examination, Dr. Cole reported minimal medial or lateral joint line tenderness and anterior medial aspect tenderness. A review of x-rays of the knees demonstrated no acute osseous abnormality, near complete loss of medial joint space, medial osteophyte, and bone-on-bone apposition. Under assessment, he noted that appellant had pain and mechanical symptoms following her fall, with evidence of medial osteophyte and medial joint space loss. In a form report of even date, Dr. Cole noted a February 21, 2002 injury date, and released appellant to return to work that day with temporary work restrictions.

Physical therapy reports dated March 9, 16, and 31, 2022, noted diagnoses of acute left knee pain, left knee injury, and impaired gait and mobility.

By decision dated April 22, 2022, OWCP denied appellant's clam finding the evidence insufficient to establish that the alleged incident occurred in the performance of duty. It concluded, therefore, that appellant had not established an injury as defined by FECA.

Subsequent to the April 22, 2022 decision, OWCP received a report dated February 22, 2022 signed by Ms. Nelson. Ms. Nelson related that appellant fell on the ice on February 21, 2022

[3] Appellant mistakenly reported the injury date as March 7, 2022 and corrected the date of injury in her April 7, 2022 statement to reflect that the alleged incident occurred on February 21, 2022.

causing her left knee to bend underneath her. She reported appellant's physical examination findings and diagnosed left knee injury.

On May 18, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on September 13, 2022.

In progress notes dated March 31, 2022, Stephanie Werner, a nurse practitioner, noted appellant was reevaluated for a left knee injury sustained at work on February 7, 2022, for which she was initially seen on February 8, 2022. The injury occurred when appellant slipped and fell with her knees bent on black ice and felt a left knee tear. Ms. Werner noted appellant's physical examination findings and diagnosed acute left knee pain with concern for a meniscus tear *versus* medial collateral ligament tear (MCL).

Ms. Werner, in progress notes dated April 28, 2022, reported appellant was seen for a workers' compensation injury follow up for a left knee injury three months ago. Physical examination findings were unchanged. She diagnosed acute left knee pain.

In progress notes dated June 29, 2022, Ms. Werner diagnosed left knee complex medial meniscus tear, left knee chronic anterior cruciate ligament (ACL) rupture, left knee osteoarthritis, and left knee chondromalacia. She reported appellant was seen for a recheck of a left knee injury, which occurred three months ago. Appellant related her symptoms since the injury were unchanged. Physical examination findings were unchanged.

By decision dated November 22, 2022, OWCP's hearing representative affirmed as modified the April 22, 2022 decision. The hearing representative found that the incident occurred as alleged in the performance of duty on February 21, 2022, but denied the claim finding no medical report provided or countersigned by a physician offering a medical diagnosis and opinion on causal relationship. The hearing representative concluded, therefore, that appellant had not established an injury on February 21, 2022, as alleged.

On January 24, 2023 appellant, through counsel requested reconsideration. In support of her claim appellant submitted a December 29, 2022 medical note signed by Ms. Werner and cosigned by Dr. William Johnston, a physician Board-certified in family medicine.

In the December 29, 2022 note, Dr. Johnston diagnosed left knee complex medial meniscus tear, left knee chronic ACL rupture, left knee primary osteoarthritis, and left knee chondromalacia. He reported that appellant slipped and fell on black ice with her knees bent. Dr. Johnston opined that the February 21, 2022 slip and fall on black ice was a direct and proximate cause of the diagnosed left knee conditions. He related that while there may be other causes for these conditions, he considered the work activities as described by appellant to clearly be one of the causes of these conditions.

In a decision dated April 20, 2023, OWCP found the evidence of record sufficient to warrant modification as the evidence of record established a medical diagnosis. It denied her claim finding the evidence insufficient to establish that the diagnosed conditions were causally related to the accepted February 21, 2022 employment incident.

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 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. First, the employee must submit sufficient evidence to establish that he or she 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 a 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 identified by the employee.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left knee condition causally related to the accepted February 21, 2022 employment incident.

In a December 29, 2022 report, Dr. Johnston noted appellant's history of injury, and diagnosed left knee complex medial meniscus tear, left knee chronic ACL rupture, left knee

[4] *Supra* note 2.

[5] *D.A.*, Docket No. 21-1002 (issued April 17, 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).

[6] *J.E.*, Docket No. 21-0810 (issued April 13, 2023); *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] *D.A.*, *supra* note 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).

[8] *D.A.*, *id.*; *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] *J.E.*, *supra* note 6; *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] *D.A.*, *supra* note 5; *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).

primary osteoarthritis, and left knee chondromalacia. He opined that the February 21, 2022 slip and fall on black ice was a direct and proximate cause of the diagnosed conditions, while noting there may be other causes for these conditions. Dr. Johnston, however, did not provide a rationalized medical explanation as to how the accepted February 21, 2022 incident physiologically caused the diagnosed left knee conditions. The Board has held that the physician must offer a rationalized explanation of how the specific employment incident or work factors physiologically caused injury.[11] Consequently, Dr. Johnston's report is insufficient to establish appellant's claim.

Appellant submitted a March 3, 2022 report from Dr. Cole diagnosing pain and mechanical symptoms following the fall on February 21, 2022. The Board has found that pain is a symptom and not a specific medical diagnosis.[12] The Board has held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.[13] For these reasons, Dr. Cole's March 3, 2022 medical report is insufficient to establish appellant's burden of proof.

Appellant also submitted reports from Ms. Nelson, an advanced practice nurse prescriber, and Ms. Werner, a nurse practitioner, and physical therapy reports. However, the Board has held that certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physician[s] as defined under FECA.[14] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[15]

[11] *D.S.*, Docket No. 23-0218 (issued June 26, 2021); *G.R.*, Docket No. 21-1196 (issued March 16, 2022); *K.J.*, Docket No. 21-0020 (issued October 22, 2021); *L.R.*, Docket No. 16-0736 (issued September 2, 2016); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[12] *L.C.*, Docket No. 21-0811 (issued January 31, 2023); *M.H.*, Docket No. 18-0873 (issued December 18, 2019); *J.S.*, Docket No. 19-0863 (issued November 4, 2019); *V.B.*, Docket No. 19-0643 (issued September 6, 2019).

[13] *L.C.*, *id.*; *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

[14] Section 8101(2) of FECA 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. 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 C.A.*, Docket No. 21-1005 (issued April 14, 2023) (physical therapists are not physicians as defined under FECA); *J.E.*, *supra* note 6 (nurse practitioners are not physicians as defined under FECA); *T.S.*, Docket No. 20-1229 (issued August 6, 2021) (physical therapists are not physicians as defined under FECA); *J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA *C.A.*, Docket No. 21-1005 (issued April 14, 2023).

[15] *D.P.*, Docket No. 19-1295 (issued March 16, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *see M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *David P. Sawchuk*, *id.*

OWCP also received left knee x-rays dated February 22 and 25, 2022. However, diagnostic studies standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[16]

As the medical evidence of record is insufficient to establish a left knee condition causally related to the accepted February 21, 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 a diagnosed medical condition causally related to the accepted February 21, 2022 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 20, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 2023
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

[16] *C.C.*, Docket No. 22-1311 (issued April 7, 2023); *A.O.*, Docket No. 21-0968 (issued March 18, 2022); *see M.S.*, Docket No. 19-0587 (issued July 22, 2019).