United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 22-0912**
	)	**Issued: October 26, 2023**
U.S. POSTAL SERVICE, EAST MONT STATION POST OFFICE, Oakland, CA, Employer	)	

Appearances:
Narcisco Paderanga, 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 26, 2022 appellant, through her representative, filed a timely appeal from an April 27, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).[2]

[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] Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. *Id*. at § 501.5(a). In support of her oral argument request, appellant asserted that oral argument should be granted because the employing establishment did not contest her claim. She further asserted that she wanted to prove that her injury happened on the job and she had the medical reports to establish her claim. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

Pursuant to the Federal Employees' Compensation Act[3] (FECA) and 20 C.F.R. § § 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[4]

ISSUE

The issue on appeal is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on May 20, 2014, as alleged.

FACTUAL HISTORY

On May 31, 2014 appellant, then a 49-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 20, 2014 she heard a popping in her right knee and experienced pain as she exited her truck while in the performance of duty. She stopped work on May 21, 2014, and returned on May 31, 2014.

On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. Accompanying appellant's claim was a May 31, 2014 accident report from the employing establishment (PS Form 1769/301), which revealed that appellant reported that on May 20, 2014 she was exiting her vehicle when she heard a "pop" and felt pain in the right knee.

In a May 21, 2014 report, Dr. Thandar Nyunt, a family medicine specialist, held appellant off work from May 21 through 24, 2014.

In a letter dated February 9, 2022, appellant noted that she was updating her employer regarding the status of her ongoing medical condition and continued treatment for her bilateral knee repetitive motion injuries. She explained that she had been working as a carrier for 11 plus years and in 2014, she began experiencing pain in both knees as a result of repetitive motion from her work as a carrier. Appellant noted that she walked for extended periods of time, climbed stairs, got in and out of an elevated postal vehicle carrying heavy parcels, and began receiving twice-yearly cortisone shots and daily anti-inflammatories, which she continued to take. She explained that her physician indicated that her condition was irreversible and that continuing to perform repetitive motions would only aggravate the condition further, lead to additional damage to the joints, and hasten the need for surgery. Appellant advised that her physician was monitoring and treating her and she would update the need for any changes to her condition as they arose.

On February 10, 2022 appellant filed a notice of recurrence (Form CA-2a) for medical treatment. She indicated that her original injury had worsened on January 24, 2022. Appellant noted that she had continued pain and inflammation of her knees. The employing establishment noted that after the original injury, they accommodated appellant with limitations on stairs and hills.

[3] 5 U.S.C. § 8101 *et seq*.

[4] The Board notes that appellant submitted additional evidence on appeal. 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*.

By letter dated March 21, 2022, OWCP explained that when her claim was first received, it appeared to be a minor injury that resulted in minimal or no lost time from work. Therefore, payment of a limited amount of medical expenses was administratively approved without formal consideration of the merits of her claim. OWCP noted that it had reopened her claim for consideration of the merits. It advised her of the deficiencies of her claim and requested additional factual and medical evidence. OWCP afforded appellant 30 days to respond.[5]

OWCP continued to receive progress reports from Dr. Nuynt. In May 21, 2014 progress notes, which were partially redacted, he noted that appellant had right knee pain for two months with no injury or trauma. Dr. Nyunt also saw appellant on June 1, 2014. He saw appellant on August 5, 2014, and noted that appellant worked for the employing establishment and that climbing in and out of the truck and walking up and down hills worsened her pain and made it difficult to perform her duties efficiently. Dr. Nyunt related that appellant requested a note restricting her activities for a few months. He noted that an x-ray revealed arthritis and that he provided treatment, including cortisone injections. In a March 16, 2015 report, Dr. Nyunt noted that appellant presented with a chief complaint of skin problem, fall, and knee pain. He referenced a March 3, 2013 fall at work. Dr. Nyunt reported that her right knee pain was worsening, and she wanted another injection. He treated appellant for her knee pain on January 16 and February 12, 2016.

Dr. Teshina Nicole Wilson, a family medicine specialist and osteopath, saw appellant on January 12, September 29, and December 22, 2017; November 30, 2018; September 25, 2019; July 1, 2020; September 8, 2021; and February 1, 2022, for knee pain and cortisone injections, as well as a right shoulder problem.

In an April 19, 2022 report, Dr. Wilson noted appellant had been under her care for six years for management of chronic medical conditions which included osteoarthritis of the bilateral knees. She noted that appellant was seen in May 2014, after an onset of right knee joint pain that was exacerbated by activities such as getting in and out of the vehicle for work, going up and down stairs, and prolonged walking/standing. Dr. Wilson explained that appellant's 2014 x-rays revealed mild joint space diagnosed as osteoarthritis, and subsequent x-rays in 2016, 2017, 2018, and 2022 revealed a progression of osteoarthritic changes, with the most recent x-ray in 2022 showing severe osteoarthritis. She opined that given the chronic nature of osteoarthritis, repetitive activities could lead to worsening changes, such as frequently bending the joints getting in and out of a vehicle, walking long distances, and climbing stairs. Dr. Wilson advised that therapies could intermittently reduce the swelling and the pain; however, the osteoarthritis would continue to worsen over time. She also noted that the options for treatment included therapy, weight maintenance, cortisone injections, and total joint replacement surgery.

In a June 23, 2017 report, Dr. Diana Emily Detwiler, a Board-certified family practitioner, diagnosed mild tricompartmental degenerative changes within the knee joints.

[5] OWCP explained that it could not take action on appellant's recurrence claim as it was submitted prior to the adjudication of her traumatic injury claim. It noted that once a decision was rendered on her traumatic injury claim, it would review her recurrence claim.

In a July 5, 2018 report, Dr. Kathy Esther Down, a Board-certified internist, noted that she treated appellant for joint pain with a right knee injection and that appellant had osteoarthritis in both knees.

In a March 10, 2016 report, that was partially redacted, Dr. John William Gallo, an internist, noted that appellant presented with chief complaints of a knee problem and that he found mild anterior swelling, Baker's cyst absent, mild warmth but no erythema, and mild varus laxity.

In a November 9, 2015 report, Dr. Mehrdad Ali Mansouri, Board-certified in family medicine, noted that he saw appellant for right knee steroid injections and assessed osteoarthritis of the bilateral knees.

In an August 19, 2016 report, Dr. Lynne J. Lazarus, Board-certified in family medicine, noted chief complaints of knee pain and that appellant received bilateral knee injections.

By decision dated April 27, 2022, OWCP denied appellant's claim, finding that the factual component of fact of injury had not been established due to inconsistencies in the evidence. It explained that the medical evidence did not support that the injury occurred as alleged, and, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] has the burden of proof to establish 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 timely filed within the applicable time limitation of FECA,[7] 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.[8] 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.[9]

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.[10]

[6] *Supra* note 3.

[7] *See D.T.,* Docket No. 22-1156 (issued April 24, 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).

[8] *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).

[9] *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).

[10] *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).

To establish that, an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on the employee's statements in determining whether a *prima facie* case has been established.[11] An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[12]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish an employment incident in the performance of duty on May 20, 2014, as alleged.

The evidence of record establishes that on May 20, 2014, appellant heard a popping in her right knee and experienced pain in her right knee when exiting her truck while in the performance of duty. The employing establishment acknowledged that appellant was in the performance of duty when her injury occurred. It also indicated that its knowledge of the facts concerning appellant's injury comported with the statement she provided. Further, the May 31, 2014 PS Form 1769/301 documented that on May 20, 2014, appellant was exiting her vehicle when she heard a "pop" and felt pain in the right knee.

The medical evidence of record, including Dr. Nyunt's reports, supports that the employment incident occurred in the performance of duty on May 20, 2014, as alleged.

As appellant has established that the May 20, 2014 employment incident occurred as alleged, the question becomes whether this incident caused an injury.[13] Thus, the Board will set aside OWCP's April 27, 2022 decision and remand the case for consideration of the medical evidence. Following any further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish causal relationship.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on May 20, 2014, as alleged.

[11] *T.T.*, Docket No. 22-0792 (issued October 18, 2022); *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

[12] *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

[13] *See S.T.*, Docket No. 21-0317 (issued August 11, 2021); *B.S.*, Docket No. 19-0524 (issued August 8, 2019); *Willie J. Clements*, 43 ECAB 244 (1991).

ORDER

IT IS HEREBY ORDERED THAT the April 27, 2022 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: October 26, 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