

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

_____)	
T.I., Appellant)	
)	
and)	Docket No. 23-0339
)	Issued: September 11, 2023
U.S. POSTAL SERVICE, CHICAGO METRO)	
SURFACE HUB, Elk Grove, IL, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 8, 2023 appellant filed a timely appeal from a January 4, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

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 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 4, 2023 decision, a appellant submitted additional evidence on appeal to the Board. However, the Board's *Rules of Procedures* 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.*

FACTUAL HISTORY

On April 17, 2012 appellant, then a 44-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a back injury due to performing the repetitive duties of her job, including lifting heavy mail tubs and sorting mail. She noted that she first became aware of her claimed injury, on October 20, 2011, and realized its relation to her federal employment on February 7, 2012. Appellant did not stop work. On April 30, 2012 OWCP accepted her claim for herniated discs at L4-5 and L5-S1, and spinal stenosis and, on June 21, 2012, it further expanded the acceptance of her claim to include ventral hernia. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective October 20, 2011, and on the periodic rolls, effective June 30, 2013.

Appellant received continuing medical care for her back and lower extremity pain from several attending physicians, including Dr. Neema Bayran, a Board-certified anesthesiologist, and Dr. Sean Salehi, a Board-certified orthopedic surgeon. By decisions dated June 11, 2015 and February 27, 2017, OWCP granted appellant schedule awards for two percent permanent impairment of each lower extremity for a total of four percent permanent impairment of each lower extremity.

In a November 20, 2019 report, Dr. Kevin C. Tu, a Board-certified orthopedic surgeon, indicated that appellant was being seen for the first time for right knee pain just above the patella, which “started on September 28, 2019.” He detailed the findings of his physical examination of the right knee, noting that appellant exhibited some mild medial joint line tenderness and mild tenderness at the superior patellar area. The right knee had range of motion from 0 to 135 degrees, and did not exhibit laxity, effusion, or patellofemoral irritability. There was normal distal sensation in the knee. Dr. Tu diagnosed right upper knee pain and performed an intra-articular injection on the right knee. On January 29, 2020 he noted that appellant reported that her right knee pain had lessened. Dr. Tu diagnosed resolving right knee pain.

In a January 12, 2022 report, Dr. Tu advised that appellant presented for treatment of mild pain in the medial portion of her right knee. He indicated that she stated that, over the past two years, “she has only had 3 bad episodes.” Dr. Tu noted that appellant had a new magnetic resonance imaging (MRI) scan of the right knee, dated December 9, 2021, which showed a medial meniscus tear of the right knee.³ He detailed the findings of his physical examination of the right knee, noting that she exhibited some mild medial joint line tenderness and had range of motion from 0 to 135 degrees. The right knee did not exhibit laxity, effusion, or patellofemoral irritability, and there was normal distal sensation. Dr. Tu diagnosed right knee medial meniscus tear, and noted that appellant was not interested in pursuing any additional treatment at the time.

Appellant requested that OWCP expand the acceptance of her claim to include right knee medial meniscus tear. In a letter dated August 5, 2022, OWCP requested that Dr. Tu provide a rationalized medical opinion regarding whether the right knee medial meniscus tear was causally related to appellant’s accepted occupational injury. It afforded Dr. Tu 30 days to respond.

³ The case record contains a copy of the December 9, 2021 MRI scan, which shows a “short horizontal medial meniscus tear involving the midbody.”

On August 8, 2022 OWCP received an October 13, 2019 x-ray report for appellant's right knee, which contained an impression of "normal right knee." Appellant also submitted administrative documents from an October 13, 2019 hospital stay which indicated that she was admitted for right knee pain.

In an August 31, 2022 report, Dr. Tu noted that appellant returned for treatment of right knee pain and indicated that she had an MRI scan, which demonstrated a right knee medial meniscus tear. He detailed physical examination findings for her right knee that were similar to those observed on January 12, 2022. Dr. Tu diagnosed right knee medial meniscus tear, and indicated that he performed an intra-articular injection of the right knee. He noted, "[w]ith respect to [appellant's] medial meniscus tear and causation[,] certainly repetitive kneeling, squatting, and pivoting activities is a mechanism for the development of medial tibial meniscus tear."

By decision dated January 4, 2023, OWCP denied expansion of the acceptance of appellant's claim, finding that the medical evidence of record was insufficient to establish additional conditions as causally related to the accepted employment injury.

LEGAL PRECEDENT

Where 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 employment injury.⁴ The medical evidence required to establish causal relationship between a specific condition, and the employment injury is rationalized medical opinion evidence. 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 specific employment factors identified by the claimant.⁵

The Board has held that when the medical evidence supports an aggravation or acceleration of an underlying condition precipitated by working conditions or injuries, such disability is compensable.⁶ However, the normal progression of untreated disease cannot be stated to constitute "aggravation" of a condition merely because the performance of normal work duties reveals the underlying condition.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to the accepted employment injury.

Appellant submitted an August 31, 2022 report in which Dr. Tu noted that she returned for treatment of right knee pain and indicated that she had an MRI scan, which demonstrated a right

⁴ *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁵ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

⁶ *C.H.*, Docket No. 17-0488 (issued September 12, 2017).

⁷ *Id.*

knee medial meniscus tear. He detailed the findings of his physical examination of the right knee, noting that appellant exhibited some mild medial joint line tenderness and mild tenderness at the superior patellar area. The right knee had range of motion from 0 to 135 degrees, and did not exhibit laxity, effusion, or patellofemoral irritability. There was normal distal sensation in the knee. Dr. Tu diagnosed right knee medial meniscus tear and indicated that he injected the right knee with cortisone. He noted, “[w]ith respect to [appellant’s] medial meniscus tear and causation[,] certainly repetitive kneeling, squatting, and pivoting activities is a mechanism for the development of medial tibial meniscus tear.”

Although the August 31, 2022 report contains a brief comment regarding causal relationship, it is of limited probative value regarding appellant’s expansion claim because Dr. Tu did not provide medical rationale in support of his opinion on causal relationship. He only described her work duties in general terms and did not explain how they would have been competent to cause the diagnosed right knee condition. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.⁸ Therefore, this report is insufficient to establish appellant’s claim.

Appellant submitted reports dated November 20, 2019, January 29, 2020, and January 12, 2022 in which Dr. Tu discussed physical examination findings for appellant’s right knee. However, these reports are of no probative value regarding her expansion claim because Dr. Tu did not provide an opinion regarding the cause of her right knee condition. 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.⁹ Therefore, this evidence is insufficient to establish appellant’s expansion claim.

Appellant submitted diagnostic tests in support of her expansion claim, including October 13, 2019 x-rays and a December 9, 2021 MRI scan of the right knee. However, the Board has held that diagnostic studies, standing alone, lack probative value on causal relationship as they do not address whether employment factors caused the diagnosed condition.¹⁰

Appellant also submitted an October 11, 2019 hospital record, which noted that she was admitted for right knee pain. There is no indication that a physician within the meaning of FECA completed any portion of these documents discussing appellant’s right knee condition. Because there is no indication that the author is a physician, these documents do not constitute medical evidence under FECA and, therefore, do not establish appellant’s expansion claim.¹¹

⁸ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

⁹ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁰ *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

¹¹ See *S.D.*, Docket No. 21-0292 (issued June 29, 2021); *C.B.*, Docket No. 09-2027 (issued May 12, 2010) (a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

As the medical evidence of record is insufficient to establish causal relationship, the Board finds that appellant has not met her burden of proof to establish the expansion of her claim.

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 expand the acceptance of her claim to include additional conditions causally related to the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 2023
Washington, DC

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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