

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

_____)
J.K., Appellant)
)
and) **Docket No. 23-0896**
) **Issued: February 9, 2024**
U.S. POSTAL SERVICE, LARCHMONT POST)
OFFICE, Larchmont, NY, Employer)
_____)

Appearances:

Case Submitted on the Record

Thomas Harkins, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 16, 2023 appellant filed a timely appeal from a March 23, 2023 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.³

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.*

³ The Board notes that, following the March 23, 2023 decision, appellant submitted additional evidence to OWCP. 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.

ISSUE

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

FACTUAL HISTORY

On March 3, 2021 appellant, then a 33-year-old customer service supervisor, filed a notice of recurrence (Form CA-2a) alleging that she sustained a recurrence on March 3, 2021 causally related to her accepted March 27, 2018 employment injury. She stopped work on March 5, 2021.⁴ Appellant explained that she experienced intermittent left knee symptoms that increased with walking and climbing. On June 3, 2021 OWCP converted her recurrence claim to a new occupational disease claim.

In notes dated March 3 and April 14, 2021, Dr. Yasmin Dhar, a Board-certified orthopedist, treated appellant for a work-related left knee injury that occurred on March 27, 2018. She noted that appellant was totally disabled from work.

In a June 8, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim. By separate letter of the same date, OWCP also requested additional information from the employing establishment. It afforded both parties 30 days to respond.

In a report dated June 25, 2021, Dr. Dhar noted that appellant was status post injury in March 2018. Appellant reported squatting and feeling pain and a pop in her left knee. She noted that a magnetic resonance imaging (MRI) scan of the left knee⁵ revealed an acute focal cartilage edematous osteochondral injury.

On June 29, 2021 the employing establishment postmaster, responded to OWCP's development letter and indicated all of appellant's statements were accurate and she concurred with her allegations. She noted that appellant was retrieving cleaning supplies from the basement area, and engaged in lifting and climbing stairs when appellant was injured. The postmaster maintained that there was nothing that could be done to minimize the effects of the job duties due to the job requirements.

By decision dated July 20, 2021, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record did not contain a valid medical diagnosis causally related to the factors of her federal employment, which included engaging in extensive walking

⁴ OWCP assigned the present claim OWCP File No. xxxxxx472. On March 28, 2018 appellant filed a traumatic injury claim for a left knee injury that occurred on March 27, 2018. OWCP assigned that claim OWCP File No. xxxxxx116 and accepted it for sprain of the left knee. It has administratively combined OWCP File Nos. xxxxxx472 and xxxxxx116, with the latter serving as the master file.

⁵ An MRI scan of the left knee dated April 19, 2018 revealed no ligamentous or meniscal tear, small synovial joint effusion, and focal osteochondral injury involving the articular surface of the lateral tibial plateau with subchondral edema possibly representing small osseous contusion if there was a recent history of trauma.

throughout the work facility. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP thereafter received additional evidence. In an April 14, 2021 note, Danielle Maucieri, a physician assistant, treated appellant for pain in the medial aspect of her left knee that was exacerbated while descending stairs. She indicated that appellant's condition was the result of a work-related injury sustained in 2018. Ms. Maucieri diagnosed chondromalacia patellae of the left knee and sprain of other specified parts of the left knee and advised that appellant was totally disabled from work.

On June 2, 2021 Dr. Dhar treated appellant in follow-up for left knee pain. She noted appellant was assessed six weeks prior for left knee pain after descending stairs. Dr. Dhar reported findings on physical examination of tenderness to palpation along the medial joint line, quadriceps atrophy, and weakness with straight leg raising. She reviewed an MRI scan of the left knee, which revealed focal osteochondral injury involving the articular surface of the lateral tibia plateau with edema, possibly representing a small osseous contusion from a recent trauma, and a small synovial joint effusion. Dr. Dhar diagnosed chondromalacia patellae of the left knee and sprain of other specified parts of the left knee and noted that appellant remained totally disabled from work. On July 30, 2021 she indicated that appellant's symptoms were "related to osteochondral injury to the [left] knee" and noted that a March 2021 incident, which occurred while walking upstairs, caused increasing pain and dysfunction. Dr. Dhar advised that the March 2021 incident likely caused "some shear across the patellofemoral area" of the left knee and caused an osteochondral injury.

On August 10, 2021 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated November 22, 2021, OWCP's hearing representative modified the July 20, 2021 decision to find that appellant had established employment factors as alleged, including engaging in walking at work, and that the medical reports diagnosed left knee strain in connection with the accepted employment factors. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between a diagnosed medical condition and the accepted employment incident.

On January 22, 2022 appellant requested reconsideration and submitted additional medical evidence.

In a January 21, 2022 report, Dr. Dhar noted her treatment of appellant in follow-up for "an injury at work that happened in 2018." Appellant reported that on March 3, 2021 she felt a pop in her left knee when it buckled while ascending stairs. On physical examination, Dr. Dhar noted tenderness along the medial and lateral joint line. She diagnosed chondromalacia patellae of the left knee and sprain of the left knee and opined that all of appellant's left knee symptoms were related to the initial injury in 2018. Dr. Dhar noted that appellant had a buckling injury to her left knee in March 2021, which caused inflammation and aggravation of her knee symptoms, but maintained that it was "not a specific new injury."

By decision dated April 22, 2022, OWCP denied modification of the November 22, 2021 decision.

On May 3, 2022 appellant requested reconsideration.

In reports dated April 16 and 26, 2018, Dr. Dhar indicated that she treated appellant for a work-related left knee injury sustained on March 27, 2018. She diagnosed other tear of the left lateral meniscus and sprain of the left knee. On March 4, 2022 Dr. Dhar noted a history of “an injury at work that happened in 2018” and a March 3, 2021 incident when appellant was walking upstairs, and diagnosed chondromalacia patellae of the left knee, and sprain of the left knee.

By decision dated July 7, 2022, OWCP denied modification of the April 22, 2022 decision.

On November 9, 2022 Dr. Dhar reevaluated appellant for left knee pain. She diagnosed chondromalacia patellae of the left knee and sprain of the left knee. In a report dated March 16, 2023, Dr. Dhar provided a history of “an injury sustained at work” on March 27, 2018 and a March 3, 2021 incident when appellant was maneuvering stairs. She noted that appellant was treated throughout 2021, 2022, and 2023 for ongoing pain and dysfunction of the left knee. Dr. Dhar opined with a reasonable degree of medical certainty that appellant’s physical limitations and left knee symptoms were a direct result of the March 27, 2018 employment injury in which she sustained an osteochondral injury to the lateral tibial plateau.

By decision dated March 23, 2023, OWCP denied modification of the July 7, 2022 decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA⁶ 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,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 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.

⁶ *Supra* note 2.

⁷ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 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).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ 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 factors.¹¹

ANALYSIS

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

In reports dated April 16, 2018 through April 14, 2021, Dr. Dhar indicated that she treated appellant for a work-related left knee injury sustained on March 27, 2018. She diagnosed other tear of the left lateral meniscus. In a report dated June 25, 2021, Dr. Dhar diagnosed status post work-related injury in March 2018 and noted that an MRI scan of the left knee revealed an acute focal cartilage edematous osteochondral injury. She opined that appellant's present left knee condition was causally related to the already accepted March 27, 2018 employment injury, but she did not address the March 3, 2021 employment incident when appellant's left knee buckled while walking on stairs, or other accepted employment factors, including generally engaging in extensive walking, which appellant believed contributed to a new work-related occupational injury. Although she supported causal relationship, Dr. Dhar failed to provide a rationalized opinion on causal relationship. 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 factor/injury caused or aggravated a medical condition.¹² These reports are thus insufficient to establish the claim.

In a July 30, 2021 report, Dr. Dhar indicated that appellant's symptoms were "related to osteochondral injury to the knee" and noted that a March 2021 incident, which occurred while ascending stairs, caused increasing pain and dysfunction. She advised that the March 2021 incident likely caused "some shear across the patellofemoral area" of the left knee and caused an osteochondral injury. Although Dr. Dhar attributed appellant's left knee condition to the events of March 2021 in this report, her opinion is of limited probative value because it does not contain adequate medical rationale on causal relationship.¹³ Thus, this report is insufficient to establish the claim.

On January 21, 2022 Dr. Dhar advised that she treated appellant in follow-up for "an injury at work that happened in 2018" and that appellant reported that on March 3, 2021 she felt a pop in her left knee when it buckled while walking upstairs. On physical examination, she noted tenderness along appellant's left medial and lateral joint line. Dr. Dhar diagnosed chondromalacia patellae of the left knee and sprain of the left knee and opined that all of appellant's left knee

¹⁰ *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *See D.C.*, Docket No. 19-1093 (issued June 25, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹² *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹³ *See id.*

symptoms were related to the initial injury in 2018. Although she supported a work-related cause for appellant's present left knee condition, she did not provide rationale explaining her conclusion. Without explaining the mechanism of injury by which a work activity/injury caused or contributed to appellants' medical condition, Dr. Dhar's opinion is of limited probative value.¹⁴ Thus, this report is insufficient to establish the claim.

In reports dated March 4, 2022 and March 16, 2023, Dr. Dhar provided a history of an injury sustained at work on March 27, 2018 and a March 3, 2021 employment incident when appellant was walking on stairs. She opined with a reasonable degree of medical certainty that appellant's physical limitations and symptoms related to appellant's left knee were secondary to the March 27, 2018 employment injury at which time she sustained an osteochondral injury to the lateral tibial plateau. However, Dr. Dhar again failed to provide a rationalized medical opinion establishing that appellant's present condition was related to the established factors of her new occupational injury claim and/or to the already accepted March 27, 2018 work injury. 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.¹⁵ Therefore, this evidence is insufficient to establish the claim.

On June 2, 2021 and November 9, 2022 Dr. Dhar reevaluated appellant for left knee pain and diagnosed chondromalacia patellae of the left knee and sprain of other specified parts of the left knee and noted that appellant remained totally disabled. However, these reports failed to provide an opinion regarding the cause of appellant's left knee condition.¹⁶ As stated above, 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.¹⁷ These reports are thus insufficient to establish the claim.

Appellant submitted an April 14, 2021 report from Ms. Maucieri, a physician assistant. However, certain healthcare providers such as physician assistants are not considered "physician[s]" as defined under FECA.¹⁸ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁹

¹⁴ *Y.F.*, Docket No. 19-1576 (issued August 4, 2020); *see A.P.*, Docket No. 19-0224 (issued July 11, 2019).

¹⁵ *See L.B.*, *supra* note 11; *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ *L.D.*, Docket No. 18-1468 (issued February 11, 2019).

¹⁷ *See L.B.*, *supra* note 11; *D.K.*, *supra* note 15.

¹⁸ Section 8102(2) of FECA provides as follows: (2) 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. § 8102(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 S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

¹⁹ *Id.*

As the medical evidence of record is insufficient to establish causal relationship between a medical condition and the accepted factors of federal employment, 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 left knee condition causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 9, 2024
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