United States Department of Labor
Employees' Compensation Appeals Board

J.D., Appellant	)	
and	)	**Docket No. 23-0993**
	)	**Issued: January 3, 2024**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Michael D. Overman, 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 July 20, 2023 appellant, through counsel, filed a timely appeal from a February 1, 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 December 6, 2021 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 December 8, 2021 appellant, then a 58-year-old postmaster, filed a traumatic injury claim (Form CA-1) alleging that on December 6, 2021 she injured her left knee while in the performance of duty. She noted that she felt a pop in the left knee when she bent and overextended her knee during mail distribution. Appellant stopped work on December 7, 2021, and returned to full-time modified-duty work with restrictions on January 15, 2022.

In a December 9, 2021 note, Brianna Maglio, a physician assistant, indicated that appellant was seen for an orthopedic injury. She released her to light-duty work, effective December 13, 2021.

In a December 22, 2021 note, Emily Stock, a physician assistant, indicated that appellant was being treated for a knee injury and was prescribed a knee brace and crutches. She released her to sedentary work with no lifting or bending.

In a December 23, 2021 note, Marsha Skorupa, a medical assistant, noted that appellant was being treated for a knee injury and should remain out of work.

In a January 18, 2022 note, Dr. Jeffrey Gillette, an osteopathic orthopedic surgeon, released appellant to light-duty desk work.

In a February 28, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP, thereafter received a February 28, 2022 note by Dr. Gillette, who released appellant to return to light-duty work with no lifting, pulling, bending, squatting, or prolonged standing.

By decision dated March 30, 2022, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that she sustained an injury in the performance of duty, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 22, 2022 appellant requested reconsideration of OWCP's March 30, 2022 decision. In support of her request, she submitted a February 22, 2022 medical report by Dr. Gillette, who noted that she related a history of left knee pain, which she attributed to bending to pick up an item from the floor on December 6, 2021. Dr. Gillette performed a physical examination of the left knee and noted pain with palpation of the medial and lateral joint line and lateral condyle, moderate crepitus, a moderate Baker's cyst, reduced range of motion, mild medial ligament laxity, a positive Steinman test medially, trace effusion, and limited strength. He reviewed x-rays of the left knee, which revealed "progression of medical joint space narrowing with no evidence of subchondral collapse." Dr. Gillette diagnosed left knee degenerative joint disease and administered a steroid injection. He related that he also discussed the possibility of a total knee replacement with appellant during the visit. In a duty status report (Form CA-17) of even date, Dr. Gillette diagnosed subchondral insufficiency and a fracture of the left femoral condyle and recommended that she remain out of work.

By decision dated April 26, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

OWCP continued to receive evidence, including reports of physical therapy for appellant's left knee dated February 11 through June 9, 2022.

In an August 25, 2022 note, Dr. Gillette released appellant to return to work with no bending below knee height for the next three weeks. He anticipated that she would be able to resume full-duty work thereafter.

On September 29, 2022 appellant, through counsel, requested reconsideration of OWCP's March 30, 2022 decision. In support of the request, counsel submitted a December 9, 2021 medical note by Maria Jones, a medical assistant, who noted that she related complaints of 10/10 left knee pain, radiating down her leg, which she attributed to a pop in her knee. In a medical note of even date, Dr. John H. Doherty, a Board-certified orthopedic surgeon, diagnosed a left knee injury and recommended a magnetic resonance imaging (MRI) scan of the left knee and use of a brace.

A December 17, 2021 report of an MRI scan of the left knee revealed moderate bone marrow edema involving the medial femoral condyle, a possible insufficiency fracture of the medial femoral condyle, mild reactive marrow edema involving the medial tibial plateau, mild-to-moderate joint arthrosis of the medial compartment with areas of full-thickness cartilage loss, and mild arthrosis of the lateral and patellofemoral compartments.

In a January 18, 2022 medical report, Dr. Gillette noted appellant's complaints and physical examination findings. He diagnosed a subchondral insufficiency fracture of the medial femoral condyle. Dr. Gillette recommended physical therapy and light-duty work restrictions.

In a note of even date, Madelyn Walsh, a medical assistant, indicated that appellant related complaints of left knee pain, which she attributed to an incident at work on December 6, 2021 when she bent down to pick up packages and felt a pop in her left knee.

In a May 24, 2022 follow-up report, Dr. Gillette noted that appellant related complaints of left knee pain. He performed a physical examination, which revealed pain with palpation of the medial compartment and limited range of motion with discomfort. Dr. Gillette diagnosed left knee osteoarthritis and opined that "the meniscus tear is likely degenerative, and it seems degenerative joint disease is a more likely cause of the symptoms." He explained that "chronic degenerative arthritis is causing symptoms along with osteochondritis dissecans medial femoral condyle" and "catching can come from a meniscus tear, but the rough surface of arthritis can cause this also." Dr. Gillette further noted that appellant was not presently a candidate for total knee replacement due to her body mass index (BMI), and recommended weight reduction. In a note of even date, he released her to return to work light duty with no lifting, pulling, bending, squatting, or prolonged standing.

In a statement dated June 25, 2022, appellant indicated that on December 6, 2021 she picked up a box which weighed about 15 pounds and felt a painful pop in her left knee. She noted that she complained of pain to her co-workers and immediately had difficulty walking. Appellant related that she attempted to treat her symptoms at home with ice and over-the-counter medication, but ultimately sought medical treatment due to continued pain, difficulty walking, and swelling.

She noted that she previously overextended her knee while working in July 2021, but had no additional injuries since December 6, 2021.

In an August 18, 2022 narrative report, Dr. Gillette outlined the history of the December 6, 2021 employment incident and appellant's complaints and treatment since December 9, 2021. He noted that she received medical treatment to her left knee six weeks prior to the December 6, 2021 injury, including a steroid injection. Dr. Gillette diagnosed degenerative joint disease and a subchondral fracture in the left knee. He opined that the subchondral fracture was sustained on December 6, 2021 and that appellant had a significant and irreversible aggravation and worsening of her underlying left knee degenerative joint disease secondary to the injury. Dr. Gillette noted that she had end-stage arthritis of the left knee and would likely require a total knee replacement. He indicated that appellant should remain on light-duty work restrictions due to pain.

OWCP also received reports of x-rays of the right knee and left foot dated September 19, 2018 for an unrelated slip and fall.

By decision dated February 1, 2023, OWCP modified the March 30, 2022 decision, finding that appellant had established that the December 6, 2021 employment incident occurred, as alleged, and that the medical reports established diagnoses of worsening left knee degenerative joint disease and subchondral insufficiency fracture in connection with the accepted December 6, 2021 employment incident. The claim remained denied, however, as the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted December 6, 2021 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,[3] that the claim was timely filed within the applicable time limitation period of FECA, 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.[4] 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.[5]

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 that the employee must submit sufficient evidence to establish that he or she actually experienced the

[3] *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused an injury.[6]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[7] 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.[8]

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left knee condition causally related to the accepted December 6, 2021 employment incident.

In support of her claim, appellant submitted a narrative report dated August 18, 2022 by Dr. Gillette who provided a history that she had felt a pop in her knee while bending over at work. He diagnosed degenerative joint disease and a subchondral fracture in the left knee and noted that she had received treatment for left knee complaints prior to the December 6, 2021 incident. Dr. Gillette opined that the subchondral fracture was sustained on December 6, 2021 and that appellant had a significant and irreversible aggravation and worsening of her underlying left knee degenerative joint disease secondary to the injury. The Board finds, however, that Dr. Gillette's August 18, 2022 narrative report is conclusory and fails to provide a rationalized medical opinion explaining how he arrived at his conclusions.[10] The Board has held that medical opinion evidence should reflect a correct history and offer a medically-sound explanation of how the specific employment incident, physiologically caused injury.[11] Further, the Board has held that medical rationale is particularly necessary where, as here, there are preexisting conditions involving some

[6] *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).

[7] *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).

[8] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *S.J.*, Docket No. 20-0896 (issued January 11, 2021); *R.G.*, Docket No. 18-0917 (issued March 9, 2020); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[10] *See D.A.*, Docket No. 20-0951 (issued November 6, 2020); *G.M.*, Docket No. 15-1288 (issued September 18, 2015).

[11] *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).

of the same body parts.[12] In such cases, the Board has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition.[13] As Dr. Gillette failed to provide this rationale, his opinion is insufficient to meet appellant's burden of proof.[14]

In his May 24, 2022 medical report, Dr. Gillette diagnosed left knee osteoarthritis and opined that "the meniscus tear is likely degenerative, and it seems degenerative joint disease is a more likely cause of the symptoms." He explained that "chronic degenerative arthritis is causing symptoms along with osteochondritis dissecans medial femoral condyle" and "catching can come from a meniscus tear, but the rough surface of arthritis can cause this also." Dr. Gillette's opinions as set forth in his May 24, 2022 report are equivocal and do not support causal relationship between the accepted December 6, 2021 employment incident and the diagnosed conditions. Consequently, his May 24, 2022 report does not establish appellant's burden of proof.[15]

In his reports dated January 18, February 22 and 28, and August 25, 2022, Dr. Gillette indicated that he was treating appellant for a left knee condition, but did not offer an opinion regarding the cause of the condition. Similarly, Dr. Doherty, in his December 9, 2021 medical report, diagnosed a left knee injury, but did not offer an opinion as to the cause of the condition. The Board has held that an opinion which does not address the cause of an employee's condition is of no probative value on the issue of causal relationship.[16] Thus, these reports are insufficient to establish appellant's claim.

Appellant also submitted various physical therapy reports and notes by physician assistants and medical assistants. However, certain healthcare providers such as nurses and physician assistants are not considered "physician[s]" as defined under FECA.[17] Consequently, their medical findings or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[18]

[12] *R.W.*, Docket No. 19-0844 (issued May 29, 2020); *A.M.*, Docket No. 19-1138 (issued February 18, 2020); *A.J.*, Docket No. 18-1116 (issued January 23, 2019).

[13] *Id*.

[14] *Id*.; *see P.M.*, Docket No. 22-0050 (issued June 6, 2022).

[15] *See supra* note 6.

[16] *T.D.,* Docket No. 19-1779 (issued March 9, 2021): *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[17] 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 supra* note 9 at 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 J.G.*, Docket No. 21-1334 (issued May 18, 2022) (medical assistants are not considered physicians as defined under FECA); *A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA); *H.S.*, Docket No. 20-0939 (issued February 12, 2021) (physician assistants are not considered physicians as defined under FECA).

[18] *See G.F.*, Docket No. 23-0114 (issued May 12, 2023); *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id*.

The remaining evidence of record consisted of reports of MRI scans and x-ray studies. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.[19] Therefore, this evidence is also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing a causal relationship between her diagnosed left knee condition and the accepted December 6, 2021 employment incident, the Board finds that she has not met her burden of proof to establish her claim.[20]

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 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 December 6, 2021 employment incident.

[19] *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

[20] *See J.T.*, Docket No. 18-1755 (issued April 4, 2019); *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 2024
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