

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

C.B., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Syracuse, NY, Employer**

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**Docket No. 13-1091
Issued: September 16, 2013**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 3, 2013 appellant, through her attorney, filed a timely appeal of a February 1, 2013 Office of Workers' Compensation Programs (OWCP) merit decision denying her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has established that she sustained a traumatic injury on March 2, 2012 in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 2, 2012 appellant, then a 47-year-old practical nurse, filed a traumatic injury claim alleging on that date she tripped when her left foot did not clear the curb and jarred her back, left knee and foot. She was performing light-duty work four hours a day.

OWCP requested additional factual and medical evidence in a letter dated March 7, 2012. Appellant provided a report dated March 2, 2012 from Dr. Stephen Bogosian, a Board-certified orthopedic surgeon, who noted that she had pain in her left knee after tripping over a curb. Dr. Bogosian provided her medical history including a lumbar fusion and history of foot drop. He stated that appellant's trip was related to her prior back injury at work due to her chronic left-sided drop foot problem. Dr. Bogosian found discomfort of the lateral collateral ligament in the left knee with mild soft tissue swelling as well as swelling in the medial arch of her left foot. He diagnosed sprain or strain of the collateral lateral ligament of the left knee and the left foot. Dr. Bogosian stated that appellant's foot drop caused her toes to catch and result in her twisting her knee.

Appellant submitted factual evidence noting that she had no prior left knee or foot problems other than the foot drop caused by nerve damage as a result of an April 12, 2004 back injury.

In a decision dated April 11, 2012, OWCP denied appellant's claim on the grounds that the medical evidence was not sufficient to establish a causal relationship between her diagnosed condition and her accepted employment incident.

Dr. Bogosian examined appellant on July 11, 2012 and reviewed a magnetic resonance imaging (MRI) scan of the left knee. The MRI scan demonstrated evidence of cartilaginous loss of patellofemoral joint and also evidence of inferior pole patellar partial thickness tear of the patellar tendon or tendinitis. Dr. Bogosian stated, "On March 2, 2012 [appellant] caught her toe and had a hyperflexion injury to her knee." He diagnosed left knee patellofemoral dysfunction with cartilaginous loss with recent aggravation. On August 1, 2012 Dr. Bogosian examined appellant and repeated that on March 2, 2012 she caught her toe and had a hyperflexion injury to her left knee. He found crepitance in the patella-femoral joint of the left knee with no effusion. Dr. Bogosian noted that appellant sustained a work-related back injury, underwent surgery and had a residual left foot drop. He diagnosed left knee patellofemoral dysfunction with cartilaginous loss with recent aggravation.

On June 16, 2012 appellant filed a notice of recurrence of disability due to her April 12, 2004 back injury. She stated that the original injury caused nerve damage to her left foot and left leg which resulted in foot drop causing trips and falls. Appellant stated on March 2, 2012 her left foot caught the curb causing a severe stumble and left knee pain.

Counsel requested reconsideration on December 6, 2012.

By decision dated February 1, 2013, OWCP found that the medical evidence did not establish a diagnosed medical condition as the reports failed either to address the specific incident or to confirm a diagnosed condition arising from the March 2, 2012 incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an “employee of the United States” within the meaning of FECA and 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 specific condition for which compensation is claimed is causally related to the employment injury.³ 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.⁴

OWCP defines a traumatic injury as, “[A] condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected.”⁵ To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First the employee must submit sufficient evidence to establish that he and she actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.⁷

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant’s condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.⁸

ANALYSIS

The Board finds that this case is not in posture for a decision. The record indicates that appellant has an accepted back injury dating from April 12, 2004, which resulted in a lumbar fusion and left foot drop due to nerve damage. Appellant has submitted factual evidence that she

² *Id.* at §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ 20 C.F.R. § 10.5(ee).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *J.Z.*, 58 ECAB 529 (2007).

⁸ *Charles W. Downey*, 54 ECAB 421 (2003).

tripped on March 2, 2012 when her left foot did not clear the curb. Dr. Bogosian stated that she tripped on March 2, 2012 due to her chronic left-sided foot drop. He stated an opinion that appellant's foot drop caused her toes to catch and resulted in her twisting her knee. Dr. Bogosian diagnosed sprain/strain of the collateral lateral ligament of the left knee and the left foot. Appellant has provided a factual statement and medical evidence of a diagnosed condition. Dr. Bogosian also provided medical reasoning explaining how her sprain/strain of the collateral lateral ligament of the left knee and sprain/strain of the left foot occurred as a result of her foot drop, trip and twisting of her left knee.

The Board finds that appellant has alleged a consequential injury resulting from appellant's April 12, 2004 employment injury and residual foot drop. The Board notes that OWCP did not develop the claim as a consequential injury.⁹ OWCP failed to properly combine or request combination of, the present case record with the record of the originally accepted employment injury, which appellant implicated as the initial causative entity.¹⁰ As appellant's claim files are not combined, the Board is unable to reach a final decision. On remand, OWCP should combine her claim files and after any necessary development of the factual and medical evidence, issue a *de novo* decision determining whether she has established that her March 2, 2012 injury occurred as a consequence of her April 12, 2004 employment injury.¹¹

CONCLUSION

The Board finds that this claim is not in posture for decision and must be remanded for OWCP to combine appellant's case files and further develop appellant's claim as a consequential injury.

⁹ See *J.K.*, Docket No. 09-859 (issued October 20, 2009) (where the Board found that appellant's traumatic injury claim attributing left arm fractures to the collapse of her right knee should have been developed and adjudicated by OWCP as a possible consequential injury of her accepted right knee contusion).

¹⁰ *D.G.*, Docket No. 11-669 (issued November 25, 2011).

¹¹ *L.Z.*, Docket No. 11-1415 (issued December 12, 2011).

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2013 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: September 16, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board