United States Department of Labor
Employees' Compensation Appeals Board

G.T., Appellant	)	
and	)	**Docket No. 13-1579**
	)	**Issued: April 3, 2014**
DEPARTMENT OF THE ARMY, INSTALLATION MANAGEMENT COMMAND, JOINT BASE LEWIS-McCHORD, WA, Employer	)	

Appearances:
Howard L. Graham, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 21, 2013 appellant, through her attorney, filed a timely appeal from the February 19, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish a work-related left knee condition on April 27, 2009, in addition to the accepted condition or that she is entitled to disability compensation for periods for which she has not already been compensated; (2) whether OWCP properly denied appellant's request for authorization of left knee surgery; and (3) whether appellant is entitled to receive continuation of pay.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On April 1, 2011 appellant, then a 41-year-old assistant program manager, filed a traumatic injury claim alleging that on April 27, 2009 she injured her left knee when she rose from a sitting position and heard a pop in her knee. She claimed continuation of pay. In an April 1, 2011 letter, appellant alleged entitlement to disability compensation for time she took off work due to her left knee condition.[2] On June 30, 2011 she filed a claim for wage loss during the period May 27 to June 5, 2009.

Appellant submitted a number of reports since 2009, regarding the medical treatment she received after her claimed April 27, 2009 injury. Findings of May 1, 2009 magnetic resonance imaging (MRI) scan of her left knee listed a meniscal tear under clinical history. Diagnoses were intrasubstance degenerative signal of the posterior horn of the medial meniscus with no surface extending tear, medial and patella femoral compartment chondromalacia with a cartilaginous fragment in the posterior aspect of the knee joint, small to moderate joint effusion and a one millimeter "cystic appearing lesion" of the posterior aspect of the medial tibial plateau (degenerative subchondral cyst versus intraosseous ganglion).

On May 5, 2009 Dr. Anthony Agtarap, an attending Board-certified orthopedic surgeon, indicated that appellant had a history of left knee pain and stated that she had a "long history [of] problems going back to childhood injuries, but has got along fairly well until a more acute episode occurred with the knee flexed underneath her while sitting at a desk and she felt a pop with pretty excruciating posterior pain and discomfort." He noted that appellant had discomfort with hyperflexion in her left knee posteriorly, but that strength and sensation were intact in the knee. Dr. Agtarap diagnosed a loose body or osteochondral defect of the left knee and recommended a left knee arthroscopy.

On May 11, 2009 Dr. Agtarap performed left knee surgery including arthroscopy with chondroplasty of the medial compartment of the medial femoral condyle and the patellofemoral compartment anteriorly. The surgery was not authorized by OWCP. Dr. Agtarap provided a preoperative diagnosis of "possible meniscal tear," but the listed postoperative diagnosis was "left knee significant articular wear, flaps and fissuring of medial femoral condyle and a second compartment to include the patella and trochlear region." No tear of the left meniscus was mentioned in the report. On May 22, 2009 Dr. Agtarap observed that appellant was doing well with some stiffness and pain and diagnosed status post left knee arthroscopic debridement with moderate degeneration in the medial compartment. He discussed her "natural history of arthritis" with her and recommended therapy. Appellant returned to light-duty work for four hours per day on June 1, 2009 and full-time regular duty on June 8, 2009.

In a November 19, 2009 report, Dr. Agtarap stated that appellant was trying to get back into running and playing soccer but she had increased symptoms in the medial compartment of her left knee. Physical examination of appellant's left knee revealed moderate tenderness in the

[2] Appellant stopped work on April 27, 2009 and returned to full duty on June 8, 2009. During this period, she underwent right knee surgery on May 11, 2009. Appellant indicated that she had used sick leave and annual leave to cover this period.

medial compartment and difficulty with full flexion and extension. Dr. Agtarap diagnosed symptomatic moderate articular wear of the left knee medial compartment.

Appellant did not submit any medical evidence concerning her medical treatment between November 19, 2009 and December 17, 2010. In a December 17, 2010 report, Dr. Agtarap stated that she complained of increasing left knee pain and examination of her left knee showed good overall range of motion with moderate tenderness to palpation over the medial joint line. X-ray findings of both knees revealed increased narrowing predominately in the medial joint space of appellant's left knee. Dr. Agtarap diagnosed progressive degenerative joint disease of the left knee and recommended oral anti-inflammatory medications.

In an April 26, 2011 letter, OWCP requested that appellant submit additional evidence including a statement about any past knee problems and medical records for past knee problems.

A March 31, 2011 report was submitted in which Dr. Agtarap stated that he had been following appellant for a number of years for "progressive articular damage and now progressive arthritis to her left knee." He noted that appellant came in wanting to open a work-related claim for her knee with respect to the April 2009 incident. Dr. Agtarap indicated that, upon review of the initial presentation, it appeared that she did have some preexisting articular and degenerative left knee features "along with an acute situation, which occurred at work when she felt a pop at her desk which led to her initial knee arthroscopy." He noted, "Now [appellant] has progressive knee arthritis related to that." Examination revealed a swollen left knee with effusion, stiffness to range of motion and moderate medial compartment tenderness. Dr. Agtarap indicated that December 2010 x-ray findings were consistent with moderate degenerative joint disease on the left and mild to moderate degenerative joint disease on the right. He stated:

> "I [ha]ve explained to [appellant] that she did have some degree of those findings within a few days of her injury. It does appear that she became symptomatic on the job, at least leading to her initial knee arthroscopy. [Appellant] will fill out the … paperwork and see if this will proceed to acceptance of a work-related claim."

In a May 17, 2011 report, Dr. Agtarap discussed the findings in his May 11, 2009 surgical report. He posited that appellant had some degree of preexisting degenerative features, which were aggravated when she stood up from her chair on April 27, 2009. Dr. Agtarap noted that she reported that her left knee was in a hyperflexed position underneath the chair and the desk and that, when she went to stand, she had an acute audible pop to her knee, which then led to her clinical evaluation, clinical and radiographic workup treatment and ultimate surgery. He stated, "It appears in discussion with [appellant] and review of my previous records that this was the first onset of internal derangement her knee [sic] that led down to her ultimate outcome of the advancing knee arthritis." Dr. Agtarap indicated that appellant had preexisting degenerative changes in her left knee that became symptomatic at the time of her work-related injury and stated:

> "I believe that [appellant's] left knee condition since April 27, 2009 has continued to deteriorate and become more clinically and radiographically evident. [Appellant's] preexisting disease has progressed and her symptoms have

> remained and have worsened since her work-related event. The standing up at work seems to have been [the] event that led to her having asymptomatic knee[-]related [symptoms] to her underlying degenerative and preexisting disease process."[3]

In a May 27, 2011 decision, OWCP accepted appellant's claim for a loose body in the left knee that had resolved by May 29, 2009, after the arthroscopic surgery. It found that the preexisting degenerative joint disease in her left knee was not aggravated by the employment injury and noted that the medical reports had stated that she had a history of knee problems dating back to childhood. OWCP indicated that appellant had not provided a written statement describing her past knee problems and had not submitted medical records from her past knee problems. It stated since such medical records had not been provided, "it is conjecture on the part of Dr. Agtarap (who also did not have access to the prior records) as to whether or not the simple act of standing up from your chair at work resulted in any significant permanent worsening of your underlying degenerative joint disease in your left knee."

Appellant requested a telephonic hearing with an OWCP hearing representative. Prior to the hearing, additional medical records were received, including a May 24, 2011 x-ray report showing moderate knee degenerative joint disease of the right knee.[4] During the October 13, 2011 hearing, appellant testified that she was presently in receipt of compensation benefits for an accepted carpal tunnel syndrome condition, not related to the April 27, 2009 work injury and that she had undergone carpal tunnel surgery several weeks prior to the hearing. She discussed the April 27, 2009 work injury and described her subsequent medical treatment. Appellant indicated that she suffered left knee injuries due to playing soccer as a child and young adult, including medial collateral ligament tears which did not require surgery.

Appellant submitted a December 13, 2011 report in which Dr. Erin Kershisnik, an attending Board-certified family practitioner, stated that she had treated appellant since 2008. Dr. Kershisnik described the April 27, 2009 work injury and stated that she was unaware of any prior knee complaints. She stated that diagnostic testing showed a loose body and significant chondromalacia, a degenerative condition and noted that appellant returned to work after her May 2009 surgery but has never been pain free. Dr. Kershisnik stated:

> "This was likely exacerbated by continuing to have to walk, stand and sit for prolonged periods as part of her job description. Given that [appellant] was pain free prior to her injury on April 27, 2009 it is more probable than not that the injury at work significantly exacerbated and contributed to the acceleration of the preexisting degenerative joint disease -- the treatment of which will ultimately involve total knee replacement."

[3] On May 6, 2011 Dr. Agtarap noted that appellant was being followed for progressive knee degenerative joint disease. He stated, "All of this comes back to her original event which occurred with an acute episode where her knee was flexed underneath while sitting at a desk and she went to get up and felt a pop and excruciating pain and discomfort in the posterior aspect of her knee." Dr. Agtarap indicated that appellant later had right knee surgery in May 2009.

[4] It should be noted that no condition has been accepted for appellant's right knee in this case.

In a January 3, 2012 decision, the hearing representative affirmed OWCP's prior decision with respect to the finding that appellant had not established a work-related injury other than a loose body in the left knee. The case was remanded to OWCP to determine whether she was entitled to disability compensation for the period between the April 27, 2009 injury and the time she returned to full duty on June 8, 2009. It was also directed to determine if reimbursement for the May 11, 2009 surgery should be authorized and whether appellant should have received continuation of pay for 45 days after the April 27, 2009 injury.

In a January 4, 2012 decision, OWCP found that appellant was not entitled to receive continuation of pay for her absences beginning April 27, 2009 because the April 27, 2009 work injury was not reported in a form approved by OWCP within 30 days following the injury.

On January 13, 2012 appellant received disability compensation on the daily rolls for the period May 27 to June 5, 2009.

In a May 14, 2012 report, Dr. Spencer Coray, an attending Board-certified orthopedic surgeon, described the April 27, 2009 injury when appellant stood up from a chair and felt a large pop in her left knee. He stated that subsequent MRI scan testing suggested a meniscal injury but at the time of surgery only degenerative changes were noted and a chondroplasty was performed in May 2009. Dr. Coray indicated that since the surgery the issue had been trying to determine whether the degenerative knee changes were work related or a preexisting condition. He stated that appellant had a left medial collateral ligament injury at age 19 but was able to play soccer for 15 years afterwards without knee complaints. Dr. Coray indicated that she continued to have pain in the left knee since surgery. He performed a physical examination which revealed trace effusion and mild crepitus in the left knee. No contractures were noted and ligaments were found to be stable. There was tenderness to palpation on the medial joint line in the anteromedial aspect of the knee and appellant had a mildly antalgic gain with guarding on the left side and mild bilateral lymphedema. Dr. Coray stated that x-ray testing showed moderate degenerative joint disease of the left knee, collapsed medical compartment left knee with early osteophyte formation and early varus alignment. He indicated that appellant was asymptomatic prior to her April 27, 2009 injury, but that she became symptomatic after the injury. Dr. Coray stated:

> "Based on information I have, I would have to state, on a more probable not basis, that the injury did exacerbate the problem which now remains symptomatic. It is not uncommon for these things to remain painful once they become symptomatic, again, given the history I have, I would have to state that the pain [appellant] has is related to her injury at work…. I do not think she is at a point where a knee replacement is warranted…."[5]

In February 6, 2013 report, Dr. Kenneth Sawyer, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, described appellant's April 27, 2009 work injury and May 11, 2009 work injury and stated, "[I]f it is accepted that a left knee injury occurred as a result of her job and if the accepted condition is loose body in the joint, the surgery should be accepted. The fact that no loose body was found is not relevant to the authorization for surgery,

[5] Dr. Coray noted that no left meniscal tear was documented at the time of the May 2009 surgery and stated that he could not provide an opinion on whether appellant sustained a left meniscus tear on April 27, 2011.

since the history, physical findings and MRI scan findings prior to surgery were all consistent with a loose body that needed to be removed."

In a February 19, 2013 decision, OWCP affirmed its January 3 and 4, 2012 decisions noting that appellant had not established additional conditions or periods of compensation, entitlement to reimbursement for the May 2009 surgery or entitlement to continuation of pay.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of establishing 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 period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[6] The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.[7]

The Board has held that the fact that a condition manifests itself or worsens during a period of employment[8] or that work activities produce symptoms revelatory of an underlying condition[9] does not raise an inference of causal relationship between a claimed condition and employment factors.

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a loose body in her left knee when she stood up from a chair at work on April 27, 2009. Appellant claimed that she sustained other conditions on April 27, 2009 including aggravation of the degenerative condition of her left knee and a left meniscus tear. She received disability compensation for the period May 27 to June 5, 2009, but also claimed entitlement to compensation for the period April 27 to May 26, 2009.

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a left knee condition on April 27, 2009 other than the accepted condition of loose body in the left knee or that she is entitled to disability compensation for periods for which she has not already been compensated. Appellant submitted several reports in which attending physicians indicated that she sustained aggravation of the degenerative condition of her left knee

[6] *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

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

[8] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[9] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

when she stood up at work on April 27, 2009. The Board finds that she did not submit rationalized medical evidence supporting such a work-related injury.

In the March 31, 2011 report, Dr. Agtarap, an attending Board-certified orthopedic surgeon, opined that appellant sustained "progressive knee arthritis" due to the April 27, 2009 work incident. On May 17, 2011 he stated, "The standing up at work seems to have been event that led to [appellant's] having asymptomatic knee related to her underlying degenerative and preexisting disease process." In a December 13, 2011 report, Dr. Kershisnik, an attending Board-certified family practitioner, noted, "Given that [appellant] was pain free prior to her injury on April 27, 2009, it is more probable than not that the injury at work significantly exacerbated and contributed to the acceleration of the preexisting degenerative joint disease." On May 14, 2012 Dr. Coray, an attending Board-certified orthopedic surgeon, stated that the fact that appellant's left knee was asymptomatic prior to April 27, 2009 made it more probable than not that the April 27, 2009 work injury caused an acceleration of her preexisting degenerative condition.

The Board notes that these reports do not contain adequate medical rationale in support of their conclusions that appellant sustained work-related aggravation of preexisting degenerative disease of her left knee. These opinions are not supported by reference to specific findings on examination and diagnostic testing, but rather appear to be solely based on a perception that she was asymptotic in her left knee before April 27, 2009. The Board has held that the fact that a condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed condition and employment factors.[10] The physicians did not describe the April 27, 2009 work incident in any great detail or explain how it could have been competent to cause such an aggravation of appellant's underlying condition. With respect to the claim of a left meniscus tear, no physician provided an opinion that such a work-related injury occurred and no tear was documented during May 2009 surgery on her left knee.[11] Appellant claimed entitlement to additional periods of disability compensation (including April 27 to May 26, 2009), but OWCP properly denied this claim because no physicians provided a clear opinion that she was entitled to receive disability compensation for such additional periods.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA states in pertinent part: "The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation."[12] The Board has found that OWCP has great discretion

[10] *See supra* notes 8 and 9.

[11] Dr. Kershisnik indicated that appellant's left knee condition was likely exacerbated by continuing to have to walk, stand and sit for prolonged periods as part of her job description, but appellant has not filed a claim for an occupational disease and this matter is not currently before the Board.

[12] 5 U.S.C. § 8103.

in determining whether a particular type of treatment is likely to cure or give relief.[13] The only limitation on OWCP's authority is that of reasonableness.[14] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[15]

In order to be entitled to reimbursement of medical expenses, it must be shown that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.[16] Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[17]

ANALYSIS -- ISSUE 2

On May 11, 2009 Dr. Agtarap performed a left knee surgery including arthroscopy with chondroplasty of the medial compartment of the medial femoral condyle and the patellofemoral compartment anteriorly. The procedures had not been authorized by OWCP and reimbursement was later denied due to failure to provide a rationalized opinion explaining the need for such surgery.

The Board finds that OWCP properly denied appellant's request for authorization of left knee surgery. On May 5, 2009 Dr. Agtarap diagnosed a loose body or osteochondral defect of the left knee and recommended a left knee arthroscopy. In later reports, he indicated that on April 27, 2009 appellant suffered an aggravation of her preexisting degenerative left knee condition which in turn led to the need for surgery. In a May 14, 2012 report, Dr. Coray also suggested that the surgery was necessitated by an April 27, 2009 aggravation of the preexisting degenerative left knee condition. In a February 6, 2013 report, Dr. Sawyer, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, indicated that the surgery should be authorized because the accepted loose body needed to be removed.

The Board finds that OWCP did not abuse its discretion by refusing reimbursement for appellant's May 11, 2009 surgery because the record does not contain a rationalized medical opinion justifying the need for the surgery due to the accepted work-related condition. The opinions of Dr. Agtarap and Dr. Coray stating that the surgery was necessitated by a work-related injury appear to be based on an assumption that she sustained a work-related aggravation of her underlying left knee condition. For the reasons stated above, such an injury has not been established. While Dr. Sawyer indicated that, the surgery was necessitated by the accepted loose

[13] *Vicky C. Randall*, 51 ECAB 357 (2000).

[14] *Lecil E. Stevens*, 49 ECAB 673, 675 (1998).

[15] *Rosa Lee Jones*, 36 ECAB 679 (1985).

[16] *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

[17] *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

body in the left knee, he did not provide any notable discussion of this condition or provide an adequate explanation of why this particular condition required surgical intervention.

LEGAL PRECEDENT -- ISSUE 3

Section 8118(a) of FECA provides for payment of continuation of pay, not to exceed 45 days, to an employee "who has filed a claim for a period of wage loss due to a traumatic injury with her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title."[18] Section 8122(a)(2) provides that written notice of the injury shall be given "within 30 days."[19] The context of section 8122 makes clear that this means within 30 days of the date of the injury.[20] A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment over a period longer than a single workday or work shift.[21]

Claims that are timely under section 8122 are not necessarily timely under section 8118. Section 8118 makes receipt of continuation of pay contingent on the filing of a written claim within 30 days of the injury.[22] When an injured employee makes no written claim for a period of wage loss within 30 days, he or she is not entitled to continuation of pay, notwithstanding prompt notice of injury.[23]

FECA's implementing regulations provide, in pertinent part, that to be eligible for continuation of pay, a claimant must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file a Form CA-1 within 30 days of the date of injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.[24]

ANALYSIS -- ISSUE 3

On April 1, 2011 appellant filed a Form CA-1 (traumatic injury claim) alleging that she sustained an injury on April 27, 2009. OWCP denied her claim for continuation of pay because she did not give notice of injury in writing within 30 days after the injury.

[18] 5 U.S.C. § 8118(a).

[19] *Id.* at § 8122(a)(2).

[20] *Robert E. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

[21] 20 C.F.R. §§ 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

[22] *Id.* at § 8118(a).

[23] *Laura L. Harrison*, 52 ECAB 515 (2001).

[24] 20 C.F.R. § 10.205(a)(1)-(3). *See also Carol A. Lyles*, 57 ECAB 265 (2005). When a Form CA-1 is not available, using another form would not alone preclude receipt. 20 C.F.R. § 10.205(a)(2).

The Board finds that appellant did not meet the standards for receiving continuation of pay in that she did not give notice of injury in writing within 30 days after the injury. Appellant first gave written notice on April 1, 2011 when she filed a Form CA-1 claiming compensation for an April 27, 2009 accident.

There is no provision under FECA for excusing an employee's failure to file a claim for continuation of pay within 30 days of the work injury.[25] Appellant did not make any written claim for a period of wage loss within 30 days of the April 27, 2009 accident and she is not entitled to continuation of pay. Thus, OWCP properly denied her claim for continuation of pay.

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 did not meet her burden of proof to establish that she sustained a left knee condition on April 27, 2009 other than the accepted condition of loose body in the left knee or that she is entitled to disability compensation for periods for which she has not already been compensated. The Board further finds that OWCP properly denied her request for authorization of left knee surgery and that OWCP properly denied her claim for continuation of pay.

[25] *See Dodge Osborne*, 44 ECAB 849 (1993); *William Ostertag*, 35 ECAB 1925 (1982).

ORDER

IT IS HEREBY ORDERED THAT the February 19, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board