United States Department of Labor
Employees' Compensation Appeals Board

A.B., Appellant	)	
and	)	**Docket No. 15-0785**
	)	**Issued: August 11, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Grand Rapids, MI, Employer	)	

Appearances:
Thomas P. Nelson, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 24, 2015 appellant, through counsel, filed a timely appeal from an August 28, 2014 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.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record contains additional evidence following the August 28, 2014 decision. The Board, under 20 C.F.R. § 501.2(c), is precluded from reviewing new evidence that was not before OWCP at the time it rendered its decision.

FACTUAL HISTORY

On July 14, 2014 appellant, then a 56-year-old city carrier, filed a traumatic injury claim alleging that on July 10, 2014 she sustained a right knee injury. She alleged that while walking downstairs she missed a step causing her right knee to swell. Appellant stopped work on July 13, 2014.

In a July 11, 2014 disability status report, Dr. Lisa Forrest, Board-certified in emergency medicine, advised that appellant was unable to work. In a July 14, 2014 disability status report, Dr. Zbigniew Srodulski, Board-certified in emergency medicine, diagnosed traumatic right knee effusion and internal derangement.

Also submitted were June 23, 2014 diagnostic and hospital reports for an unrelated incident where appellant injured her right knee. In the June 23, 2014 report, Dr. Devin Woelzlein, a specialist in emergency medicine, advised that appellant was experiencing right knee pain after jumping off a small ledge while delivering mail. He further advised that she had a history of right knee problems and had undergone right knee surgery twice previously. Dr. Devin noted that on examination appellant had normal range of motion, edema, tenderness along the medial and lateral joint line, right knee swelling, and effusion. An x-ray of the right knee revealed joint effusion, but no evidence of fracture, dislocation, or soft tissue swelling. Dr. Woelzlein diagnosed a right knee sprain.

By letter dated July 25, 2014, OWCP notified appellant that evidence was insufficient to establish that she actually experienced the incident alleged to have caused the injury. Appellant was advised to complete a questionnaire establishing the factual element of her claim and advise of the type of medical evidence needed.

In a July 11, 2014 hospital report, Dr. Forrest, advised that appellant's daughter related that appellant missed a step at work and fell onto her right knee. She further advised that appellant continued to work that day, but the next day the pain and swelling worsened. Dr. Forrest noted that appellant was seen a month prior for right knee pain, but the symptoms were worse with this incident. She also noted that appellant had two previous meniscus tears both requiring an arthroscopy. On examination Dr. Forrest noted right knee swelling with obvious effusion and pain over the medial and lateral joint line. She assessed internal derangement of the right knee joint. An accompanying July 11, 2014 x-ray report advised that a right knee x-ray revealed patellar spurring, no evidence of fracture, and joint effusion.

In a July 14, 2014 report, Dr. Zbigniew Srodulski, Board-certified in emergency medicine, advised that appellant was injured at work when she missed a step and landed on her foot while hyperextending her right knee. He noted that, although she did not fall completely, she was experiencing moderate aching pain. Physical examination revealed decreased range of motion, pain medially and laterally with valgus and varus stress, and tenderness along the medial and lateral joint line. Dr. Srodulski noted that there was no ecchymosis, deformity, laceration, erythema, bony tenderness, patellar tendon tenderness, restrictions on patellar mobility, or medial collateral ligament (MCL) laxity. He further noted that appellant had a history of two prior meniscus tears requiring surgery. A July 17, 2014 magnetic resonance imaging (MRI) scan report stated that appellant had a tear of the anterior cruciate ligament (ACL), fracture of the

posterior tibia, tear of the medial meniscus, full-thickness chondral loss over the posterior portion of the medial tibial plateau, and large joint effusion.

On July 18, 2014 Dr. Forrest advised that the swelling improved, but appellant was still experiencing pain and instability even without weight bearing. She advised that appellant would remain off work and that a surgery referral would be made. Appellant submitted July 18 and 22, 2014 disability status reports advising her of inability to return to work.

In a July 23, 2014 report, Dr. Robert Lee Highhouse, Board-certified in orthopedic surgery and sports medicine, advised that appellant injured herself at work on June 23 and July 10, 2014 and that on both occasions she missed a step and fell. He noted that following the first incident her symptoms were mild and she was able to return to work; however, her injuries were more significant following the second incident. Dr. Highhouse further noted that appellant had a history of knee problems, but she was able to perform the duties of her position. He reiterated the MRI scan findings and diagnosed right knee pain, tibial plateau fracture, ACL tear, and medial meniscus tear. Dr. Highhouse recommended bracing and estimated that appellant would need three to five months out of work to recover.

In an August 3, 2014 statement, appellant advised that while she was delivering mail she missed a step. She noted that her right leg did not land normally and that the pressure from the missed step caused her right knee to feel as though it was smashed from her lower leg and upper thigh. Appellant advised that she experienced a burning sensation in her knee and that the next day her knee was swollen. She submitted hospital reports related to the June 23, 2014 right knee injury.

By decision dated August 28, 2014, OWCP denied appellant's claim because medical evidence was insufficient to establish that the diagnosed conditions were causally related to the work incident.[3]

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[4] including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.[5] The employee must also

[3] Appellant continued to submit medical evidence and requested review of the written record on September 22, 2014. By letter dated April 9, 2015, OWCP advised her that, although the request was timely, it no longer retained jurisdiction to conduct a review of the written record because she had filed an appeal of the August 28, 2014 decision to ECAB. It explained that ECAB and OWCP could not have simultaneous jurisdiction over the same issue. *See Douglas E. Billings*, 41 ECAB 880 (1990).

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[5] *R.C.*, 59 ECAB 427 (2008).

establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.[6]

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. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[7]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on 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 identified by the claimant.[8]

ANALYSIS

OWCP has accepted the July 10, 2014 incident. The Board finds that the medical evidence is insufficient to establish that the employment incident on July 10, 2014 caused appellant's right knee conditions.

In his July 14, 2014 report, Dr. Srodulski, advised that appellant was injured at work when she missed a step and landed on her foot while hyperextending her right knee. He noted that she did not fall completely, but she experienced moderate aching pain. Although Dr. Srodulski described the incident, he did not provide medical rationale explaining how the incident caused or contributed to appellant's torn ACL, fractured posterior tibia, torn medial meniscus, full-thickness chondral loss, and large joint effusion. As noted, rationalized medical opinion evidence is generally required to establish causal relationship.

In his July 23, 2014 report, Dr. Highhouse advised that appellant injured herself at work on June 23 and July 10, 2014 when she misstepped and fell. He noted that she had a history of knee problems and reiterated the MRI scan findings. Although Dr. Highhouse advised that appellant was injured at work, he failed to explain how the work incident caused or contributed to the diagnosed conditions. Given that appellant has a history of right knee injuries, the need for medical rationale is particularly important.

In her July 11, 2014 hospital report, Dr. Forrest, advised that appellant sustained a right knee injury. She advised that appellant's daughter related that she missed a step at work and fell onto her right knee. Although she provides a history of the incident as relayed by appellant,

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[6] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *T.H.*, 59 ECAB 388 (2008).

[8] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Dr. Forrest does not provide an opinion on causal relationship. The Board has held that a report without an opinion as to causal relationship is of little probative value.[9]

Disability status and diagnostic reports are also insufficient to discharge appellant's burden of proof as they do not offer a physician's opinion on causal relationship between the diagnosed conditions and the July 10, 2014 work incident.[10]

Other reports including the June 23, 2014 hospital and diagnostic reports are insufficient to discharge appellant's burden of proof because they predate and are unrelated to the July 10, 2014 work incident in question.[11]

Consequently, appellant has submitted insufficient medical evidence to establish her claim. As noted, causal relationship is a medical question that must be established by probative medical opinion from a physician.[12] The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated her condition. The need for medical reasoning or rationale is particularly important where the record indicates that appellant had a previous condition to the same area of the body. Because appellant has not provided such medical opinion evidence in this case, she has failed to meet her burden of proof.

Counsel asserts that appellant was denied due process as the employing establishment took or threatened negative actions against her because of her claimed injury. The Board notes that it has no jurisdiction over internal personnel matters of the employing establishment.[13] Furthermore, there is no provision in FECA or its implementing regulations for payment of a claimant's attorney's fees.[14]

Appellant may submit or resubmit new evidence or argument as part of a formal 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. More specifically, she may request reconsideration and in support thereof the medical evidence which she attempted to submit following OWCP's August 28, 2014 merit decision.

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[9] *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[10] *Id*.

[11] Matters pertaining to the June 23, 2014 incident are not before the Board on the present appeal.

[12] *See supra* note 7.

[13] *See V.B.*, Docket No. 12-114 (issued June 13, 2012). The Board only has jurisdiction over final decisions of OWCP arising under FECA; *see* 20 C.F.R. § 501.2(c).

[14] *Linda D. Perren (Larry P. Perren)*, 49 ECAB 246 (1997).

CONCLUSION

The Board finds that appellant has not established a traumatic injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 11, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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