

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

_____)
J.M., Appellant)

and)

DEPARTMENT OF JUSTICE, U.S.)
PROBATION DEPARTMENT, EASTERN)
DISTRICT OF NEW YORK, Brooklyn, NY,)
Employer)

_____)

Docket No. 15-1174
Issued: August 18, 2015

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 29, 2015 appellant, through counsel, filed a timely appeal from an April 10, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 met her burden of proof to establish that she sustained bilateral knee, back, and right shoulder injuries on November 15, 2012 while in the performance of duty.

On appeal counsel contends that OWCP's decision is contrary to law and fact.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² On November 21, 2012 appellant, then a 38-year-old probation officer, filed a traumatic injury claim alleging pain in both knees, back, and right shoulder as a result of being struck by a sport utility vehicle (SUV) as she crossed the street on November 15, 2012. In a May 15, 2014 decision, the Board affirmed an October 29, 2013 OWCP decision which accepted that the November 15, 2012 incident occurred as alleged, but found that the medical evidence failed to establish that appellant sustained bilateral knee, back, and right shoulder injuries as a result of the accepted November 15, 2012 employment incident. The facts are hereby incorporated by reference.

Subsequent to the last OWCP merit decision dated October 29, 2013, appellant submitted medical reports from Dr. Michael Raffinan, a Board-certified family practitioner.³ In an October 30, 2013 report, Dr. Raffinan provided a history of injury that on November 15, 2012 appellant was in an SUV accident that left her seriously injured. He noted that she was out of work through February 3, 2013 while recovering from her injuries. Appellant returned to work on February 4, 2013. Dr. Raffinan requested accommodation. In a November 1, 2013 report, he reiterated the history of the November 15, 2012 incident. Dr. Raffinan advised that appellant was disabled and was out of work through February 3, 2013 as she recovered from her injuries. Appellant returned to work on February 4, 2013. Dr. Raffinan requested accommodation as she attempted to resume her regular duties.

Appellant, through counsel, requested reconsideration before OWCP in an April 2, 2015 letter. She submitted an April 1, 2015 medical report from Dr. Leon E. Popovitz, an attending Board-certified orthopedic surgeon, who provided a history of the treatment he provided to her and his examination findings commencing on January 17, 2013 following the accepted November 15, 2012 employment incident. Dr. Popovitz related appellant's history of injury that she was struck by an SUV while crossing the street on November 15, 2012. He advised that she suffered from post-traumatic chondromalacia as a result of being struck by the SUV while crossing the street. Dr. Popovitz stated that appellant had significant pain for over a year and that she continued to struggle with discomfort. He further stated that it was evident her pain was related to her injury and that she had significant disability. OWCP conducted a merit review. By decision dated April 10, 2015, OWCP denied modification of its May 15, 2014 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative, and substantial evidence⁵

² Docket No. 14-482 (issued May 15, 2014).

³ The Board did not review Dr. Raffinan's October 30 and November 1, 2013 reports in its prior decision dated May 15, 2014 as its jurisdiction of a case is limited to reviewing the evidence that was before OWCP at the time of its final decision on October 29, 2013. 20 C.F.R. § 501.2(c)(1).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that 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.⁷ There are two components involved in establishing the 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.⁸

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁹ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.¹⁰ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on November 15, 2012, as alleged. Appellant failed to submit sufficient medical evidence to establish that her post-traumatic chondromalacia or any other claimed medical condition was causally related to the accepted November 15, 2012 employment incident.

In an April 1, 2015 report, Dr. Popovitz opined that appellant had post-traumatic chondromalacia as a result of being struck by an SUV while crossing the street on November 15, 2012. He noted that she had significant pain for over a year and she continued to struggle with discomfort. Dr. Popovitz opined that it was evident that appellant's pain was related to her injury and that she had significant disability. While he provided a firm medical diagnosis of post-traumatic chondromalacia, he did not adequately explain how the accepted November 15, 2012 employment incident caused or contributed to appellant's diagnosed medical condition and resultant disability. Medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.¹² The Board finds,

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁸ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁹ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

¹⁰ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

¹¹ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

¹² See *Albert C. Brown*, 52 ECAB 152 (2000).

therefore, that Dr. Popovitz's opinion on causal relationship is of diminished probative value and is insufficient to establish appellant's traumatic injury claim.

In reports dated October 30 and November 1, 2013, Dr. Raffinan provided a history of the accepted November 15, 2012 employment incident and addressed appellant's disability for work and need for accommodation. However, he did not provide a specific diagnosis and failed to provide a medical opinion addressing whether any diagnosed condition and resultant disability were caused or aggravated by the November 15, 2012 work incident. A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.¹³ The Board finds that Dr. Raffinan's reports are insufficient to establish appellant's claim.

Therefore, the Board finds that there is insufficient medical evidence to establish that appellant sustained bilateral knee, back, and right shoulder injuries causally related to the accepted November 15, 2012 employment incident. Appellant did not meet her burden of proof.

On appeal appellant's counsel argues that OWCP's April 10, 2015 decision is contrary to law and fact. However, the Board finds that the weight of the medical evidence does not establish that appellant sustained bilateral knee, back, and right shoulder injuries causally related to the accepted November 15, 2012 employment incident.

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 that she sustained bilateral knee, back, and right shoulder injuries on November 15, 2012 while in the performance of duty.

¹³ *B.T.*, Docket No. 13-138 (issued March 20, 2013); *John W. Montoya*, 54 ECAB 306 (2003).

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 18, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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