United States Department of Labor
Employees' Compensation Appeals Board

D.J., Appellant	)	
and	)	**Docket No. 14-1928**
	)	**Issued: February 6, 2015**
DEPARTMENT OF VETERANS AFFAIRS, FAYETTEVILLE VETERANS ADMINISTRATION MEDICAL CENTER, Fayetteville, AR, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 2, 2014 appellant, through her attorney, filed a timely appeal from a July 24, 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.

ISSUE

The issue is whether appellant met her burden of proof to establish that she has a left knee condition causally related to a March 4, 2009 employment injury.

On appeal, appellant's attorney asserts that the July 24, 2014 decision is contrary to law and fact.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On February 17, 2005 appellant, then a 46-year-old nursing assistant, injured her right lower extremity while assisting a patient. The claim was accepted for right knee sprain, right medial meniscus tear, and aggravation of right osteochondritis dissecans. Dr. Mark W. Powell, a Board-certified orthopedic surgeon, performed arthroscopic right medial meniscectomy with chondroplasty on October 6, 2006. Appellant returned to part-time modified duty on December 14, 2006 and to regular duty on January 9, 2007. On May 11, 2007 OWCP denied her schedule award claim.

On March 24, 2009 appellant sustained a second work-related injury that occurred when she assisted an agitated patient. In a March 26, 2009 report, Dr. Powell noted the history of injury and her statement that her left knee was not very painful at that time. Examination of the left knee revealed no effusion and mild medial joint line tenderness with no lateral joint line tenderness and no medial or lateral collateral ligament laxity, and a negative Lachman's test. Appellant's diagnoses included left knee contusion. The claim was accepted for right shoulder contusion, right shoulder impingement, bilateral knee contusions, and a left thumb sprain. A May 29, 2009 magnetic resonance imaging (MRI) scan study of the left knee was unremarkable. On June 9, 2009 Dr. Powell reviewed the MRI scan and diagnosed left knee internal derangement. On July 30, 2009 he noted no tenderness to palpation or collateral ligament laxity on examination of the left knee.

On February 4, 2010 OWCP combined the two claims. By decision dated July 2, 2010, appellant was granted a schedule award for a two percent impairment of the right lower extremity, no impairment of the left lower extremity, a one percent impairment of the right upper extremity, and no impairment of the left thumb. The accepted conditions for the 2009 injury were expanded to include right rotator cuff syndrome and cervical spondylosis without myelopathy.

Dr. Joseph M. Ricciardi, a Board-certified orthopedic surgeon, performed a second opinion evaluation on November 1, 2011. He noted appellant's complaint of left knee pain along the medial collateral ligament with tenderness on examination in the medial peripatellar and medial joint line areas bilaterally. Collateral ligaments appeared intact. Dr. Ricciardi diagnoses included left knee pain which, he opined, was a result of the March 4, 2009 employment injury. Dr. Powell performed a second right knee surgical procedure on December 23, 2011.

On January 9, 2012 appellant accepted a modified secretarial position at the employing establishment. In a March 20, 2012 decision, OWCP found that the modified position fairly and reasonably represented her wage-earning capacity with zero loss of wage earning capacity.[2]

In treatment notes dated February 14, March 27, and May 12, 2012, Dr. Powell noted that appellant's complaint of left knee pain that had been present off and on since a March 4, 2009 employment injury. Examination of the left knee demonstrated no effusion, patellofemoral crepitus, some tenderness to palpation, no collateral ligament laxity, and negative Lachman's and Homan's tests. On November 13, 2012 Dr. Powell noted that appellant indicated that two weeks

[2] Appellant accepted a similar clerical position in August 2012.

previously she started feeling a sharp, throbbing pain, and swelling in her left knee and denied a new injury. Examination of the left knee demonstrated no effusion or medial joint line tenderness with no ligament laxity and negative Lachman's and Homan's tests. Dr. Powell injected appellant's left knee. In a January 3, 2013 treatment note, he noted her report that the injection did not help and complained of continued swelling and pain. Dr. Powell recommended a repeat MRI scan study. A January 22, 2013 MRI scan study of the left knee demonstrated intrasubstance degeneration in the posterior horn of the medial meniscus. In a January 31, 2013 letter, Dr. Powell requested that appellant's claim be expanded to include left knee internal derangement. He noted that the January 22, 2013 MRI scan revealed a medial meniscus tear and opined that her left knee condition was a result of the March 4, 2009 employment injury because she had no problems with her left knee prior to that injury.

By letter dated February 7, 2013, OWCP informed appellant of the type medical evidence needed to support her request to expand her left knee claim.

In a February 14, 2013 statement, appellant indicated that her clerical job required walking between buildings several times a day on uneven ground, and this required compensating for her right knee pain by putting more weight on her left leg and knee. Also on February 14, 2013 the employing establishment controverted the claim, noting that accommodations had been made for her and that she had applied for disability retirement.

On March 14, 2013 Dr. Daniel D. Zimmerman, an OWCP medical adviser, who is Board-certified in internal medicine, noted his review of the medical evidence. He indicated that review of both MRI scan studies showed no change in appellant's left knee. The medical adviser recommended that her left knee condition should not be accepted. On March 29, 2013 OWCP authorized appellant's request to change physicians to Dr. Christopher A. Arnold, a Board-certified orthopedic surgeon.

On April 29, 2013 appellant was granted a schedule award for an additional one percent impairment of the right arm and an additional two percent of the right leg.

By decision dated May 6, 2013, OWCP denied appellant's claim to expand the accepted conditions to include left knee internal derangement and meniscus tear. On April 25, 2014 counsel requested reconsideration.

Additional medical evidence submitted included an April 25, 2013 report in which Dr. Arnold advised that appellant had left knee pain following an employment-related injury. Dr. Arnold diagnosed left knee pain secondary to a meniscus tear/chondral defect, and noted that she wished to have surgery. He performed left knee arthroscopy with medial meniscectomy, chondroplasty, and plica excision on May 24, 2013. Dr. Arnold provided postoperative follow-up treatment notes dated June 3 and July 9, 2013 in which he advised that appellant was progressing well. In a January 16, 2014 treatment note, he noted that she continued to have moderate left knee pain. Dr. Arnold injected her left knee and diagnosed left knee pain secondary to osteoarthritis.[3] On February 14, 2014 James Semingson, an advanced practice

[3] The record also includes medical evidence that is not relevant to appellant's left knee condition. This includes an impairment evaluation for her right knee.

registered nurse, noted a history that appellant injured her left knee at work in March 2009 which directly led to the meniscus tear/chondral defect. He stated that her left knee treatment was directly related to the work injury as she reported that she had no left knee pain prior to this event.

In a merit decision dated July 24, 2014, OWCP denied appellant's claim finding the medical evidence insufficient to establish that her left knee condition of internal derangement and meniscus tear was caused by the March 9, 2009 employment injury, and denied modification of the May 6, 2013 decision.

LEGAL PRECEDENT

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[4] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 employee.[5] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[6]

ANALYSIS

The Board finds that appellant did not establish that she sustained a left knee internal derangement, chondral defect, or meniscus tear caused by the March 4, 2009 employment injury because the medical evidence is insufficient to establish causal relationship.

Dr. Powell, an attending orthopedic surgeon, submitted treatments dated March 26, 2009 to January 31, 2013 in which he described findings relative to appellant's left knee. In his initial report dated March 26, 2009, he merely noted the history of injury and her statement that her left knee was not very painful at that time. The only positive physical examination finding was mild medial joint line tenderness, and he diagnosed left knee contusion. Although Dr. Powell diagnosed left knee internal derangement on June 9, 2009 following his review of the May 29, 2009 left knee MRI scan study, the study was read as unremarkable by the reading radiologist. He did not specifically discuss the cause of appellant's left knee condition until 2012 when he indicated that left knee pain had been present off and on since a March 4, 2009 employment injury. On November 13, 2012 Dr. Powell indicated that two weeks previously she felt a sharp, throbbing pain and swelling in her left knee but that she denied a new injury. A January 22, 2013 MRI scan study of the left knee demonstrated intrasubstance degeneration in the posterior horn of the medial meniscus. On January 31, 2013 Dr. Powell stated that the January 22, 2013 MRI scan revealed a medial meniscus tear and opined that appellant's left knee condition was a

[4] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[5] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[6] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

result of the March 4, 2009 employment injury because she had no problems with her left knee prior to that injury.

Dr. Arnold, an orthopedic surgeon, who began treatment of appellant in April 2013 merely advised that she had left knee pain following an employment-related injury and diagnosed left knee pain secondary to a meniscus tear/chondral defect, and noted that she wished to have surgery. He performed left knee arthroscopy on May 24, 2013. Dr. Arnold, however, did not describe how the unspecified employment injury caused appellant's left knee condition. Medical evidence must be 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.[7] Neither Dr. Powell nor Dr. Arnold adequately explained or described physiologically how the March 4, 2009 employment injury caused appellant's current left knee condition. Their opinions are therefore of diminished probative value.[8]

Dr. Ricciardi, who provided a second opinion evaluation for OWCP on November 1, 2011 diagnosed left knee pain and indicated that it was caused by the March 4, 2009 employment injury. The Board has long held that pain is a symptom, not a compensable medical diagnosis.[9] Dr. Zimmerman, an OWCP medical adviser, reviewed the entire record on March 14, 2012 and indicated that his review of both MRI scan studies showed no change in appellant's left knee. He recommended that her left knee condition should not be expanded.

The March 29, 2009 and January 22, 2013 MRI scan studies of the left knee did not provide a cause of any diagnosed conditions, and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[10] The February 14, 2014 report from Mr. Semingson, a nurse practitioner, does not constitute competent medical evidence as a nurse practitioner is not a physician under FECA.[11]

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to his federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[12] It is appellant's burden to establish that the claimed left knee condition is causally related to factors of her federal employment. In this case, she submitted

[7] *W.W.*, Docket No. 09-1619 (issued June 2, 2010).

[8] *See M.L.*, Docket No. 14-1128 (issued September 17, 2014).

[9] *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[10] *Willie M. Miller*, 53 ECAB 697 (2002).

[11] *L.D.*, 59 ECAB 648 (2008). Section 8101(2) of FECA provides that "physician" includes 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); *see Roy L. Humphrey*, 57 ECAB 238 (2005).

[12] *A.D.*, 58 ECAB 149 (2006).

insufficient evidence to show that the diagnosed left knee internal derangement/chondral defect/meniscal tear was caused by the March 4, 2009 employment injury.

Lastly, the Board notes that in February 14, 2013 statement, appellant indicated that her current clerical job required walking between buildings on uneven ground several times a day, and because of her right knee injury, she had to put more weight on her left leg. This would indicate that she is claiming that employment factors other than the March 4, 2009 employment injury caused her left knee condition.

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 causally related to a March 4, 2009 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 24, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2015
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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