United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 16-1192**
	)	**Issued: December 6, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Pittsburgh, PA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 15, 2016 appellant filed a timely appeal from a February 23, 2016 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 his burden of proof to establish a left knee injury causally related to an accepted January 27, 2015 employment incident.

On appeal appellant contends that he has unpaid medical bills and unpaid sick days and that he did not receive a letter requesting information until after its submission date.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 29, 2015 appellant, then a 52-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 27, 2015 he sustained left knee patellar tendinitis while walking up and down steps and hills to deliver mail. He stopped work on January 28, 2015.

Dr. Robert C. Smith, a Board-certified internist, initially treated appellant in the hospital and indicated in emergency room records dated January 28, 2015 that appellant complained of left knee pain since yesterday. He also noted that appellant had a work-related left knee injury and that he "walked a lot." Upon examination, Dr. Smith observed tenderness in the anterior left knee. He diagnosed left knee patellar tendinitis.

In a January 28, 2015 diagnostic examination report, Dr. Anil K. Bhardwaj, a Board-certified anesthesiologist, noted no findings of fracture or significant arthritic changes in appellant's left knee.

A patient incident report dated February 2, 2015 indicated that on January 27, 2015 around 3:00 p.m. appellant experienced extreme pain in the left knee when walking up and down stairs, up and down hills, and across snow covered grass.

Jean Pohlot, a certified nurse practitioner, related in February 2, 2015 examination notes that appellant had been referred for physical therapy for his left knee tendinitis/sprain. She related that he could return to work as of February 3, 2015 with restrictions of no excessive walking greater than 60 minutes on uneven terrain for extended periods of time.

In a February 5, 2015 statement, Mark Mizerak, appellant's supervisor, controverted appellant's claim for workers' compensation because appellant had just been shadowing a carrier during his second day of training.

Appellant received medical treatment from Dr. Thomas Brockmeyer, a Board-certified orthopedic surgeon, who related in a February 9, 2015 narrative report that appellant had just begun working for the employing establishment and was undergoing training on January 26 and 27, 2015. Dr. Brockmeyer explained that for the previous two weeks appellant had been engaged in driving tests as part of his training and that on January 26 and 27, 2015 he began carrying mail up and down hills. Appellant described that towards the end of the first day and on the second day he developed significant left knee pain. Dr. Brockmeyer reviewed appellant's history and conducted an examination. He reported tenderness and soft tissue swelling anterior to the left knee infrapatellar tendon. Lachman's and McMurray's tests were both negative. Dr. Brockmeyer opined that appellant had left infrapatellar tendinitis from sudden increase in work activities. He indicated that appellant should be on light duty for two weeks but could likely return to full duty thereafter.

Ms. Pohlot continued to treat appellant and in progress notes dated February 9 to March 2, 2015 indicated that appellant had a work-related overuse injury. She related that his left knee pain had improved since the last visit and that physical therapy was helping. Ms. Pohlot reported that examination of the lower extremities revealed no swelling, redness, or

tenderness in the left knee. She diagnosed left knee tendinitis and sprain. In a March 2, 2015 note, Ms. Pohlot opined that appellant was able to return to full duty as of March 2, 2015.

Appellant was treated again by Dr. Brockmeyer who noted in a February 23, 2015 report that appellant's condition continued to improve. He related that appellant recalled a "stepping-in-a-hole episode on the morning of January 27," but otherwise no other abnormal history. Upon examination, Dr. Brockmeyer observed no significant synovitis or effusion.

In a letter dated April 10, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he respond to a questionnaire in order to substantiate that the January 27, 2015 incident occurred as alleged. Appellant was afforded 30 days to provide additional medical evidence to demonstrate that he sustained a diagnosed condition as a result of the January 27, 2015 incident. He did not reply to the questionnaire or submit any additional evidence to the record.

OWCP denied appellant's claim in a decision dated May 13, 2015. It found that the factual evidence failed to demonstrate that appellant experienced the January 27, 2015 incident as he described and that the medical evidence did not establish that he sustained a diagnosed condition as a result of the alleged incident.

On June 1, 2015 OWCP received appellant's request for a telephone hearing, before an OWCP hearing representative. The hearing was held on January 6, 2016. Appellant stated that on January 27, 2015 he was power walking through the snow when his leg went into a hole and he wrenched his knee. He indicated that he did not write that description on the Form CA-1 because he was only mimicking what was given him at the hospital and asserted that he described the employment incident as best he could on the claim form. Appellant explained that after he wrenched his left knee, it got progressively worse when he delivered mail and had to walk up and down steps, hills, and across snow. He stated that he had three days of on-the-job training for delivering mail on January 26, 27, and 28, 2015. Appellant mentioned that he completed a revised Form CA-1. He described the medical treatment that he received and noted that he was diagnosed with a knee sprain and tendinitis. Appellant indicated that his left knee pain had not resolved but the pain was sporadic.

In a handwritten January 20, 2016 statement, appellant explained that he requested that his supervisor sign a witness statement regarding the January 27, 2015 employment incident. He also asked his doctor's office for a narrative medical report and provided them with OWCP's development letter. Appellant resubmitted Ms. Pohlot's progress notes dated February 2 to March 2, 2015 that were co-signed with an illegible signature.

By decision dated February 23, 2016, an OWCP hearing representative affirmed the May 13, 2015 denial decision with modification. He determined that the factual evidence sufficiently supported that the January 27, 2015 employment incident occurred as alleged and that appellant was diagnosed with left knee infrapatellar tendinitis. However, the hearing representative denied appellant's claim because the medical evidence of record was insufficient to establish that his left knee condition was causally related to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[3] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[4]

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.[5] There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[6] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[7] An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.[8]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[9] The opinion of the physician must be based on a complete factual and medical background of the employee, 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.[10] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[11]

---

[2] 5 U.S.C. §§ 8101-8193.

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

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

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

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

[7] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[9] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

[10] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[11] *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

Appellant alleged that on January 27, 2015 he sustained a left knee injury when he was in training to deliver mail, stepped in hole, wrenched his knee, and continued to walk up and down stairs and hills. OWCP accepted that the January 27, 2015 incident occurred as alleged and that he was diagnosed with left knee tendinitis. It denied appellant's claim because the medical evidence of record failed to establish that his left knee condition was causally related to the accepted incident. The Board finds that the medical evidence of record is insufficient to establish that appellant sustained a traumatic injury causally related to the January 27, 2015 employment incident.

Dr. Brockmeyer treated appellant and in reports dated February 9 and 23, 2015 described that on January 26 and 27, 2015 appellant was carrying mail up and down hills as part of his training with the employing establishment. He related that appellant began to experience significant left knee pain toward the end of the first day. Dr. Brockmeyer reviewed appellant's history and conducted an examination. He reported tenderness and soft tissue swelling anterior to the left knee infrapatellar tendon. Dr. Brockmeyer opined that appellant had left infrapatellar tendinitis from his sudden increase in work activities. In a February 23, 2015 note, he related that appellant had a "stepping-in-a-hole episode on the morning of January 27" but otherwise, no other abnormal history. The Board finds that Dr. Brockmeyer's reports are insufficient to establish a causal relationship between appellant's left knee condition and the January 27, 2015 incident. Dr. Brockmeyer initially related appellant's condition to a sudden increase in work activities and later described the January 27, 2015 work events. The Board has held that inconsistent and contradictory reports from the same physician lack probative value and cannot constitute competent medical evidence.[12] An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.[13] The Board finds that Dr. Brockmeyer did not provide a rationalized medical explanation as to how any of appellant's employment activities on January 27, 2015 would have physiologically caused the diagnosed condition.[14] Accordingly, Dr. Brockmeyer's reports fail to establish causal relationship.

Appellant was also treated in the emergency room. In hospital records dated January 28, 2015, Dr. Smith opined that appellant suffered a work-related left knee injury. He observed tenderness in the anterior left knee upon examination and diagnosed left knee patellar tendinitis. Although Dr. Smith described a work-related left knee injury, such generalized statements do not establish causal relationship.[15] The Board has held that 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.[16] Dr. Smith did not describe the January 27, 2015 employment incident nor did he

[12] *K.S.*, Docket No. 11-2071 (issued April 17, 2012); *Cleona M. Simmons*, 38 ECAB 814 (1987).

[13] *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[14] *See B.B.*, Docket No. 16-0304 (issued June 1, 2016).

[15] *See L.M.*, Docket No. 16-0188 (issued March 24, 2016).

[16] *John W. Montoya*, 54 ECAB 306 (2003).

provide a medical opinion on causal relationship. Likewise, in Dr. Anil K. Bhardwaj's January 28, 2015 diagnostic examination report, he indicated that he examined appellant for a work-related left knee injury but provided no additional explanation or description of the January 27, 2015 incident.[17] These reports, therefore, are insufficient to establish appellant's claim.

The examination notes dated February 2 to March 2, 2015 by Ms. Pohlot, a nurse practitioner, are also insufficient to establish appellant's traumatic injury claim because nurse practitioners are not considered physicians as defined under FECA and their medical opinions regarding diagnosis and causal relationship are of no probative medical value.[18] While appellant resubmitted those progress reports co-signed with an ineligible signature, reports that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.[19] These reports, therefore, are insufficient to establish appellant's claim.

On appeal, appellant alleges that he received OWCP's letter requesting additional information after the deadline for submission date. The Board notes that the April 10, 2015 development letter was mailed to appellant's last known address. In the absence of evidence to the contrary, a letter properly addressed and mailed in the due course of business is presumed to have arrived at the mailing address in due course. This is known as the mailbox rule.[20]

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 his burden of proof to establish a left knee injury causally related to an accepted January 27, 2015 employment incident.

[17] *Supra* note 14.

[18] 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005). Section 8102(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.

[19] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[20] *See James A. Gray*, 54 ECAB 277 (2002).

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 6, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board