United States Department of Labor
Employees' Compensation Appeals Board

D.C., Appellant	)	
and	)	**Docket No. 17-0993**
	)	**Issued: November 20, 2017**
U.S. POSTAL SERVICE, POST OFFICE, San Antonio, TX, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 April 6, 2017 appellant filed a timely appeal from a February 2, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 has met his burden of proof to establish a left knee injury in the performance of duty on September 29, 2015, as alleged.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 24, 2016 appellant, then a 50-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 29, 2015, while delivering mail, he placed a package on the ground and noticed that his left foot was on top of a rattlesnake and he immediately jumped. He was diagnosed with a tear of the meniscus on the left knee. Appellant did not immediately stop work.

By letter dated March 8, 2016, OWCP advised appellant of the type of factual and medical evidence needed to establish his claim. It requested that he complete a questionnaire describing in detail how the claimed injury occurred.

Appellant was treated by Dr. Leigh F. Nordstrom, a Board-certified internist, on October 22, 2015 for left knee pain and swelling which began on September 28, 2015. He reported that while delivering a package he accidentally stepped on a rattlesnake and jumped back. Appellant noted pain and swelling of the knee during the day and an episode of his knee giving out. He noted that the pain worsened in the anteromedial and posterior area, radiating up the posteromedial thigh and down the lateral leg to the great toe. Appellant further noted puncture-type marks on the back of his knee, but he did not remember a snake bite. Dr. Nordstrom noted that appellant's history was significant for left knee arthroscopy in 1981. Appellant reported working as a mail carrier and home inspector. Dr. Nordstrom noted findings on examination of two small bite marks on the back of the left knee, but he could not determine whether this was an insect bite or snake bite.

The employing establishment submitted a March 29, 2016 statement from W.N., Health and Resource Management Specialist, controverting appellant's claim and questioning the circumstances surrounding appellant's alleged incident. On the Form CA-1, appellant alleged that "while placing package on the opposite side of fence, placing it on the ground, I observed my left foot was on top of a large rattlesnake. I immediately jumped." However, W.N. noted that appellant continued to work without incident until February 5, 2016 when he informed his postmaster that he was going to see an orthopedic surgeon regarding his left knee. She asserted that appellant delayed seeking treatment and it was not until five months later on February 24, 2016 that he noted that he wanted to file a claim indicating that his injury was work related. W.N. further noted that appellant first sought treatment on October 6, 2015 and complained of joint and knee pain and eruption, but failed to mention that he sustained a work-related injury. Similarly, on October 22, 2015 appellant was treated by a physician and reported a history of injury of left knee pain and swelling since September 28, 2015, but the date of injury noted on the Form CA-1 was September 29, 2015. W.N. referenced an e-mail from appellant's postmaster, K.P., dated March 18, 2016 which stated:

> "The photo of the snake was sent on September 29, 2015 @ 12:45 p.m. by text without any information explaining the photo. I only saw the package on the ground. On October 5, 2015 @ 3:01 p.m., he told me to zoom in, at that time I saw the snake. [Appellant] mentioned [that] he was going to get his knee checked out since it was sore & stiff. It was during this conversation that he [stated] that it was due to the incident when he jumped over the snake. [Doctor] [stated] that it was just a sprain. I did n[o]t hear anything else about the incident until February 5, 2016 @ 5:39 p.m. that he was going to see the orthopedic surgeon."

The employing establishment submitted a report from a nurse practitioner dated October 6, 2015 who treated appellant for joint pain, knee pain, and eruption and was prescribed oral medication and topical ointment.

On March 28, 2016 appellant responded to OWCP's questionnaire and noted that on September 29, 2015, while delivering a package, he walked between the square opening of a fence and placed a package on the ground on the owner's side of the property. He noted that shortly upon releasing the package he observed his left foot was on top of a large rattlesnake and he jumped from the crouched position and injured his knee. Appellant reported texting a photograph of the snake and package to K.P. shortly after departing, but she did not respond. He indicated that on October 5, 2015 he contacted K.P. and informed her that his knee injury had not improved and that he was seeking medical treatment the next day. On October 21, 2015 appellant requested October 22, 2015 off so that he could see his physician because his knee was not improving. He advised that there were no witnesses to the incident, but he had texted pictures of the snake to K.P. Appellant noted the immediate effect of the injury was left knee swelling. He reported no improvement in his knee condition. On October 5, 2015 while delivering a package appellant's knee locked up. He submitted a copy of a photograph.

In an attending physician's report (Form CA-20) dated March 31, 2016, Dr. J. Scott Ellis, an osteopath Board-certified in orthopedic surgery, noted that on September 29, 2015, appellant was bitten by a snake while delivering mail and twisted his left knee. He found complex tearing involving the posterior horn of the medial meniscus. Dr. Ellis noted by checking a box marked "yes" that appellant's condition was caused or aggravated by an employment activity. He performed a left knee arthroscopy and noted that appellant was totally disabled from March 22 to May 9, 2016.

In a April 11, 2016 decision, OWCP denied the claim finding that appellant failed to submit medical evidence establishing that a medical condition was diagnosed in connection with the accepted work incident.

On April 22, 2016 appellant requested an oral hearing before an OWCP hearing representative which was held on December 14, 2016. Evidence submitted included a June 29, 2016 form noting appellant's resignation from the employing establishment effective June 24, 2016.

On January 12, 2017[3] appellant was treated by Dr. Ellis. He reported working as a postal worker and alleged that on September 29, 2015 he injured his left knee when he was squatting down outside a residence and noticed a rattlesnake and jumped up and twisted his knee. Dr. Ellis noted this action "could have" caused a meniscus tear. Appellant's history included a left knee arthroscopy when he was 16 years old. On February 10, 2016 Dr. Ellis noted findings for the left knee of positive McMurray's and Apley's test, limited range of motion, swelling, and tenderness over the joint line. He noted a magnetic resonance imaging (MRI) arthrogram of the left knee revealed a complex tear of the medial meniscus and grade 3 and 4 chondromalacia of the medial femoral condyle. Appellant underwent arthroscopic surgery on March 22, 2016. On September 7, 2016 he had left knee pain after mowing grass. Dr. Ellis diagnosed sprain or strain of the left knee.

[3] There appears to be a typographical error with the report of Dr. Ellis as it is dated 2016, not 2017.

In a February 2, 2017 decision, OWCP affirmed as modified the decision dated April 11, 2016. The hearing representative determined that appellant did not establish that he experienced the employment-related incident at the time, place, and in the manner alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims an injury in the performance of duty, he or she must submit sufficient evidence to establish a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. An employee must also establish that such event, incident, or exposure caused an injury.[4]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[5] The second component is whether the employment incident caused a personal injury.[6] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[7]

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[8] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence so as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.[9]

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[4] *See Walter D. Morehead,* 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton,* 40 ECAB 1143 (1989).

[5] *Elaine Pendleton, id*.

[6] *John J. Carlone, supra* note 4. Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris,* 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams,* 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors(s). *Id.*

[7] *Shirley A. Temple,* 48 ECAB 404, 407 (1997).

[8] *R.T.*, Docket No. 08-0408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

[9] *Betty J. Smith*, 54 ECAB 174 (2002).

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 claimant.[10]

ANALYSIS

OWCP denied appellant's claim because he failed to establish that the claimed work incident of September 29, 2015 occurred as alleged. The evidence of record supports that appellant's duties as a rural carrier involved delivering mail and packages in rural areas. There is no dispute that he was actually doing the job of a rural carrier on September 29, 2015 when he alleged an injury. Specifically, appellant's postmaster, K.P., indicated in an e-mail dated March 18, 2016, that appellant texted her a photograph of a snake on September 29, 2015 at 12:45 p.m. which depicted a package on the ground. Subsequently, on October 5, 2015 appellant told her to zoom in on the photograph and she noted seeing a snake. Appellant reported at that time that he was seeking medical treatment for his knee because it was sore and stiff due to the incident when he jumped over the snake. While she noted that it was unknown whether appellant was injured in the performance of duty, she did not dispute that appellant was performing his assigned work duties on September 29, 2015 when he observed a rattlesnake and jumped. The Board finds that the factual evidence establishes that on September 29, 2015, appellant was performing his duties as a rural carrier delivering packages when he observed a rattlesnake and jumped.

The Board further finds, however, that there is insufficient medical evidence to establish that the accepted September 29, 2015 work incident caused or aggravated his claimed injury.

Appellant submitted an October 22, 2015 report from Dr. Nordstrom who treated him for left knee pain and swelling beginning on September 28, 2015. He reported that while delivering a package he accidentally stepped on a rattlesnake and jumped back. Appellant noted pain and swelling of the knee during the day and an episode of his knee giving out. He further noted puncture-type marks on the back of his knee, but he did not remember a snake bite. Appellant reported working as a mail carrier and home inspector. Dr. Nordstrom noted findings on examination of two small bite marks on the back of the left knee but he could not determine whether this was an insect bite or snake bite. Regardless, he appears to merely be repeating the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work related.[11] To the extent that Dr. Nordstrom is providing his own

[10] *Solomon Polen*, 51 ECAB 341 (2000).

[11] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

opinion, he failed to provide a rationalized opinion regarding the causal relationship between appellant's left knee injury and the September 29, 2015 employment incident.[12]

Appellant submitted a March 31, 2016 attending physician's report from Dr. Ellis who noted that on September 29, 2015, appellant was bitten by a snake while delivering mail and twisted his left knee. By checking a box marked "yes," he noted that appellant's condition was caused or aggravated by an employment activity. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[13] Furthermore, Dr. Ellis does not have an accurate history of injury as appellant has not claimed that he was bitten by the snake, only that he had torn left knee cartilage from jumping away from the snake.[14]

In a report dated January 12, 2017, Dr. Ellis related that appellant reported that on September 29, 2015 he had injured his left knee when he was squatting down outside a residence and noticed a rattlesnake and jumped up and twisted his knee. He noted this action "could have" caused a meniscus tear. Dr. Ellis diagnosed sprain or strain of the left knee. The Board finds that, although he supported causal relationship, he failed to provide sufficient medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's left leg injury and the accepted work incident of September 29, 2015. Therefore, this report is insufficient to meet appellant's burden of proof. Medical rationale was particularly necessary given that appellant had a preexisting left knee injury and arthroscopic surgery when he was 16 years old. As the opinion of appellant's physician regarding causal relationship was conclusory and unexplained, it was insufficient to meet appellant's burden of proof.[15]

Other evidence submitted by appellant included a report from a nurse practitioner dated October 6, 2015. The Board has held that treatment notes signed by a nurse practitioner are not considered medical evidence as these providers are not considered physicians under FECA.[16]

[12] *Franklin D. Haislah,* 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[13] *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006).

[14] *See supra* note 10.

[15] *J.M.,* 58 ECAB 478 (2007) (where the Board found that appellant did not meet his burden of proof in establishing a work-related right wrist condition where his physician provided only conclusory support for causal relationship and did not identify any of the job duties appellant performed at the employing establishment which he believed were responsible for appellant's condition or explain how his work duties at the employing establishment caused or contributed to his condition. Medical rationale was particularly necessary given that appellant injured his wrist while lifting luggage in private employment. As the opinion of appellant's physician regarding causal relationship was conclusory and unexplained, it was insufficient to meet appellant's burden of proof.)

[16] *Paul Foster*, 56 ECAB 208 (2004) (where the Board found that a nurse practitioner is not a "physician" pursuant to FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

Consequently, the Board finds that appellant has failed to submit sufficient medical evidence to establish that his accepted work incident on September 29, 2015 resulted in an injury.

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 his burden of proof to establish a left knee injury causally related to a September 29, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2017 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: November 20, 2017
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