United States Department of Labor
Employees' Compensation Appeals Board

C.D., Appellant	)	
and	)	**Docket No. 17-0555**
	)	**Issued: June 22, 2018**
U.S. POSTAL SERVICE, KINGSBRIDGE STATION, Bronx, NY, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 13, 2017 appellant, through counsel, filed a timely appeal from a December 5, 2016 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 her burden of proof to establish left elbow, bilateral knee, and back conditions causally related to an accepted August 19, 2015 employment incident.

[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 August 19, 2015 appellant, a 55-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries to her left elbow, bilateral knee, and back that day as a result of falling while being chased by a dog while in the performance of her duties. She stopped work that same day and has not yet returned to work. Appellant further submitted pay rate information in support of her claim.

In a September 25, 2015 development letter, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted a November 3, 2015 narrative statement indicating that she visited the emergency room, her primary care physician, a spine specialist, and a pain management specialist for her injuries. She further submitted hospital records from Montefiore Medical Center dated August 19, 2015 from an unidentifiable healthcare provider diagnosing low back pain, contusion of left elbow, and left knee pain due to falling at work while being chased by a dog that day. The hospital records indicated that appellant had a past medical history of a left knee meniscal tear.

An August 19, 2015 report from a physician assistant indicated that appellant was seen, treated, and released by the emergency department for low back pain, bilateral knee pain, and left elbow pain status post fall while being chased by a dog at work and had been advised to return to work, effective August 25, 2015.

In a September 9, 2015 work excuse note, Dr. Ilora Rafique, an internist, took appellant off of work from September 9 to 24, 2015 and released her to work on September 25, 2015. She asserted that appellant was status post workers' compensation injury for "cervicalgia/shoulder" and lumbar spine pain.

In an October 27, 2015 report, Dr. Evan Schwechter, an orthopedic surgeon, asserted that appellant had been seen on September 1, October 13, 20, and 27, 2015.

In a report dated October 29, 2015, Dr. John Olsewski, a Board-certified orthopedic surgeon, found spondylotic changes principally at L5-S1 based on his review of a magnetic resonance imaging (MRI) scan. On November 12, 2015 he indicated that appellant was undergoing evaluation for her lumbar spine and advised that she was not capable of working until December 17, 2015 when she would be reevaluated and her work status would be determined.

By decision dated December 10, 2015, OWCP denied the claim, as the medical evidence submitted was insufficient to establish that a medical condition had been diagnosed in connection with the accepted August 19, 2015 employment event.

On December 22, 2015 counsel requested an oral hearing by a representative of the Branch of Hearings and Review.

Appellant submitted reports dated September 24 and December 17, 2015 from Dr. Olsewski who diagnosed spondylosis at L5-S1 and indicated that she had no surgical lesion. Dr. Olsewski reported that appellant had been off work since her claimed August 19, 2015 injury and opined that she was not capable of work because she had no pain management.

In reports dated August 20, 2015, March 2, April 27, May 10, and April 27, 2016, Dr. Rafique diagnosed lumbar radiculopathy status post August 19, 2016 injury during work-related activities for which she required physical therapy and pain management. On May 10, 2016 she diagnosed knee osteoarthritis requiring left total knee replacement surgery on May 17, 2016.

On July 7, 2016 Dr. Arnold Wilson, a Board-certified orthopedic surgeon, diagnosed left knee post-traumatic arthritis and right knee degenerative joint disease and opined that appellant's conditions were causally related to her fall after being chased by a dog at work while delivering mail.

A telephonic hearing was held before an OWCP hearing representative on August 2, 2016. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

Subsequently, appellant submitted reports dated July 13, August 24, and October 5, 2016 from Dr. Wilson who diagnosed status post left total knee replacement and opined that appellant was totally disabled from work.

By decision dated December 5, 2016, OWCP's hearing representative affirmed that the August 19, 2015 employment incident occurred as alleged, but denied the claim because the medical evidence of record failed to establish causal relationship between appellant's diagnosed conditions and the accepted August 19, 2015 work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury[3] was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. A fact of injury determination is based on two elements. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal

[3] OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

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

injury. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.[5]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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.[6]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a causal relationship between the conditions for which compensation is claimed and the accepted August 19, 2015 employment incident.

In a July 7, 2016 report, Dr. Wilson diagnosed left knee post-traumatic arthritis and right knee degenerative joint disease. He opined that appellant's conditions were causally related to her fall after being chased by a dog at work while delivering mail. Dr. Wilson also diagnosed status post left total knee replacement and opined that appellant was totally disabled for work. The Board finds that Dr. Wilson failed to provide sufficient medical rationale explaining how falling while being chased by a dog at work on August 19, 2015 caused or aggravated appellant's bilateral knee conditions. Dr. Wilson noted that her conditions occurred while she was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed conditions.[7] Dr. Wilson's opinion was based, in part, on temporal correlation. However, the Board has held that 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.[8] The need for rationale is particularly important as the evidence of record indicates that appellant had a medical history of meniscal tear in the left knee.[9] Dr. Wilson did not otherwise sufficiently explain the reasons why diagnostic testing and examination findings led him to conclude that the August 19, 2015 incident at work caused or contributed to the diagnosed conditions or left total knee replacement surgery. Lacking thorough medical rationale on the issue of causal relationship, the Board finds that the reports from Dr. Wilson are insufficient to establish that appellant sustained an employment-related injury.

In her reports, Dr. Rafique noted that appellant was status post workers' compensation injury for "cervicalgia/shoulder" and lumbar spine pain. She later diagnosed lumbar radiculopathy

[5] *Id.*

[6] *Id.*

[7] *See K.W.*, Docket No. 10-0098 (issued September 10, 2010).

[8] *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

[9] *See P.H.*, Docket No. 16-0654 (issued July 21, 2016); *S.R.*, Docket No. 16-0657 (issued July 13, 2016).

status post August 19, 2015 injury and knee osteoarthritis requiring left total knee replacement surgery on May 17, 2016. Dr. Rafique did not provide medical rationale explaining how appellant's diagnosed conditions were caused or aggravated by falling while being chased by a dog at work on August 19, 2015. She noted that appellant sustained an injury on August 19, 2015 during work-related activities. However, such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how her physical activity actually caused the diagnosed conditions.[10] Thus, Dr. Rafique's reports are of limited probative value and insufficient to establish that appellant sustained an employment-related injury on August 19, 2015.

In his reports, Dr. Olsewski diagnosed spondylosis at L5-S1 and noted that appellant had no surgical lesion. He reported that appellant had been off work since her claimed August 19, 2015 injury and opined that she was not capable of work because she had no pain management. The Board has held that 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.[11] Thus, appellant has not met her burden of proof with this evidence.

Dr. Schwechter noted that appellant had been seen on September 1, October 13, 20, and 27, 2015. The Board finds that the report from Dr. Schwechter is of limited probative value as it fails to address whether appellant's employment caused a diagnosed condition.[12]

Appellant submitted hospital records dated August 19, 2015 diagnosing low back pain, contusion of left elbow, and left knee pain due to falling at work while being chased by a dog that day. However, these records are from a healthcare provider whose identity cannot be discerned from the record. Because it cannot be determined whether this record is from a physician as defined in 5 U.S.C. § 8101(2), it does not constitute competent medical evidence.[13]

Appellant further submitted evidence from a physician assistant. This document does not constitute competent medical evidence because a physician assistant is not considered a "physician" as defined under FECA.[14] As such, this evidence is insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence to support her traumatic injury claim that she sustained an injury causally related to the accepted August 19, 2015

[10] *See K.W.*, *supra* note 7.

[11] *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

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

[13] *R.M.*, 59 ECAB 690, 693 (2008). *See C.B.*, *supra* note 11 (a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence).

[14] 5 U.S.C. § 8101(2); *Sean O'Connell*, 56 ECAB 195 (2004) (physician assistants). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

employment incident, she failed to meet her burden of proof to establish entitlement to FECA benefits.

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 left elbow, bilateral knee, and back conditions causally related to the accepted August 19, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 5, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 2018
Washington, DC

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

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

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