United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
	)	**Docket No. 18-0280**
and	)	**Issued: June 12, 2018**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Las Vegas, NV, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 27, 2017 appellant, through counsel, filed a timely appeal from an August 30, 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.

[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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a right knee condition causally related to the accepted January 9, 2016 employment incident.

On appeal counsel contends that OWCP's decision lacks rationale and is contrary to fact and law as it failed to properly consider the evidence. He further maintains that it hires physicians who routinely see patients well after an injury and relies on their reports. Counsel asserts that "contemporaneous" is not part of the statute.

FACTUAL HISTORY

On February 2, 2016 appellant, then a 60-year-old rural mail carrier, filed a traumatic injury claim (Form CA-1) alleging that, on January 9, 2016, she injured her right knee when she stepped out of a long-life vehicle (LLV) while in the performance of duty. She stopped work on January 11, 2016 and returned to work on January 18, 2016.

In a February 2, 2016 supplemental statement, appellant indicated that she experienced right knee pain caused by added volume and heavy packages during the holiday season. She claimed that she requested January 9, 2016 to be excused from work to rest her knee, but instead worked due to the employing establishment being overburdened. On that date appellant stepped out of her truck and "heard a crunch in her knee." She experienced excruciating pain radiating throughout the knee area. Appellant hobbled in pain during the rest of her route. On January 13, 2016 she was evaluated by a chiropractor who advised her to stay off her knee for the rest of the week. When appellant later returned to work, her knee had improved, but was still painful. After three days, her pain was as bad as her original pain due to climbing in and out of her truck. Appellant worked on intermittent dates from January 19 to 29, 2016 and sought additional treatment from her chiropractor during this period.

An undated and unsigned duty status report (Form CA-17) noted a history that on January 9, 2016 appellant felt a crack in her right knee when she stepped out of her LLV. The report also noted her usual work requirements.

In a medical report dated February 2, 2016 and physician work activity status report dated February 4, 2016, Taposhi Swar, a family nurse practitioner, indicated that appellant presented with a right knee injury sustained on December 15, 2015. She reported having pain since the date of injury when she stepped down from her truck at work. Ms. Swar provided a review of systems and findings on physical and x-ray examination. She assessed right knee strain. Ms. Swar advised that appellant could return to full-time modified work with restrictions as of the date of her examination.

A February 2, 2016 report from the employing establishment's health unit noted a history that on January 9, 2016 appellant injured her right knee when she stepped out of her LLV. The report also noted her complaint of right knee pain.

By letter dated February 11, 2016, the employing establishment controverted the claim. It contended that appellant failed to submit evidence sufficient to establish that she sustained an

injury in the performance of duty on January 9, 2016. The employing establishment noted that she was on her scheduled day off from work on the date of the alleged injury. OWCP subsequently received a February 17, 2016 memorandum which indicated that appellant worked on January 9, 2016.

OWCP also received a Form CA-17 report dated February 10, 2016 from Dr. Thea M. Klingberg, a physician specializing in occupational medicine. Dr. Klingberg noted a history that when appellant stepped out of her LLV on January 9, 2016 she heard a crack in her knee. She reported examination findings and diagnosed right knee bursitis due to the injury. Dr. Klingberg noted that appellant could not perform her work duties, but advised that she could return to work with restrictions as of the date of her examination. In a February 10, 2016 physical work activity status report, she diagnosed strain of unspecified muscle(s) and tendon(s) and again released appellant to return to work with restrictions as of that date. Dr. Klingberg, in narrative reports dated February 10, 17, and 29, 2016 and physician work activity status reports dated February 17 and 22 and March 14 and 17, 2016, examined appellant and restated her prior assessment of right knee strain, bursitis, strain of unspecified muscle(s) and tendon(s), and pain in unspecified knee. She also diagnosed internal derangement of the right knee. Dr. Klingberg advised that appellant could return to full-time modified work with restrictions on each date of her examination.

In a February 16, 2016 letter, appellant refuted the employing establishment's contention that she did not sustain an injury in the performance of duty on January 9, 2016. She expressed dissatisfaction with Ms. Swar's report.

In a report dated March 16, 2016, Janette W. Powell, appellant's physical therapist, addressed the treatment received on that date for her diagnosed strain of unspecified muscle(s) and tendon(s). She indicated that appellant could return to modified work with restrictions.

OWCP, by development letter dated March 23, 2016, noted that appellant's claim initially appeared to be a minor injury that resulted in minimal lost time from work. It had approved a limited amount of medical expenses without considering the merits of her claim. OWCP reopened appellant's claim because her medical bills had exceeded $1,500.00. It requested that she provide additional factual and medical evidence in support of her traumatic injury claim and afforded her 30 days to respond.

OWCP received a copy of a March 19, 2016 job offer from the employing establishment for a full-time, light-duty position as a modified regular rural carrier which appellant accepted on that date.

In a March 14, 2016 Form CA-17 duty status report, Dr. Curtis W. Poindexter, a physiatrist, noted a history that, on January 9, 2016, appellant heard a crack in her knee when she stepped out of her LLV. He provided examination findings and diagnosed right knee strain due to the injury. Dr. Poindexter advised appellant that she could resume her full-time, regular work duties with restrictions as of the date of his examination.

Reports from Ms. Powell addressed appellant's right knee treatment from March 16 to 28, 2016 and indicated that she could return to modified-duty work with restrictions.

In a right knee magnetic resonance imaging (MRI) scan report dated March 15, 2016, Dr. Alison M. Nguyen, a Board-certified radiologist, provided an impression of medial meniscal posterior root ligament deep radial tear, lateral meniscal body superior surface tear, mild chronic anterior cruciate ligament sprain, mild knee osteoarthrosis with chondral injury of the medial femoral condyle and patella apex, and small 5 x 1-millimeter loose body along the anteromedial aspect of the medial femoral condyle located 2 centimeters above the knee joint line.

On April 3, 2016 appellant responded to OWCP's March 23, 2016 development questionnaire. She related that the wear and tear on her knees was occupational as her workload had quadrupled in December and January. Appellant, however, indicated that she sustained a traumatic injury on January 9, 2016 because of the severity of the injury, a torn meniscus. She described her symptoms immediately following the January 9, 2016 incident. Appellant related that she had not sustained any other injury or symptoms prior to the claimed injury. In an April 3, 2016 statement, she contended that Ms. Swar's report had no probative value as she was not a physician, the exercises performed by a physical therapist who she had referred her to worsened her knee condition, and she provided an incorrect date and mechanism of injury. Appellant also contended that Dr. Klingberg incorrectly noted that she fell out of a bathtub. She asserted that she slipped while trying to get up, and bumped her knee on the side of the tub.

In an April 18, 2016 Form CA-17 report, Dr. Poindexter reiterated appellant's history of injury and his diagnosis of right knee strain. He noted that she had been advised to resume her regular work duties. In a physician work activity status report also dated April 18, 2016, Dr. Poindexter diagnosed unspecified internal derangement of the right knee, pain in unspecified knee, and bursopathy, unspecified. He again advised that appellant could return to regular full-duty work with no restrictions as of that date.

By decision dated April 27, 2016, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record failed to establish that her diagnosed conditions were causally related to the accepted January 9, 2016 employment incident. It found that her physician did not provide rationale explaining how or why the diagnosed conditions were causally related to the accepted work incident.

Michael Foster, a physical therapist, noted in a February 4, 2016 report, a date of injury as January 8, 2016. He related that appellant felt a sharp pain and crunch in the medial aspect of her right knee when she stepped down from a mail truck. Mr. Foster discussed examination findings and diagnosed right knee strain.

In narrative reports dated March 14 and 28, 2016, Dr. Poindexter restated a history of the January 9, 2016 incident and discussed examination findings. He diagnosed history of right knee sprain/strain due to activities at work on January 9, 2016, probable right knee degenerative joint disease, and rule out possible medial meniscus injury or tear. Dr. Poindexter related that appellant would remain temporarily on light-duty work with restrictions.

On May 25, 2016 appellant requested a review of the written record by an OWCP hearing representative. In undated statements, she again contended that she sustained a work-related right knee injury on January 9, 2016. Appellant described her rural carrier work duties.

Appellant submitted a February 29, 2016 report in which Dr. Klingberg listed findings on examination of appellant's right knee. Dr. Klingberg noted that appellant had not been working.

In reports dated March 14 and 28, 2016, Dr. Poindexter noted examination findings and provided an impression of history of right knee sprain/strain due to activities at work on January 9, 2016, probable right knee degenerative joint disease, and rule out possible medial meniscus injury or tear. In the March 14, 2016 report, he recommended that appellant continue to perform temporary light-duty work with restrictions. On March 28, 2016 Dr. Poindexter released her to return to full-duty work.

By decision dated November 9, 2016, an OWCP hearing representative affirmed the April 27, 2016 decision.

A notice of personnel action (PS Form 50) dated October 26, 2016 indicated that appellant's last day in pay status was November 23, 2016.

In a March 21, 2017 statement, appellant reiterated her dissatisfaction with Ms. Swar's report.

In a Form CA-17 duty status report and physician work activity status report dated March 28, 2017, Dr. Poindexter restated appellant's diagnoses of sprain of unspecified site of unspecified knee, initial encounter, pain in unspecified knee, strain of unspecified muscle and tendon at right lower leg. He released her to return to regular-duty work on that date.

A February 29, 2016 Form CA-17 report contained an illegible signature. The report provided a history of the January 9, 2016 employment incident, examination findings, and a diagnosis of right knee strain without derangement due to injury.

On June 9, 2017 appellant, through counsel, requested reconsideration of the November 9, 2016 decision and submitted additional medical evidence from Dr. Poindexter. In an April 18, 2017 report, Dr. Poindexter reiterated a history of the accepted January 9, 2016 employment incident. He referenced his prior treatment notes, including an April 18, 2016 note in which he determined that appellant had reached maximum medical improvement (MMI) and released her to return to full-duty work with a knee brace if needed and continuation of regular exercise. Dr. Poindexter also referenced the findings set forth in the March 15, 2016 right knee MRI scan report. He noted his confusion as to why appellant's claim had been denied based on her initial treatment by primary care physicians and subsequent treatment by him, a specialist. Dr. Poindexter related that there was evidence of preexisting changes in her knee as noted in the MRI scan findings, but maintained that these findings would not negate acceptance of a claim for a knee strain. He concluded by strongly requesting acceptance of appellant's claim for right knee strain.

By decision dated August 30, 2017, OWCP denied modification of its November 9, 2016 decision. It found that Dr. Poindexter's April 18, 2017 report provided neither an opinion expressed in an affirmative manner nor medical rationale based on a complete and accurate factual history. OWCP also found that none of the contemporaneous medical evidence contained a medical opinion establishing a causal relationship between the accepted January 9, 2016 work incident and appellant's diagnosed right knee conditions, including right knee sprain.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.[5]

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.[6] There are two components involved in establishing 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.[7]

The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[8] 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 incident(s).[9] The belief of the claimant that a condition was caused or aggravated by the employment incident, however sincerely held, is insufficient to establish causal relationship.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right knee condition caused or aggravated by the accepted January 9, 2016 employment incident.

Appellant submitted a series of reports from Dr. Poindexter. In his April 18, 2017 report, Dr. Poindexter found that appellant's right knee strain was caused by the January 9, 2016 employment incident and that her claim should be accepted for this condition. Dr. Poindexter also noted that while the MRI scan results showed preexisting changes in the knee, these findings did not preclude acceptance of appellant's claim for right knee strain. While in general terms, Dr. Poindexter supported a finding that appellant's right knee strain was caused by the accepted

[3] *Supra* note 2.

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

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

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

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

[8] *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).

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

[10] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

employment incident, his opinion was insufficiently rationalized. He did not explain how the January 9, 2016 work incident caused or aggravated appellant's diagnosed right knee condition. Likewise, when he saw appellant on March 14 and April 18, 2016 Dr. Poindexter failed to explain how appellant's diagnosed right knee strain and work restrictions were causally related to the accepted work incident.[11] The Board has found that medical evidence is of limited probative value if it contains a conclusion regarding causal relationship, but does not offer any rationalized medical explanation on the issue of causal relationship.[12] The Board notes that Dr. Poindexter failed to provide a supported medical opinion. Dr. Poindexter's remaining reports addressed appellant's right knee conditions and work capacity, but failed to offer a specific opinion as to whether her conditions and work restrictions were caused or aggravated by the accepted work incident.[13] For the reasons stated, the Board finds that Dr. Poindexter's reports are insufficient to establish appellant's burden of proof.

Similarly, Dr. Klingberg's reports are insufficient to establish appellant's burden of proof. In her Form CA-17 reports dated February 10, 2016, she described the January 9, 2016 employment incident, diagnosed right knee bursitis due to the accepted work incident, and found that appellant could return to work with restrictions. The Board notes that these reports are of limited probative value with regard to establishing causal relationship because Dr. Klingberg did not provide any medical rationale in support of her opinion. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a diagnosed medical condition.[14] Dr. Klingberg's other reports addressed appellant's right knee conditions and work capacity, but failed to provide a specific opinion as to whether appellant's conditions and work restrictions were caused or aggravated by the accepted work incident.[15] For the reasons stated, the Board finds that Dr. Klingberg's reports are insufficient to establish appellant's burden of proof.

Dr. Nguyen's March 15, 2016 MRI scan report, which addressed appellant's right knee conditions, is of limited probative value as she simply performed a diagnostic test and did not address history of injury[16] or offer a specific opinion as to whether the accepted employment incident caused or aggravated appellant's conditions.[17]

[11] *Id.*

[12] *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[13] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F., id.*; *A.D., id.* (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[14] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[15] *See* cases cited *supra* note 12.

[16] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

[17] *See* cases cited *supra* note 12.

The employing establishment health unit report dated February 2, 2016 described the January 9, 2016 employment incident and diagnosed right knee pain. The Board notes that this evidence failed to provide a firm medical diagnosis as it only diagnosed right knee pain. The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis.[18] Thus, this report is insufficient to establish causal relationship.

The reports from Ms. Swar, a nurse practitioner, and Ms. Powell and Mr. Foster, physical therapists, have no probative medical value. Neither nurse practitioners, nor a physical therapists, are considered physicians as defined under FECA and, therefore, their opinions are of no probative medical value.[19]

An undated and unsigned Form CA-17 duty status report noted a history of the accepted January 9, 2016 employment incident, and a February 29, 2016 Form CA-17 report from a physician with an illegible signature diagnosed right knee strain without derangement due the accepted work incident. The Board has held that unsigned reports and reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification.[20] Thus, these reports are of no probative value.

The Board finds that appellant has failed to submit rationalized, probative medical evidence sufficient to establish a right knee condition causally related to her employment on January 9, 2016. Appellant therefore did not meet her burden of proof.

On appeal counsel contends that "OWCP's decision lacks rationale and does not properly consider the evidence. OWCP hired doctors who routinely see patients well after an injury. Their report are relied upon. 'Contemporaneous' is not part of the statute. Thus, is contrary to law or fact."

Contrary to counsel's vacuous contentions, OWCP considered the medical evidence relevant to causal relationship and clearly explained the reasons why it found the medical evidence submitted by appellant insufficient to establish that she sustained a right knee condition causally related to the accepted January 9, 2016 employment incident.

Counsel argued that OWCP hires physicians who routinely see patients well after an injury and relies on their reports. The Board notes that in this case, OWCP did not refer appellant to any physician for a second opinion or an impartial medical examination. As such, this argument is totally irrelevant and completely without merit.

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

[19] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See G.A.*, Docket No. 09-2153 (issued June 10, 2010) (nurse practitioner); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapist); *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).

[20] *See R.M.*, 59 ECAB 690 (2008); *D.D.*, 57 ECAB 734 (2006); *Richard J. Charot*, 43 ECAB 357 (1991).

Counsel also contends that the term "contemporaneous" is not a part of the statute. The Board is unable to decipher such a claim as the term has no bearing on any aspect of the case at bar.

Lastly counsel contends that the decision below is contrary to law or fact. Such broad claim without proof fails on the same grounds as outlined above.

Thus, the Board finds that counsel's contentions are wholly unsubstantiated.

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 a right knee condition causally related to the accepted January 9, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 2018
Washington, DC

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

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

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