United States Department of Labor
Employees' Compensation Appeals Board

C.C., Appellant	)	
and	)	**Docket No. 17-1981**
	)	**Issued: January 23, 2019**
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 25, 2017 appellant, through counsel, filed a timely appeal from an August 24, 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 met his burden of proof to establish a left knee condition causally related to the accepted June 16, 2016 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 June 16, 2016 appellant, then a 43-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that, when delivering mail on that date, he popped his left knee when he stepped on an acorn that was in the grass.

In a June 16, 2016 duty status report (Form CA-17), Dr. Gary J. Gray, a Board-certified internist, diagnosed sprain of unspecified site of the left knee. He noted that appellant stepped on acorns and injured his left knee. Dr. Gray recommended a return to work with restrictions. He saw appellant on June 24, 2016, and recommended his route be limited to four hours. On June 28, 2016 Dr. Gray recommended cutting his route walking to three hours maximum and to continue knee support.

OWCP also received physical therapy reports dated June 16, 20, 21, 23, 24, 27, 29, and July 1, 2016.

In a July 5, 2016 report, Dr. Gray noted in his physical examination that the strength and appearance were normal and there was no deformity or tenderness in the knee. He diagnosed a left knee sprain and indicated that appellant had reached maximum medical improvement and could return to regular duty.

In an August 10, 2016 report, Dr. Mark Belew, a Board-certified orthopedic surgeon, noted that appellant was seen for left knee pain with unspecified chronicity. He explained that appellant had left medial pain after stepping on a "gumball" almost two months prior. Dr. Belew indicated that appellant's x-rays were negative and further noted that his examination and history were consistent with a medial meniscus tear. He advised that a magnetic resonance imaging (MRI) scan was indicated.

An August 15, 2016 MRI scan of the left knee read by Dr. Kimberly Foust, a Board-certified diagnostic radiologist, revealed a nondisplaced complex tear of the posterior horn and body of the left medial meniscus with a predominant horizontal undersurface component, and mild medial compartment predominant tricompartmental left knee chondrosis with medium-sized effusion.

In an August 16, 2016 work status note, Dr. Belew noted that appellant was unable to work at this time. In an August 22, 2016 follow-up report, he noted that the MRI scan revealed a complex tear of the medial meniscus of the left knee as a current injury. Dr. Belew also noted that appellant had some underlying arthritis that was "likely preexisting" and may have knee issues due to the arthritis. He diagnosed a complex tear of the medial meniscus of the left knee. Dr. Belew recommended arthroscopic partial meniscectomy. In an August 22, 2016 work status note, he noted that appellant was currently under his care, was having surgery on September 1, 2016, and would need to remain off work for at least four weeks following surgery.

In a letter dated August 31, 2016, the employing establishment controverted the claim, contending that appellant never reported any pain or reinjury of the knee to his manager or supervisor. It also noted that he had many extracurricular activities.

By development letter dated October 17, 2016, OWCP informed appellant that when his claim was submitted, it appeared to be a minor injury that resulted in minimal or no lost time from work, and that based upon these criteria, the employing establishment did not controvert continuation of pay (COP) or challenge the merits of the case, and payment of a limited amount of medical expenses was administratively handled. However, as appellant's expenses had exceeded $1,500.00 it was now formally adjudicating his claim. OWCP requested that he complete a questionnaire describing any similar disability or left knee medical conditions before the injury and to submit a comprehensive narrative medical report from his attending physician, which differentiated between the effects of the work incident and the status of the preexisting condition before the alleged work incident. It afforded appellant 30 days to submit the requested medical evidence.

By decision dated December 9, 2016, OWCP denied appellant's claim, finding that appellant had not established that he sustained a traumatic injury causally related to the accepted June 16, 2016 employment incident.

By letter dated December 16, 2016, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received a June 16, 2016 x-ray of the left knee read by Dr. Cary G. Stolar, a diagnostic radiologist, which revealed findings which included no fracture or malalignment of the preserved joint spaces and no evidence of arthritis. Dr. Stolar indicated that the examination was normal.

In a January 30, 2017 report, Dr. Belew explained that a complex tear of the medial meniscus of the left knee was the current injury. He related that appellant described the acute injury that "occurred at work in which he slipped and fell." Dr. Belew noted that he developed an acute effusion of the knee. He advised that appellant's MRI scan, revealed a meniscal tear, which was confirmed at the time of surgery. Dr. Belew opined that it was "extremely unlikely this individual would have had a complex tear of the medial meniscus and be able to perform any kind a manual labor." He noted that appellant's "injury was fitting of the description of his fall with no prior history available of any issues with the knee." Dr. Belew further explained that the injury "[u]ndoubtedly occurred as a direct result of the acute injury," as he "did have several partial thickness chondral irregularities of the joint surface with loose bodies in the joint." He noted that "this portion of pathology in the knee certainly could have been preexisting; however, a fall could have aggravated existing irregularities of the chondral surfaces as well." Dr. Belew further opined that "[t]he meniscal tear however was clearly acute, indicating of the injury." He also noted that appellant had no prior history of knee problems.

A hearing was held before an OWCP hearing representative *via* teleconference on June 13, 2017.

By decision dated August 24, 2017, OWCP's hearing representative affirmed the December 9, 2016 decision. She found that the medical evidence was insufficient to establish causal relationship in this case.

LEGAL PRECEDENT

A claimant seeking benefits under FECA 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, including that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.[3]

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.[4] The second component is whether the employment incident caused a personal injury.[5] 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.[6]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[7] 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.[8] 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 factor(s).[9]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[10] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[11]

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[3] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *John J. Carlone*, 41 ECAB 354 (1989); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

[7] *Robert G. Morris*, 48 ECAB 238 (1996).

[8] *Victor J. Woodhams*, *supra* note 5.

[9] *Id.*

[10] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[11] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

ANALYSIS

The Board finds that appellant has not met his burden of proof as the medical evidence of record does not contain a reasoned explanation of how the June 16, 2016 employment incident caused or aggravated appellant's claimed left knee condition.[12]

The Board notes that OWCP received several physical therapy reports dating from June 16, to July 1, 2016. However, physical therapists are not considered physicians as defined under FECA, and thus their findings are insufficient to establish entitlement to FECA benefits.[13]

The record also includes diagnostic reports. However, these reports merely reported findings and did not contain an opinion regarding the cause of the reported condition. Thus, they lack probative value on the issue of causal relationship.[14]

The Board notes that OWCP initially received a series of reports from Dr. Gray, where he repeated his diagnosis of sprain of an unspecified part of the left knee and provided work restrictions. Dr. Gray indicated that he believed that appellant had a mild sprain injury of the left knee. During follow-up examinations, he augmented his various work restrictions culminating in a July 5, 2016 report, where he indicated that appellant's left knee was doing well. Dr. Gray explained that he conducted a physical examination and the appearance was normal and diagnosed a left knee sprain. He indicated that appellant reached maximum medical improvement and could return to regular duty. Dr. Gray's reports did not provide an opinion on causal relationship. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[15] These reports are therefore insufficient to establish appellant's claim.

Appellant also submitted reports from Dr. Belew. In an August 10, 2016 report, Dr. Belew noted appellant's complaints of left knee medial pain and indicated that appellant's x-rays were negative and explained that his examination and history were consistent with a medial meniscus tear. However, he did not offer any opinion regarding the cause of an employee's condition.[16] Likewise, Dr. Belew did not provide any opinion on causal relationship in his August 16 and 22, 2016 work status notes and August 22, 2016 follow-up report. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[17] Thus, these reports are also insufficient to establish the claim.

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[12] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (a medical opinion not fortified by medical rationale is of diminished probative value).

[13] *See supra* note11.

[14] *See M.V.,* Docket No. 18-0884 (issued December 28, 2018); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[15] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[16] *Id.*

[17] *Id.*

In a January 30, 2017 report, Dr. Belew noted that appellant developed an acute effusion of the knee. He advised that on workup by MRI scan, he was found to have a meniscal tear, which was confirmed at the time of surgery. Dr. Belew opined that it was "extremely unlikely this individual would have had a complex tear of the medial meniscus and be able to perform any kind a manual labor." He noted that appellant's "injury was fitting of the description of his fall with no prior history available of any issues with the knee." Dr. Belew further explained that the injury "[u]ndoubtedly occurred as a direct result of the acute injury…." He explained that appellant did have several partial thickness chondral irregularities of the joint surface with loose bodies in the joint. Dr. Belew noted that "this portion of pathology in the knee certainly could have been preexisting; however, a fall could have aggravated existing irregularities of the chondral surfaces as well." He opined that the meniscal tear, however, was "clearly acute, indicating of the injury." Dr. Belew also noted that appellant had no prior history of knee problems. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.[18] The Board also notes that Dr. Belew did not explain his conclusion that the diagnosis was a result of the injury. A medical opinion not fortified by medical rationale is of diminished probative value.[19] A rationalized opinion is especially important as the evidence supports that appellant has a preexisting left knee condition.[20] Thus, Dr. Belew's January 30, 2017 report is also insufficient to establish appellant's claim.

Accordingly, the Board finds that appellant has not met his burden of proof.

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 condition causally related to the accepted June 16, 2016 employment incident.

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[18] *John F. Glynn*, 53 ECAB 562, 567 (2002).

[19] *Supra* note 12.

[20] *See S.D.*, Docket No. 16-0999 (issued October 16, 2017).

ORDER

IT IS HEREBY ORDERED THAT the August 24, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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