United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 18-1182**
	)	**Issued: January 9, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Oshkosh, WI, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 22, 2018 appellant filed a timely appeal from a May 1, 2018 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.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a left knee injury causally related to the accepted February 17, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the May 1, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On February 17, 2018 appellant, then a 52-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a left knee injury that day when her grippers got caught while she was putting them on in the performance of duty. She noted that she fell on cement and that she was unable to put weight on her left knee. Appellant stopped work and sought medical attention that day.

In a partial February 17, 2018 return to work report -- emergency department/urgent care note, Lisette C. Brown, a certified physician assistant, noted that appellant had fallen that day. Initial encounter diagnoses of closed nondisplaced longitudinal fracture of left patella, closed nondisplaced transverse fracture of left patella, and effusion of left knee were provided.

In a February 19, 2018 return to work note, Dr. Loren M. Potter, an osteopath and orthopedic surgeon, indicated that appellant was seen in the clinic and unable to return to work. He estimated that it would be eight weeks before appellant could return to work.

By development letter dated March 19, 2018, OWCP informed appellant that the evidence of record was insufficient to establish her traumatic injury claim. It advised her of the type of medical and factual evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In an April 6, 2018 report, Dr. Timothy J. Bergan, an osteopath and preventive medicine specialist, noted a February 17, 2018 date of injury. He diagnosed a left patellar fracture, which he opined was work related. Dr. Bergan indicated that appellant could return to work with restrictions on April 9, 2018.

By decision dated May 1, 2018, OWCP denied appellant's claim. It found that the medical evidence of record was insufficient to establish causal relationship between the diagnosed left patellar fracture and the accepted February 17, 2018 employment incident.

LEGAL PRECEDENT

A claimant seeking benefits under FECA[3] 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

[3] *See supra* note 1.

[4] *C.P.*, Docket No. 18-0665 (issued November 8, 2018); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[8] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[9] 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).[10]

ANALYSIS

The Board finds that appellant has not established a left knee injury causally related to the accepted February 17, 2018 employment incident.

On the date of injury appellant sought treatment from Ms. Brown, a certified physician assistant. Reports from physician assistants, however, have no probative value as those healthcare providers are not considered physicians as defined under FECA.[11] Consequently, her report is insufficient to establish appellant's claim.[12]

On February 19, 2018 Dr. Potter indicated that appellant would be unable to return to work for approximately eight weeks. However, he did not provide an opinion regarding whether

[5] *Id.*

[6] *Id.*; *see also John J. Carlone*, 41 ECAB 354 (1989).

[7] *See K.C.*, Docket No. 17-1693 (issued October 29, 2018); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[8] *See K.C., id.*; *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *See K.C., id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] *C.O.*, Docket No. 10-0189 (issued July 15, 2010).

[11] *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA). *See also M.M.*, Docket No. 16-1617 (issued January 24, 2017).

[12] *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *L.M.*, Docket No. 18-0473 (issued October 22, 2018).

appellant sustained a diagnosed condition causally related to the accepted employment injury. Therefore, Dr. Potter's opinion is of no probative value in establishing appellant's claim.[13]

In his April 6, 2018 report, Dr. Bergan diagnosed a left patellar fracture, which he opined was work related. While he noted the correct date of injury, he failed to provide a history of appellant's injury. Medical opinions based on an incomplete or inaccurate history are of limited probative value.[14] Additionally, Dr. Bergan offered only a general conclusion on causal relationship. He did not offer a rationalized medical explanation regarding causal relationship between the diagnosed conditions and the February 17, 2018 employment incident. A mere conclusion without necessary rationale explaining why the physician believes that a claimant's accepted employment incident resulted in the diagnosed condition is insufficient to establish appellant's claim.[15]

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.[16] Appellant's honest belief that her February 17, 2018 fall caused a medical condition does not constitute medical evidence sufficient to establish causal relationship.[17] As she has not submitted rationalized medical evidence establishing a left knee injury causally related to the accepted employment incident, she has not met her burden of proof to establish her claim.[18]

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 left knee injury causally related to the accepted February 17, 2018 employment incident.

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

[14] *C.L.*, Docket No. 14-1585 (issued December 16, 2014); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[15] *D.O.*, Docket No. 18-0086 (issued March 28, 2018).

[16] *See B.A.*, Docket No. 17-1130 (issued November 24, 2017); *S.S.*, 59 ECAB 315 (2008); *J.M.*, 58 ECAB 303 (2007); *Donald W. Long*, 41 ECAB 142 (1989).

[17] *See J.S.*, Docket No. 17-0967 (issued August 23, 2017).

[18] *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2019
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