United States Department of Labor
Employees' Compensation Appeals Board

G.D., Appellant	)	
and	)	**Docket No. 19-0265**
	)	**Issued: May 20, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Algonac, MI, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 16, 2018 appellant filed a timely appeal from an October 30, 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 to consider the merits of this case.[2]

ISSUE

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

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the October 30, 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 September 7, 2018 appellant, then a 43-year-old part-time flexible clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 17, 2018 she injured her left knee while in the performance of duty. She was unloading an all-purpose container of tub flats, and as she grabbed a tub and turned to set it down, her left knee popped. Appellant indicated that her left knee swelled and it hurt to bear weight. On the reverse side of the claim form, the employing establishment did not indicate whether she stopped work, but listed September 7, 2018 as the date she returned to work.

With her Form CA-1, appellant submitted a letter signed by physician assistant David Slapyznski, indicating that she visited the Henry Ford Health System clinic on September 7, 2018 and checked a box marked "yes," that the injury had occurred in the performance of duty.

In a development letter dated September 24, 2018, OWCP advised appellant of the need for additional medical evidence in support of her claim for FECA benefits. It specifically requested that she provide a narrative report from her attending physician, which included a diagnosis and a medical explanation as to how the reported work incident either caused or aggravated a medical condition. OWCP afforded appellant 30 days to submit the requested information.

In an attending physician's report (Form CA-20) dated September 11, 2018, Dr. Eddie F. El-Yussif, a Board-certified orthopedic surgeon, diagnosed left knee medial meniscus tear. He indicated that he performed a physical examination and noted a positive McMurray's test, posterior pain, mild crepitus, and mild swelling.[3] Dr. El-Yussif noted a March 17, 2018 date of injury when appellant "twisted [her] knee while carrying a heavy tub of mail at work [and] noticed pain." The Form CA-20 also documented that an x-ray was performed, that she was given an injection, and that she was prescribed physical therapy, a knee brace, and referred for a magnetic resonance imaging scan. Dr. El-Yussif also noted that appellant had been advised that she could return to work as of April 9, 2018. In response to question of whether he believed that her injury was caused or aggravated by her employment, Dr. El-Yussif checked the box marked "Yes."[4]

In a letter dated September 18, 2018, Mr. Slapyznski wrote that it was his opinion that appellant could return to work, and reported that she visited the clinic that day.

By decision dated October 30, 2018, OWCP accepted that the March 17, 2018 incident occurred as alleged and that a medical condition had been diagnosed. It denied the claim, however, finding that causal relationship had not been established between the diagnosed condition and the accepted March 17, 2018 employment incident.

[3] Dr. El-Yussif initially examined appellant on April 10, 2018 and reexamined her on September 6, 2018.

[4] Dr. El-Yussif also provided the same information in a September 11, 2018 authorization for examination and/or medical treatment (Form CA-16), (Part B – Attending Physician's Report). There is no indication of record that the Form CA-16 was properly executed by the employing establishment for purposes of granting authorization for treatment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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 of FECA,[6] that an injury 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.[7] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[8]

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.[9] 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.[10] The second component is whether the employment incident caused a personal injury.[11] 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.[12]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[13] Aphysician'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.[14] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical

[5] *Supra* note 1.

[6] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[8] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[9] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[10] *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[11] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[12] *J.P.*, *supra* note 6; *L.T.*, *supra* note 10; *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[13] *E.M.*, *supra* note 9; *Robert G. Morris*, 48 ECAB 238 (1996).

[14] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[15]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left knee condition causally related to the accepted March 17, 2018 employment incident.

The medical evidence of record does not contain a physician's rationalized opinion on causal relationship between the diagnosed left medial meniscus tear and the employment incident of March 17, 2018. Dr. El-Yussif checked a box marked "yes" on the September 11, 2018 attending physician's reports (Form CA-20 and CA-16) noting his opinion that appellant's condition had been caused or aggravated by her employment, but he did not provide rationale to support his belief and opted to leave the explanation space blank. The Board has held that when a physician's opinion on causal relationship consists only of checking a box marked "Yes" to a form question, without more by the way of medical rationale, that opinion has little probative value and is insufficient to establish causal relationship.[16] Appellant's burden of proof includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.[17] As Dr. El-Yussif did no more than check a box marked "Yes" to a form question, his opinion on causal relationship is insufficient to meet appellant's burden of proof.[18]

The remaining medical records from Mr. Slapyznski are of no probative value, as a physician assistant is not considered a "physician" as defined under FECA.[19]

For these reasons, the Board finds that the evidence of record is insufficient to establish causal relationship between appellant's left knee medial meniscus tear and the accepted March 17, 2018 employment incident.[20]

[15] *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[16] *S.S.*, Docket No. 18-0950 (issued October 23, 2018); *E.P.*, Docket No. 18-0194 (issued September 14, 2018).

[17] *Id.*; *J.P.*, *supra* note 6.

[18] *Id.*; *E.P.*, *supra* note 16.

[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* 5 U.S.C. § 8102(2); *M.M.*, Docket No. 16-1617 (issued January 24, 2017); *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 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).

[20] *J.P.*, *supra* note 6; *L.T.*, Docket No. 18-1603 (issued February 21, 2019).

Appellant may submit new evidence and/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 condition causally related to the accepted March 17, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 2019
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