United States Department of Labor
Employees' Compensation Appeals Board

B.H., Appellant	)	
and	)	**Docket No. 18-0943**
	)	**Issued: February 19, 2020**
DEPARTMENT OF VETERANS AFFAIRS, COMMUNITY BASED OUTPATIENT CLINIC, Bourbonnais, IL, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 4, 2018 appellant, through counsel, filed a timely appeal from a February 1, 2018 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 that her right knee conditions are causally related to the accepted March 2, 2017 employment incident.

FACTUAL HISTORY

On March 9, 2017 appellant, then a 61-year-old nurse, filed a traumatic injury claim (Form CA-1), alleging that she sustained a "right knee strain" on March 2, 2017 after "excessive repetitive motion while performing patient care duties" in the performance of duty. She stopped work on the date of injury.

Hospital reports dated March 2, 2017 provided an x-ray of the right knee which showed no acute abnormality and a diagnosis of acute pain of the right knee.

In a March 13, 2017 report, Dr. Eric Varboncouer, a Board-certified orthopedic surgeon, diagnosed right knee pain and right knee musculature strain and indicated that appellant was under his care as of March 6, 2017. He took appellant off work until she was cleared by orthopedics.

In three reports dated March 20, 2017, including a duty status report (Form CA-17) and attending physician's report (Form CA-20), Dr. Adam F. Meisel, an orthopedic surgeon and sports medicine specialist, advised that appellant sustained a right knee injury and possible meniscal tear on March 2, 2017 due to repetitive motion when performing patient care. He advised that appellant was totally disabled from work until April 3, 2017.

In a March 28, 2017 letter, OWCP indicated that, when appellant's claim was first received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It stated that it had now reopened the claim for formal consideration of the merits because her medical bills had exceeded $1,500.00. OWCP requested additional evidence and afforded appellant 30 days to respond to its inquiries.

In response, appellant submitted an April 4, 2017 narrative statement reiterating the factual history of her claim. OWCP also received additional medical evidence.

In a March 20, 2017 report, Dr. Meisel diagnosed "right knee pain, medial meniscus tear, status post injury at work." Appellant reported that on March 2, 2017 she was at work, walking around, when she had a sudden onset of pain and inability to bear weight on the right knee. She denied falling or any specific trauma, other than feeling the pain suddenly before a step. Pain was over the medial aspect of the knee and appellant was unable to bear full weight.

A March 28, 2017 right knee magnetic resonance imaging (MRI) scan revealed a sprain of the medial collateral ligament (MCL), mild sprain or mucinous degeneration of the cruciate ligaments, and infrapatellar and distal quadriceps tendinopathy, as well as findings suggestive of tear of the posterior horn of the medial meniscus adjacent to the intercondylar notch.

In an April 3, 2017 report, Dr. Meisel diagnosed right posterior horn medial meniscus tear and right tibial plateau insufficiency fracture/contusion/edema. He released appellant to modified work effective April 4, 2017 with the following restrictions: occasional standing and walking; frequent sitting; and no bending, kneeling, twisting, or squatting. He additionally recommended icing and elevating the right leg for 15 minutes every two hours.

On April 13, 2017 appellant accepted a transitional-duty assignment from the employing establishment.

In an April 17, 2017 report, Dr. Meisel continued to diagnose right posterior horn medial meniscus tear and found that appellant's right tibial plateau insufficiency fracture/contusion/edema had resolved. He advised that she was capable of returning to full-duty work with no restrictions effective April 18, 2017.

By decision dated May 16, 2017, OWCP accepted that the March 2, 2017 employment incident occurred as alleged and that a diagnosis had been provided, but denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the March 2, 2017 employment incident.

On May 25, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received a May 8, 2017 report, wherein Dr. Meisel advised that he had released appellant to return to work without restrictions effective April 18, 2017. In another May 8, 2017 report, Dr. Meisel reiterated his diagnoses and advised that she was not interested in surgery and had returned to full duty.

A hearing was held on November 17, 2017.

By decision dated February 1, 2018, OWCP's hearing representative affirmed the prior decision finding that the medical evidence of record was insufficient to establish causal relationship between a diagnosed medical condition and the March 2, 2017 employment incident.

LEGAL PRECEDENT

An employee 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 timely filed within the applicable time limitation of FECA,[4] 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

[3] *Supra* note 1.

[4] *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).

the employment injury.[5] 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.[6]

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.[7] 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.[8] The second component is whether the employment incident caused a personal injury.[9] 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.[10]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[11] 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.[12] 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).[13]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her right knee conditions are causally related to the accepted March 2, 2017 employment incident.

Appellant's March 2, 2017 emergency department treatment records noted a finding of acute right knee pain, but did not otherwise provide a specific medical diagnosis causally related to the accepted March 2, 2017 employment incident. The Board has held that "pain" is a symptom

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

[6] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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

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

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

[10] *J.P.*, *supra* note 4; *L.T.*, *supra* note 8; *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[11] *E.M.*, *supra* note 7; *Robert G. Morris*, 48 ECAB 238 (1996).

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

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

not a diagnosis of the medical condition.[14] As such, this report is insufficient to satisfy appellant's burden of proof.

In his March 13, 2017 report, Dr. Varboncouer diagnosed right knee musculature strain and indicated that appellant was under his care as of March 6, 2017. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[15] Thus, this evidence is also insufficient to meet appellant's burden of proof.

In his reports beginning on March 20, 2017, Dr. Meisel advised that appellant sustained a right knee injury on March 2, 2017 due to repetitive motion performing patient care. Appellant reported that on March 2, 2017 she was at work, walking around, when she had a sudden onset of pain and inability to bear weight on the right knee. She denied falling or any specific trauma to it, other than feeling the pain suddenly before a step. Pain was over the medial aspect of the knee and appellant was unable to bear full weight. In an April 3, 2017 report, Dr. Meisel diagnosed right posterior horn medial meniscus tear and right tibial plateau insufficiency fracture/contusion/ edema. On April 17, 2017 Dr. Meisel released appellant to return to work without restrictions effective April 18, 2017 and found that her right tibial plateau insufficiency fracture/contusion/ edema had resolved. He advised that she was capable of returning to full-duty work with no restrictions, which he reiterated in his May 8, 2017 report. Dr. Meisel noted that appellant sustained an injury on March 2, 2017 due to "excessive repetitive motion while performing patient care duties." 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.[16] The Board finds that Dr. Meisel did not otherwise sufficiently explain why diagnostic testing and examination findings led him to conclude that the accepted March 2, 2017 work incident caused or contributed to the diagnosed right knee conditions. The fact that a condition manifests itself during a period of employment is not sufficient to establish causal relationship.[17] Temporal relationship alone will not suffice.[18] A physician's opinion must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor.[19] For these reasons, Dr. Meisel's reports are insufficient to meet appellant's burden of proof with respect to causal relationship.

Appellant also submitted a March 2, 2017 right knee x-ray and March 28, 2017 right knee MRI scan. The Board has held, however, that diagnostic studies lack probative value on the issue

[14] *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

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

[16] *See K.W.*, 59 ECAB 271, 279 (2007).

[17] 20 C.F.R. § 10.115(e).

[18] *See D.I.*, 59 ECAB 158, 162 (2007).

[19] *Victor J. Woodhams*, *supra* note 13.

of causal relationship as they do not address whether the employment incident caused any of the diagnosed conditions.[20]

As appellant has not submitted rationalized medical evidence to support her claim that she sustained a right knee injury causally related to the accepted March 2, 2017 employment incident, she has not met her burden of proof to establish entitlement to FECA benefits.

On appeal counsel argues that the case record was not reviewed as a whole. However, as explained above, the case record does not include a well-rationalized medical opinion attributing appellant's right knee conditions to the accepted March 2, 2017 employment incident.

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 that her right knee conditions are causally related to the accepted March 2, 2017 employment incident.

[20] *See C.D.*, Docket No. 17-2011 (issued November 6, 2018).

ORDER

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

Issued: February 19, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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