United States Department of Labor
Employees' Compensation Appeals Board

J.V., Appellant	)	
and	)	**Docket No. 22-1347**
	)	**Issued: May 1, 2023**
U.S. POSTAL SERVICE, AVON LAKE POST OFFICE, Avon Lake, OH, 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:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On September 23, 2022 appellant, through counsel, filed a timely appeal from an August 19, 2022 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 recurrence of disability commencing May 16, 2019, causally related to the accepted January 16, 2014 employment injury.

FACTUAL HISTORY

On January 16, 2014 appellant, then a 31-year-old city carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on that date she twisted her left knee when she stepped out of her postal vehicle and her mailbag got caught on a window handle while in the performance of duty. She stopped work on January 17, 2014. OWCP accepted appellant's claim for left knee sprain and closed dislocation of the left knee patella. It paid her wage-loss compensation on the supplemental rolls, effective March 22, 2014, and on the periodic rolls, effective June 1, 2014.

By decision dated October 23, 2014, OWCP expanded the acceptance of appellant's claim to include contracture of the left tendon sheath.

On December 5, 2014 appellant underwent OWCP-approved left knee arthroscopic surgery for revision of the medial patellofemoral ligament.

On March 31, 2016 appellant returned to work without restrictions.[3]

The case lay dormant until November 2021.

On November 19, 2021 when appellant filed a notice of recurrence (Form CA-2a) claiming disability from work, commencing May 10, 2019, due to a change or worsening of her work-related injury. She indicated that she had increased aches and pains, which continuously worsened after surgery. Appellant indicated that the first date of medical treatment following the recurrence was May 16, 2019.

In a development letter dated December 16, 2021, OWCP advised appellant of the definition of a recurrence of disability and requested that she provide additional factual and medical evidence supporting that her accepted condition had worsened such that she was disabled from work. It afforded her 30 days to respond.

OWCP received duty status reports (Form CA-17) dated February 9 and March 14, 2016, from an unknown medical provider who indicated that appellant could work full time with restrictions of climbing up to two hours per day, sitting, kneeling, bending/stooping, pulling/pushing, and reaching above the shoulder up to four hours per day, simple grasping up to five hours per day, and fine manipulation and driving a vehicle up to six hours per day.

[3] By decision dated September 24, 2018, OWCP granted appellant a schedule award for 14 percent permanent impairment of the left lower extremity. The period of the award ran for 40.32 weeks from March 5 through September 15, 2018.

Appellant submitted an October 14, 2021 report by Dr. Louis Keppler, a Board-certified orthopedic surgeon, who noted that she was evaluated for a left knee condition. Dr. Keppler reported that she underwent left knee surgery on December 5, 2014 and complained of increasing posterior knee pain that "comes and goes" during the last year. Appellant indicated that her symptoms worsened with walking, squatting, lifting, and weather changes. Dr. Keppler noted that she had been able to work at her current position without restrictions. He recommended that appellant not return to her previous position as a mail carrier because it "may place [appellant's] left knee at risk of reinjury." Dr. Keppler advised that she continue with her current role with the employing establishment.

In a note dated November 24, 2021, Roman Hanycz, a physician assistant, indicated that appellant was seen for follow-up of her left knee and for paperwork regarding her return to work. He noted that she had undergone left knee surgery. Mr. Hanycz opined that appellant was not a candidate to return to work as a letter carrier.

In a letter dated January 5, 2022, Dr. Keppler indicated that he had treated appellant since 2014 and described the initial January 16, 2014 employment injury. He noted that she returned to the office on October 14, 2021 after being last seen in May 2019, and complained of increasing posterior knee pain, throbbing, and cramping. Appellant recounted that she had these symptoms "off and on" over the last year. Dr. Keppler described the conservative treatment that she had received. He recommended a magnetic resonance imaging (MRI) scan because of appellant's continued and persistent posterior knee pain. Dr. Keppler opined that "[a]ll of this is part of [appellant's] initial injury to the left knee and surgery required for the same." He reported that appellant's postoperative condition remained unchanged and recommended that she continue with her current role at the employing establishment, but not as a mail carrier.

By decision dated February 17, 2022, OWCP denied appellant's claim finding that she had not established a recurrence of disability on May 16, 2019 causally related to her accepted employment injury.

On March 2, 2022 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on June 7, 2022.

In a July 25, 2022 statement, A.P., a human resource management specialist of the employing establishment, described the January 16, 2014 employment injury. She explained that, for the past several years, appellant worked a detail assignment as a safety driving instructor, which did not require carrying mail. A.P. noted that appellant did not file her recurrence claim until she was instructed to go back to her original assignment. She reported that appellant currently had a new assignment as a clerk training technician, which involved sitting in an office doing all office and computer work. A.P. asserted that the work required no carrying or handling mail and was of no danger to appellant's knee.

By decision dated August 19, 2022, OWCP's hearing representative affirmed the February 17, 2022 decision.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition that had resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.[4] This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations and which is necessary because of a work-related injury or illness is withdrawn or altered so that the assignment exceeds the employee's physical limitations.[5]

OWCP procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. The change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.[6]

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that, a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that for each period of disability claimed, the disabling condition is causally related to employment injury and supports that conclusion with medical reasoning.[7] Where no such rationale is present, the medical evidence is of diminished probative value.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing May 16, 2019, causally related to the accepted January 16, 2014 employment injury.

In support of her claim, appellant submitted reports by Dr. Keppler dated October 14, 2021 and January 5, 2022. Dr. Keppler described the January 16, 2014 employment injury and discussed the medical treatment that she had received. He indicated that appellant was evaluated on October 14, 2021 for complaints of increasing posterior knee pain that "comes and goes" during the last year. Dr. Keppler advised that she could continue with her current employment

[4] 20 C.F.R. § 10.5(x); *see J.D.*, Docket No. 18-1533 (issued February 27, 2019).

[5] *Id.*

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018); *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

[7] *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

[8] *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

position, but recommended that she not return to her previous mail carrier position because it "may place [appellant's] left knee at risk of reinjury." He opined that appellant's persistent left knee pain was part of her initial injury to the left knee and subsequent surgery. Dr. Keppler did not, however, address the relevant issue of whether she sustained an employment-related recurrence of disability such that she was unable to work beginning May 16, 2019 and, thus, his opinion is insufficient to meet her burden of proof.[9]

Appellant also submitted a November 24, 2021 note by Mr. Hanycz, a physician assistant. This note, however, is of no probative value because physician assistants are not considered physicians as defined under FECA.[10]

As appellant has not submitted any rationalized medical evidence establishing a recurrence of disability commencing May 16, 2019, causally related the accepted January 16, 2014 employment injury, the Board finds that she has not met her 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 her burden of proof to establish a recurrence of disability commencing May 16, 2019, causally related to her accepted January 16, 2014 employment injury.

[9] *D.H.*, Docket No. 22-0533 (issued August 4, 2022); *T.M.*, Docket No. 21-1310 (issued March 7, 2022); *D.B.*, Docket No. 21-0503 (issued August 24, 2021).

[10] Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); 20 C.F.R. § 10.5(t). *See supra* note 6 at *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also C.R.*, Docket No. 22-0734 (issued March 3, 2023) (physician assistants are not considered "physician[s]" as defined under FECA; *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not physicians as defined under FECA).

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board