United States Department of Labor
Employees' Compensation Appeals Board

M.D., Appellant	)	
and	)	**Docket No. 24-0387**
	)	**Issued: May 20, 2024**
DEPARTMENT OF THE ARMY, U.S ARMY CORPS OF ENGINEERS, Walla Walla, WA, Employer	)	

Appearances:
James D. Muirhead, 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 February 27, 2024 appellant, through counsel, filed a timely appeal from an October 24, 2023 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 expand the acceptance of her claim to include bilateral knee conditions as causally related to the accepted April 5, 2021 employment injury.

FACTUAL HISTORY

On August 12, 2021 appellant, then a 78-year-old administrative support assistant, filed a traumatic injury claim (Form CA-1) alleging that on April 5, 2021 she sustained face, right shoulder, leg, and knee injuries when she tripped over an uncovered wire while in the performance of duty. She stopped work on April 5, 2021 and returned on April 9, 2021.

In support of her claim, appellant submitted hospital emergency room reports dated April 5, 2021 indicating she was seen for head trauma following a fall. She complained of frontal headache, neck pain, and bilateral knee pain after tripping on a cord on the floor, falling forward onto her hands and knees, and bumping her head. Dr. Cynthia D. Santos, a physician Board-certified in emergency medicine and preventive medicine, reviewed diagnostic tests, provided examination findings, and diagnosed closed head injury, mechanical fall, head trauma with anticoagulation, and extremity contusions. She also indicated that appellant's x-rays showed degenerative knee joint changes including lateral greater than medial joint narrowing and tricompartmental osteophytosis, diffuse osseous demineralization, and no soft tissue swelling.

In progress notes dated April 6, 2021, Terri A. Davis, and Saino Mathew, advanced practice nurses, related that appellant was status post a mechanical fall, with reported head and bilateral knee pain.

By decision dated October 1, 2021, OWCP accepted the claim for closed head injury.

On January 5, 2023 appellant, through counsel, requested expansion of the acceptance of her claim to include bilateral knee conditions. Counsel submitted a report dated December 20, 2022 from Dr. Gregory T. Bigler, an orthopedic surgeon, who recounted appellant's history of injury. Dr. Bigler related that x-rays were taken at the time of injury which revealed bilateral knee arthritis. A few months ago, a magnetic resonance imaging (MRI) scan revealed a meniscus tear, appellant underwent an arthroscopy, which revealed significant arthritis as well as medial and lateral meniscus tears. Dr. Bigler concluded that appellant's employment injury "could have created the meniscal pathology in her knee and potentially accelerated the arthritic changes."

In a development letter dated January 26, 2023, OWCP informed appellant of the deficiencies of her claim for expansion. It advised her of the type of additional medical evidence necessary, and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

Dr. Bigler, in encounter notes dated August 31, 2018, indicated that appellant had undergone an arthroscopy of the knee on August 31, 2108. In encounter notes dated September 9, October 12, and 14, 2021 and April 25, 2022, Dr. Bigler provided examination findings and diagnoses of right knee internal derangement and bilateral knee primary osteoarthritis. He noted

that appellant had received bilateral knee injections and attributed the diagnosed bilateral knee conditions to an injury and repetitive motion.

October 3, 2022 MRI scans revealed bilateral complex degenerative knee meniscal tears.

OWCP also received a January 26, 2023 report from Dr. Bigler, which was repetitive of his December 20, 2022 report.

By decision dated March 3, 2023, OWCP denied expansion of the acceptance of appellant's claim to include a bilateral knee injury as the medical evidence was insufficient to establish that the additional claimed conditions were causally related to the accepted April 5, 2021 employment injury.

On March 13, 2023 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on August 9, 2023.

By decision dated October 24, 2023, OWCP's hearing representative affirmed the March 3, 2023 decision.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[3]

To establish causal relationship between the condition as well as any additional conditions claimed and the employment injury, an employee must submit rationalized medical evidence.[4] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.[5]

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation,

[3] *M.T.*, Docket No. 23-0251 (issued February 22, 2024); *J.R.*, Docket No. 21-0790 (issued June 21, 2022); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

[4] *M.T.*, *id.*; *S.S.*, Docket No. 23-0391 (issued October 24, 2023); *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[5] *M.T.*, *id.*; *S.S., id.*; *T.K., id.*; *I.J.*, 59 ECAB 408 (2008).

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[6]

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of the claim to include bilateral knee conditions as causally related to the accepted April 5, 2021 employment injury.

In support of her claim, appellant submitted reports dated December 20, 2022, and January 26, 2023, wherein Dr. Bigler diagnosed bilateral medial and lateral meniscal tears, and accelerated bilateral knee arthritis, which he attributed to the accepted April 5, 2021 employment injury. However, Dr. Bigler did not explain with rationale how the accepted employment incident of April 5, 2021 physiologically caused the diagnosed conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was physiologically caused by the accepted employment incident.[7] Furthermore, the Board has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition.[8] This evidence is, therefore, insufficient to establish expansion of the acceptance of the claim.

In April 5, 2021 reports, Dr. Santos noted extremity contusions and reported degenerative bilateral knee joint changes. He did not identify the specific location of the "extremity contusions" as such, this vague diagnosis cannot be accepted.[9] Regarding Dr. Santos' finding of degenerative bilateral knee joint changes, no opinion was offered regarding causal relationship. The Board has held that a medical report that does not offer an opinion on causal relationship is of no probative value.[10] Thus, this evidence is of no probative value and is insufficient to establish expansion of the acceptance of appellant's claim.

OWCP also received reports by Ms. Davis and Ms. Mathew, advanced practice nurses. The Board has held that medical reports signed solely by a nurse, physician assistant, or physical therapist are of no probative value, as such healthcare providers are not considered physicians as

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[6] *J.M.*, Docket No. 23-0251 (issued January 9, 2023); *G.D.*, Docket No. 20-0966 (issued July 21, 2022); *R.C.*, Docket No. 19-0376 (issued July 15, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023).

[7] *P.M.*, Docket No. 22-1171 (issued January 10, 2024); *S.S.,* Docket No. 21-1140 (issued June 29, 2022); *A.P.,* Docket No. 20-1668 (issued March 2, 2022); *D.S.*, Docket No. 21-0673 (issued October 10, 2021); *R.A.,* Docket No. 20-0969 (issued August 9, 2021); *see also T.M.,* Docket No. 08-0975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[8] *Supra* note 6; *see also R.W.,* Docket No. 19-0844 (issued May 29, 2020); *A.M.,* Docket No. 19-1138 (issued February 18, 2020); *A.J.,* Docket No. 18-1116 (issued January 23, 2019).

[9] *See R.G.*, Docket No. 14-0113 (issued April 25, 2014).

[10] *S.S.*, *supra* note 4; *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

defined under FECA and, therefore, are not competent to provide a medical opinion.[11] Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[12]

The remainder of the evidence of record consists of diagnostic study reports. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injury caused any of the additional diagnosed conditions.[13]

As the medical evidence of record is insufficient to establish that the acceptance of appellant's claim should be expanded to include bilateral knee conditions as causally related to the accepted April 5, 2021 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 expand the acceptance of her claim to include bilateral knee conditions as causally related to the accepted April 5, 2021 employment injury.

[11] Section 8101(2) of FECA provides that 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. § 8101(2); 20 C.F.R. § 10.5(t). *See also supra* note 6 at Chapter 2.805.3a(1) (January 2013); *R.F.,* Docket No. 24-0112 (issued April 15, 2024) (advanced practice nurses are considered physicians as defined under FECA); *D.H.*, Docket No. 22-1050 (issued September 12, 2023) (nurses and nurse practitioners are not considered physicians as defined under FECA); *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).

[12] *M.T.*, Docket No. 23-0251 (issued February 22, 2024); *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk, id.*

[13] *M.T.*, *id.*; *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 2024
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