United States Department of Labor
Employees' Compensation Appeals Board

B.M., Appellant	)	
and	)	**Docket No. 24-0444**
	)	**Issued: May 29, 2024**
DEPARTMENT OF DEFENSE, DEFENSE COMMISSARY AGENCY, Fort Eisenhower, GA, 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
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On March 22, 2024 appellant, through counsel, filed a timely appeal from October 3, 2023 and February 12 and March 1, 2024 merit decisions 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 the need for medical treatment commencing March 5, 2022 causally related to her accepted November 21, 2002 employment injury.

FACTUAL HISTORY

On December 13, 2002 appellant, then a 49-year-old store worker, filed a traumatic injury claim (Form CA-1) alleging that on November 21, 2002 she injured her back, elbow, legs, and hands when she slipped on ice in a walk in freezer while in the performance of duty. OWCP accepted the claim, assigned OWCP File No. xxxxxx662, for back sprain/strain, back contusion, and right elbow contusion. It subsequently expanded its acceptance of the claim to include right lateral meniscus tear, left knee dislocation, and osteoarthritis of the left knee. OWCP paid appellant wage-loss compensation on the supplemental rolls from April 29 to May 26, 2003 and from October 27 to November 22, 2008, on the periodic rolls from November 23, 2008 to May 7, 2011, and on the supplemental rolls for intermittent disability from May 9, 2011 to November 2, 2014.

Appellant underwent a left partial lateral meniscectomy on April 4, 2003, a right meniscectomy and chondroplasty on October 27, 2008, and a right total knee arthroplasty on April 14, 2009.

In a report dated August 12, 2014, Dr. Alex D. Collins, an osteopath, Board-certified in orthopedic surgery evaluated appellant for bilateral knee pain and low back pain. He diagnosed status post left total knee replacement on January 4, 2010, status post right knee replacement arthroplasty on April 14, 2009, and degenerative disc disease of the lumbar spine with central disc bulging at L5-S1. Dr. Collins opined that appellant was doing "okay" overall and should follow up as needed.

Appellant filed a Form CA-1 for a traumatic injury to her right leg on September 12, 2016, assigned OWCP File No. xxxxxx976. On October 13, 2016 she underwent an open reduction and fixation of the left distal femur. By decision dated December 30, 2016, OWCP denied the traumatic injury claim as appellant had not factually established that the event occurred as alleged. It administratively combined OWCP File No. xxxxxx976 with the current case, OWCP File No. xxxxxx662, serving as the master file.

By decision dated February 26, 2015, OWCP reduced appellant's compensation to zero effective January 30, 2012, as her actual earnings as a store associate fairly and reasonably represented her wage-earning capacity.

The record contains no evidence from a healthcare provider until April 15, 2022, when a physician assistant diagnosed a history of a left total knee replacement, trigger thumb of the left hand, and pain in the left knee joint.

The record contains a partial report dated June 28, 2023 from Dr. Justin Head, an osteopath, who noted that appellant's "polyethylene shows severe posterior wear and subluxation of the knee joint [at] the coronal plane and anterior position."

In a notice of recurrence (Form CA-2a) dated August 16, 2023, appellant alleged that on March 5, 2022 she experienced recurrent knee pain causally related to her November 21, 2002 employment injury. She advised that she had retired from work and had received medical treatment for her condition on April 15, 2022 and June 28, 2023.

In a development letter dated August 28, 2023, OWCP advised appellant of the definition of a recurrence of disability and a recurrence of a medical condition. It requested further factual and medical information, including a reasoned report from a physician addressing the relationship between her current disability or need for medical treatment and her accepted employment injury. OWCP afforded appellant 30 days to submit the requested information.

In a response dated September 14, 2023, appellant advised that on March 5, 2022 she experienced popping and clicking in her knee when she walked. She indicated that she had retired but wanted to work part time.

By decision dated October 3, 2023, OWCP found that appellant had not established the recurrence of the need for medical treatment causally related to her accepted November 21, 2002 employment injury.

On October 21, 2023 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on January 11, 2024. The hearing representative noted that appellant had undergone OWCP-authorized right and left total knee replacements in 2009 and 2010. She filed a claim for a traumatic injury on October 13, 2016 and underwent an open reduction and internal fixation of the left distal femur; however, OWCP had denied the claim. The hearing representative noted that there was a gap in medical evidence from 2014 until 2022 in the instant case. She noted that the medical evidence following the knee replacements had advised following-up as needed. Appellant related that she had retired in 2017, and had filed a notice of recurrence because she required additional medical treatment. She advised that a physician told her that she would require a revision of her left total knee replacement. OWCP's hearing representative requested that appellant submit evidence addressing the intervening injury on October 13, 2016.

By decision dated February 12, 2024, OWCP's hearing representative affirmed the October 3, 2023 decision.

Subsequently, OWCP received a February 6, 2024 report from Dr. Derek C. Whitaker, a Board-certified orthopedic surgeon. Dr. Whitaker noted that appellant had a history of bilateral total knee replacements in 2010 on the right, and 2011 on the left, and that in September 2016 had fallen while walking and fractured her femur. He discussed her current symptoms of pain in the posterior aspect of the left knee. Dr. Whitaker noted that Dr. Head had recommended replacing the polyethylene from her left knee total arthroscopy, but that he did not accept her insurance. He

diagnosed a left knee arthroplasty with evidence of polyethylene wear and recommended a bone scan. Dr. Whitaker advised that appellant should "modify activities as tolerated."

On February 28, 2024 appellant, through counsel, requested reconsideration.

By decision dated March 1, 2024, OWCP denied modification of its February 12, 2024 decision. It found that Dr. Whitaker had not explained whether the need for additional medical treatment resulted from the accepted employment injury, nor addressed whether the symptoms arose from an intervening cause such as the injury in September 2016.

LEGAL PRECEDENT

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.[3] An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted employment injury without intervening cause.[4]

If a claim for recurrence of a medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report establishing causal relationship between the employee's current condition and the original injury in order to meet his or her burden of proof.[5] To meet this burden the employee must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, supports that the condition is causally related and supports his or her conclusion with sound medical rationale.[6] Where no such rationale is present, medical evidence is of diminished probative value.[7]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of the need for medical treatment commencing March 5, 2022 causally related to her accepted November 21, 2002 employment injury.

In a partial report dated June 28, 2023, Dr. Head noted that appellant's polyethylene showed severe wear and found subluxation at the knee joint. In a report dated February 6, 2024, Dr. Whitaker discussed her history of bilateral knee replacements in 2010 and 2011, and noted that

[3] 20 C.F.R. § 10.5(y).

[4] *See R.B.*, Docket No. 22-0980 (issued October 18, 2022); *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *M.P.*, Docket No. 19-0161 (issued August 16, 2019); *E.R.*, Docket No. 18-0202 (issued June 5, 2018).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4b (June 2013); *see also J.S.*, Docket No. 23-0957 (issued March 15, 2024); *J.M.*, Docket No. 09-2041 (issued May 6, 2010).

[6] *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *T.B.*, Docket No. 18-0672 (issued November 2, 2018); *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

[7] *W.B.*, Docket No. 22-0985 (issued March 27, 2023); *A.M.*, Docket No. 22-0322 (issued November 17, 2022); *R.C.*, Docket No. 20-1321 (issued July 7, 2021); *R.S.*, Docket No. 19-1774 (issued April 3, 2020).

she had fractured her femur while walking in September 2016. He diagnosed a left knee arthroplasty with evidence of polyethylene wear and recommended a bone scan. These reports, however, did not offer an opinion on causal relationship between appellant's current need for medical treatment and the accepted employment injury.[8] The Board has held that a medical report is of no probative value on a given medical matter if it does not contain an opinion on that matter.[9] Thus, these reports are insufficient to establish appellant's recurrence claim.

Appellant also submitted an April 15, 2022 note from a physician assistant. However, certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered qualified physicians as defined under FECA.[10] Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[11]

As the medical evidence of record does not contain a rationalized medical opinion establishing that appellant required further medical care on or after March 5, 2022 causally related to her accepted 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 the need for medical treatment commencing March 5, 2022 causally related to her accepted November 21, 2002 employment injury.

[8] *Supra* note 8; *see also J.B.*, Docket No. 23-0660 (issued October 12, 2023).

[9] *J.B., id*.; *M.F.*, Docket No. 21-1221 (issued March 28, 2022); Docket No. 19-0573 (issued May 6, 2021); *T.H.*, Docket No. 18-0704 (issued September 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

[10] 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *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 S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

[11] *See T.H.*, Docket No. 23-0811 (issued February 13, 2024); *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk, id.*

ORDER

IT IS HEREBY ORDERED THAT the March 1 and February 12, 2024 and October 3, 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 29, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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