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J.L., Appellant)	
)	
and)	Docket No. 25-0167
)	Issued: January 24, 2025
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Carol Stream, IL, Employer)	
)	

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On December 6, 2024 appellant, through counsel, filed a timely appeal from an August 15, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

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 an 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.*

³ The Board notes that following the August 15, 2024 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a right knee condition causally related to the accepted December 6, 2023 employment incident.

FACTUAL HISTORY

On January 3, 2024 appellant, then a 55-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 6, 2023, she sustained a right knee injury when her knee popped as she picked up a tub of mail and placed it onto a hand truck, while in the performance of duty. She stopped work that same day and returned on December 9, 2023.

In a December 7, 2023 disability certificate, Dr. Sheryl Lynn Lipnick, an osteopath Board-certified in orthopedic surgery, provided restrictions of no lifting more than 10 pounds, limited bending/squatting, and alternating between standing and sitting every two hours.

In a December 28, 2023 report, Dr. Lipnick noted that appellant was treated on December 7 and 28, 2023, for complaints of right knee discomfort. She noted that diagnostic test results revealed anterior cruciate ligament (ACL) patella tendinitis. Dr. Lipnick related that appellant described her job duties to include being on her feet 90 percent of the day, bending, twisting, walking, pulling pushing tubs and trays, and dispatching, in an 8-hour shift, five days a week, with two 15-minute breaks and a 30-minute lunch. She opined that appellant's conditions were caused by her work activities, such as heavy lifting, standing, and other tasks required as a clerk. Dr. Lipnick diagnosed anterior cruciate ligament (ACL)/patella tendinitis and noted that appellant would need physical therapy and pain management. She provided restrictions of lifting of five pounds or less, limited bending, squatting, and little to no standing or walking.

In a development letter dated January 18, 2024, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond.

OWCP received physical therapy notes dated January 30 through February 21, 2024.

In a February 26, 2024 disability certificate, Dr. Lipnick noted that she saw appellant on that date, requested that appellant be excused on that date for the appointment, and provided a 10 pound lifting restriction, limited bending and squatting, and alternating between standing and sitting every hour.

In a follow-up development letter dated March 1, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from its January 8, 2024 letter to submit the necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

A December 15, 2023 magnetic resonance imaging (MRI) scan of appellant's right knee read by Dr. Gaston Saint Martin, Board-certified in anatomic and clinical pathology and diagnostic radiology, was negative for ligamentous or meniscal injury, negative for acute fracture or

dislocation, and revealed an ovoid focal lesion in the superior, lateral, and posterior upper right tibia.

In a February 26, 2024 report, Dr. Lipnick diagnosed patellar tendinitis of right knee (primary), lesion of bone of knee, and acute pain of the right knee.

By decision dated March 27, 2024, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between a diagnosed right knee condition and the accepted December 6, 2023 employment incident.

On August 12, 2024, appellant, through counsel, requested reconsideration and submitted a March 28, 2024 progress report from Dr. Lipnick, who repeated her previous diagnoses of patellar tendinitis of right knee (primary); lesion of bone of knee, and acute pain of right knee. She provided work restrictions of 10 pounds lifting and pulling, limited bending and squatting, and alternating between standing and sitting every two hours. OWCP also received the first page of a June 24, 2024 MRI scan of the right knee.

By decision dated August 15, 2024, OWCP denied modification of the March 27, 2024 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including 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,⁵ 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.⁶ 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.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ See *M.G.*, Docket No. 23-1049 (issued November 26, 2024); *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient medical evidence to establish that the employment incident caused an injury.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment incident identified by the employee.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right knee condition causally related to the accepted December 6, 2023 employment incident.

In a December 28, 2023 report, Dr. Lipnick noted that diagnostic test results revealed right knee ACL patella tendinitis. She opined that appellant's right knee condition was caused by her work activities, such as heavy lifting, standing, and other tasks required as a clerk. However, Dr. Lipnick did not address the accepted incident of picking up a tub of mail causing her right knee to pop. The Board finds that this report failed to provide an opinion that appellant's right knee condition was caused by the accepted work incident on December 6, 2023. Dr. Lipnick did not provide a rationalized opinion explaining the pathophysiological process of how the accepted employment incident caused or contributed to appellant's diagnosed conditions.¹¹ This report is therefore insufficient to establish appellant's claim.

In February 26 and March 28, 2024 reports, Dr. Lipnick diagnosed patellar tendinitis of right knee (primary), lesion of bone of knee, and acute pain of right knee, and provided work restrictions. She also provided disability certificates with work restrictions dated December 7, 2023 and February 26, 2024. However, these reports from Dr. Lipnick did not provide any opinion regarding causation between appellant's diagnosed conditions and the accepted employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹² Consequently, these reports from Dr. Lipnick are insufficient to establish appellant's claim.

⁸ *H.M.*, Docket No. 22-0343 (issued June 28, 2022); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *J.C.*, Docket No. 18-1474 (issued March 20, 2019); *M.M.*, Docket No. 15-0607 (issued May 15, 2015); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

¹² *See S.T.*, Docket No. 22-1025 (issued January 3, 2023); *M.G.*, Docket No. 22-1119 (issued November 15, 2022); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Appellant submitted reports from physical therapists. The Board has held that the reports of physical therapists do not constitute probative medical evidence as physical therapists are not considered physicians under FECA.¹³ Consequently, these reports are of no probative value.

OWCP also received diagnostic test results. The Board has also held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.¹⁴ Consequently, this evidence is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a right knee condition causally related to the accepted December 6, 2023 employment incident, the Board finds that appellant 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 right knee condition causally related to the accepted December 6, 2023 employment incident.

¹³ 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) (May 2023); *R.L.*, Docket No. 20-0284 (issued June 30, 2020) (a physical therapist is not considered physician 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); *see also P.D.*, Docket No. 21-0920 (issued January 12, 2022) (physical therapists are not considered physicians under FECA).

¹⁴ *W.L.*, Docket No. 20-1589 (issued August 26, 2021); *A.P.*, Docket No. 18-1690 (issued December 12, 2019).

ORDER

IT IS HEREBY ORDERED THAT the August 15, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 24, 2025
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board