

**United States Department of Labor
Employees' Compensation Appeals Board**

T.D., Appellant

and

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Kansas City, MO, Employer

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**Docket No. 20-0835
Issued: February 2, 2021**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 4, 2020 appellant filed a timely appeal from a February 28, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish left knee and left hip conditions causally related to the accepted October 28, 2019 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the February 28, 2020 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 evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On January 7, 2020 appellant, then a 55-year-old tax examining clerk, filed a traumatic injury claim (Form CA-1) alleging that on October 28, 2019 she injured her left knee when she sat down on her accommodated chair and the seat slammed down into the legs of the chair while in the performance of duty. She explained that as the seat of the chair slammed down she tried to brace herself, but her left knee bent beyond her tolerance level and then jarred and began to swell. Appellant also indicated that she has had numerous surgeries on her left knee. On the reverse side of the claim form, the employing establishment indicated that appellant was injured in the performance of duty on October 28, 2019 and stopped work on that date.

In a January 29, 2020 development letter, OWCP informed appellant that additional evidence was required in support of her claim. It advised her of the type of medical evidence necessary to establish her claim and attached an attending physician's report (Form CA-20) to provide to her physician for completion. OWCP afforded appellant 30 days to submit the requested evidence.

An October 28, 2019 employing establishment occupational health report by Deanna Hawk, a registered nurse, indicated that when appellant sat on her accommodated chair it broke, causing her to fall and injure her left lower and mid back and her left knee. Ms. Hawk related that appellant experienced back spasms and soreness and that her left knee was throbbing. She listed appellant's medical history as including a right knee replacement and arthritis and conducted a physical examination of appellant's left knee which revealed swelling, a limited range of motion, tenderness upon palpation, and increased pain upon movement. Ms. Hawk assessed appellant as at risk for ineffective tissue perfusion and having impaired comfort, and she related that appellant was taken to the hospital.

October 28, 2019 unsigned hospital records indicated that appellant was admitted on that date and diagnosed with left knee pain, left hip pain, and unilateral primary osteoarthritis of the left knee.

The October 28, 2019 hospital records included an x-ray of appellant's left hip interpreted by Dr. Yuri Shif, a Board-certified radiologist, which revealed normal results. An October 28, 2019 x-ray of appellant's left knee by Dr. Shif revealed joint space narrowing in the medial and lateral compartments, bulky tricompartmental osteophytes, a small effusion, prepatellar soft tissue swelling, and severe osteoarthritis.

October 28, 2019 emergency room notes by Dr. Adam Brunfeldt, Board-certified in emergency medicine, indicated that appellant presented with back, left knee, and left hip pain from falling out of a chair that broke when she sat on it. He related that appellant's medical history included underlying arthritis in her left knee and four right knee surgeries. A physical examination revealed left hip tenderness and left knee swelling, decreased range of motion, lateral joint line tenderness, and medial collateral ligament laxity. An x-ray of appellant's left hip displayed normal results, and an x-ray of appellant's left knee revealed prepatellar soft tissue swelling and severe osteoarthritis. Dr. Brunfeldt diagnosed left knee pain and left hip pain.

An undated employing establishment incident report indicated that appellant was injured on October 28, 2019. It related that she reported her injury on the date it occurred and described

the injury as including left knee pain and severe swelling. Appellant related that she had an accommodated chair and had informed her supervisor and the accommodations liaison about her concerns regarding her chair wobbling and making noises. On October 24, 2019 the employing establishment fixed the chair. After appellant was injured she was seen by a nurse and requested that her chair be replaced with a new chair. The report indicated that she was out of work for four and a half days.

By decision dated February 28, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that a medical condition was causally related to the accepted October 28, 2019 employment incident, and thus the requirements had not been met for establishing an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,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 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 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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁸ 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

³ *Supra* note 1.

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *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).

nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.⁹

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish left knee and left hip conditions causally related to the accepted October 28, 2019 employment incident.

October 28, 2019 unsigned hospital records indicated that appellant was admitted on that date and diagnosed with left knee pain, left hip pain, and unilateral primary osteoarthritis of the left knee. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.¹¹

October 28, 2019 emergency room notes by Dr. Brunfeldt indicated that appellant presented with back, left knee, and left hip pain from falling out of a chair that broke when she sat on it. He related that her medical history included underlying arthritis in her left knee and four right knee surgeries, conducted a physical examination, and diagnosed left knee pain and left hip pain. The Board has held that pain is a symptom and not a compensable medical diagnosis.¹² Additionally, Dr. Brunfeldt did not address whether appellant's accepted employment incident aggravated her preexisting left knee arthritis. 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.¹³ Consequently, this report will not suffice for purposes of establishing entitlement to FECA benefits.

The employing establishment's occupational health report by Ms. Hawk, a registered nurse, reviewed appellant's history of injury, medical history, reported physical examination findings, and assessed appellant as at risk for ineffective tissue perfusion and having impaired comfort. Registered nurses however, are not considered physicians as defined under FECA and

⁹ *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).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹¹ *See R.C.*, Docket No. 19-0376 (issued July 15, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *See S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

¹³ *See R.C.*, Docket No. 19-0376 (issued July 15, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

accordingly their reports do not constitute medical evidence.¹⁴ Therefore, this report is also insufficient to establish the claim.

Appellant additionally submitted October 29, 2019 x-rays of her left hip and left knee. The Board has held, however, that diagnostic studies standing alone lack probative value on the issue of causal relationship as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.¹⁵

As appellant has not submitted a rationalized medical opinion sufficient to establish that she sustained a left knee or left hip condition causally related to the accepted October 28, 2019 employment incident, the Board finds that she has not met her burden of proof to establish an employment-related traumatic injury.

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 left knee and left hip conditions causally related to the accepted October 28, 2019 employment incident.

¹⁴ 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* 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); *J.D.*, Docket No. 16-1752 (issued March 1, 2017) (a nurse practitioner is not considered a physician under FECA); *D.A.*, Docket No. 20-0951 (issued November 6, 2020) (the nurse’s report did not suffice for purposes of establishing entitlement to FECA benefits).

¹⁵ *M.M.*, Docket No. 20-0019 (issued May 6, 2020).

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2020 decision of the Office of Workers Compensation Programs is affirmed.

Issued: February 2, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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