United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 16-1816**
	)	**Issued: January 17, 2018**
DEPARTMENT OF VETERANS AFFAIRS, NATIONAL CEMETERY ADMINISTRATION, Holly, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 12, 2016 appellant filed a timely appeal from a June 8, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant established that his claimed right knee condition is causally related to the accepted November 5, 2015 employment incident.

FACTUAL HISTORY

On November 10, 2015 appellant, then a 53-year-old cemetery caretaker/foreman, filed a traumatic injury claim (Form CA-1) alleging that on November 5, 2015 he injured his right knee

[1] 5 U.S.C. § 8101 *et seq.*

when he stepped in a tire rut while prepping sod. His right knee twisted and buckled. Appellant did not stop work at the time.[2]

Dr. Ayman E. Tadros, a Board-certified family practitioner, examined appellant on November 10, 2015. In a November 19, 2015 attending physician's report (Form CA-16), he noted that appellant was walking at work on November 5, 2015 when he stepped in a tire rut. Appellant's right knee buckled and he went down. Dr. Tadros' findings included severe right knee medial pain and swelling. He diagnosed right knee pain and ordered a magnetic resonance imaging (MRI) scan. Dr. Tadros prescribed pain and anti-inflammatory medications, and advised that appellant was able to resume work.

A November 24, 2015 right knee MRI scan revealed a complex tear of the posterior horn of the medial meniscus. There was also evidence of very early arthritic change with grade 1 chondromalacia involving the medial femoral condyle.

In a December 15, 2015 claim development letter, OWCP advised appellant that the evidence submitted in support of his claim did not substantiate that the diagnosed right medial meniscus tear was caused or aggravated by the work injury. It afforded him 30 days to submit additional medical evidence regarding the cause of his claimed right knee condition.

OWCP subsequently received Dr. Tadros' November 5, 2015 treatment notes, which he amended on January 6, 2016 to include a diagnosis of acute medial meniscus tear. Dr. Tadros characterized it as a workplace accident, noting that appellant reported having stepped in a tire rut on November 5, 2015, at which point his right knee buckled and he went down. His amended treatment notes also included the results of appellant's November 24, 2015 right knee MRI scan. Dr. Tadros recommended an orthopedic/surgical consultation.

OWCP also received a December 29, 2015 report from Dr. Sidney N. Martin, a Board-certified orthopedic surgeon.[3] Dr. Martin noted that appellant was working at the cemetery when he stepped in a rut, his knee buckled, and he felt a pop on the medial side. Appellant experienced pain on the medial side of his knee post incident. Dr. Martin examined appellant and determined that he had remarkable pain with McMurray's tests. He related that appellant indicated that it was so painful that he could not force him back into flexion enough to even come close to getting a pop. Dr. Martin found no ligamentous instability, 2+ joint effusion and marked tenderness over the medial joint line. X-rays of the right knee revealed significant narrowing of the medial cartilaginous clear zone, very small osteophyte forming on the medial tibial plateau, with sharpening of the tibial spines and evidence of early patellofemoral arthritis. A right knee MRI scan from November 24, 2015 revealed that the patellofemoral relationship was normal and the ligaments were intact. However, Dr. Martin explained that the posterior horn of the medial meniscus revealed a complex tear, which looked primarily to be a horizontal

[2] The date of injury was November 5, 2015. It was reportedly rainy and wet outside when appellant stepped in a rut and twisted his knee. He felt a pop and his knee buckled. Appellant believed he had just bruised it, and thus, continued working. However, the pain worsened and he went to see his primary care physician on November 10, 2015. Appellant initially wrapped the knee with an Ace bandage, but subsequently bought a neoprene sleeve, which seemed to help some.

[3] Portions of the report were prepared (dictated) by Dr. David L. Mayor, an orthopedic resident.

cleavage-type degenerative tear. The MRI scan also revealed early arthritic change with grade 1 chondromalacia involving the medial femoral condyle and no evidence of bone bruise. Dr. Martin also noted that he personally reviewed the MRI scan which revealed a horizontal and oblique tear of the posterior horn of his medial meniscus and some underlying arthritis. He explained that the x-rays made it look worse than the MRI scan revealed as he was going to have some arthritis. Appellant decided to try a cortisone injection to see if his knee would feel better without surgery. His diagnosis was right posteromedial meniscal tear and he received a right knee injection.

By decision dated January 28, 2016, OWCP denied appellant's claim as he failed to establish a causal relationship between the diagnosed right knee condition and the accepted employment incident. It found the reports of Dr. Tadros and Dr. Martin insufficient to establish that the November 5, 2015 employment incident caused the diagnosed right medial meniscus tear.

On March 14, 2016 OWCP received appellant's request for reconsideration of the January 28, 2016 decision.

OWCP also received additional reports from Dr. Martin dated January 19 and March 3, 2016. In his January 19, 2016 follow-up report, Dr. Martin noted that appellant's right knee symptoms had all but resolved since the last injection on December 29, 2015.[4] He noted that appellant's knee looked very good, was nice and quiet, and had good range of motion. Dr. Martin diagnosed knee arthritis with degenerative meniscal tear and advised appellant to return on an as-needed basis.

In a March 3, 2016 report, Dr. Martin explained that he was puzzled that OWCP found his records insufficient regarding the November 5, 2015 work injury. He noted that he reported that appellant twisted his knee and had symptoms. Regarding appellant's arthritis, Dr. Martin explained that people can have underlying knee arthritis that is completely asymptomatic until an injury occurs and exacerbates the condition. He noted that he believed OWCP was playing a game and was engaged in delay tactics trying to deny compensation to an injured worker who had all the necessary documentation. Dr. Martin advised OWCP against any further contact. He concluded that appellant had an injury, has a torn meniscus, and some underlying arthritis, but interestingly enough did not have surgery. After a very short course of rehabilitation, appellant returned to work without restrictions.

By decision dated June 8, 2016, OWCP denied modification of its January 28, 2016 decision. It found that the January 19 and March 3, 2016 reports from Dr. Martin were insufficient to establish a causal relationship between the diagnosed right knee condition(s) and the November 5, 2015 employment incident.

[4] *See supra* note 2.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[5]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[6] The second component is whether the employment incident caused a personal injury.[7] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[8]

ANALYSIS

OWCP accepted that the November 5, 2015 employment incident occurred, as alleged, that appellant stepped in a tire rut with his right leg. The record also included a diagnosis of right knee arthritis with degenerative meniscal tear. However, OWCP initially denied appellant's traumatic injury claim based on his failure to establish a causal relationship between the diagnosed right knee conditions and the November 5, 2015 employment incident.

The Board finds that the medical evidence of record contains no reasoned explanation of how the specific employment incident on November 5, 2015 caused or aggravated appellant's claimed right knee condition.[9]

In a November 10, 2015 report, Dr. Tadros noted that last Thursday, while appellant was at work, he was walking and stepped in a tire rut, when his knee buckled and he went down. He indicated that appellant's right knee was still painful and swelling. Dr. Tadros explained that the symptoms resulted from a medial impact (varus stress) and the injury occurred at work. He

[5] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[6] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[8] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[9] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

diagnosed acute medial meniscus tear. However, other than noting a workplace accident, Dr. Tadros did not offer any explanation as to how the November 5, 2015 employment incident either caused or contributed to the diagnosed right knee condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[10]

In a report dated December 29, 2015, Dr. Martin noted that appellant was working at the cemetery when he stepped in a rut the other day, his knee buckled and he felt a pop on the medial side and had pain on the medial side of his knee ever since. He examined appellant and provided findings which included that he had remarkable pain with McMurray's tests. Dr. Martin also indicated that x-rays of the right knee revealed significant narrowing of the medial cartilaginous clear zone, very small osteophyte forming on the medial tibial plateau, with sharpening of the tibial spines and evidence of early patellofemoral arthritis. He explained that a right knee MRI scan from November 24, 2015 revealed the posterior horn of the medial meniscus had a complex tear, which looked primarily to be a horizontal cleavage-type degenerative tear. Dr. Martin also noted arthritic changes with grade 1 chondromalacia involving the medial femoral condyle and no evidence of bone bruise. He also reviewed the MRI scan which revealed a horizontal and oblique tear of the posterior horn of his medial meniscus and some underlying arthritis. Dr. Martin recommended a cortisone shot to see if his knee would feel better without surgery. However, he did not offer any opinion on causal relationship. As noted above, medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[11]

In the January 19, 2016 report, Dr. Martin noted that appellant twisted his knee and had pain on the medial side. He diagnosed knee arthritis with degenerative meniscal tear. This report is of limited probative value as the physician did not offer any opinion regarding the causal connection between the incident and appellant's condition.[12]

In a March 3, 2016 report, Dr. Martin explained that he was puzzled that his reports were insufficient to provide a rationalized opinion related to the work injury of November 5, 2015. He noted that he reported that appellant twisted his knee and had symptoms. Regarding the underlying arthritis, Dr. Martin explained that "[p]eople could have underlying arthritis in the knee that is completely asymptomatic until an injury occurs and causes exacerbation very much akin to an athlete who sprained his ankle in last night's game but then is able to continue playing." However, he did not describe the employment incident or offer an opinion regarding the causal connection between the incident and the diagnosis. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[13] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be

[10] *K.W.*, 59 ECAB 271 (2007).

[11] *Id.*

[12] *Id.*

[13] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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 factors identified by the claimant. This medical opinion must include an accurate history of the employee's injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[14] The Board finds that Dr. Martin's reports are of limited probative value.

Because the medical reports submitted by appellant do not adequately address how the November 5, 2015 employment incident either caused or aggravated appellant's right knee condition, these reports are of limited probative value and are insufficient to establish entitlement to FECA benefits.[15]

On appeal appellant argues that his doctors provided the requisite evidence to establish his claim. Further, he argued that degenerative arthritis did not cause tearing of the meniscus membrane. Additionally, appellant argued that he did not seek out surgery, but a course of rehabilitation that had not occurred due to his claim being denied. He also argued that his employing establishment was trying to help him, even though his claim was denied. The Board notes that in this case, as found above, the medical evidence is insufficient as appellant has not provided the requisite rationale noted above.

The Board notes that the employing establishment executed a Form CA-16 on November 10, 2015 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.[16] Although OWCP denied appellant's claim for an employment-related injury, it did not address whether he is entitled to reimbursement of medical expenses pursuant to the Form CA-16.[17] Upon return of the case, it should further address this matter.

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.

[14] *James Mack*, 43 ECAB 321 (1991).

[15] *See Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

[16] *See D.M.*, Docket No. 13-0535 (issued June 6, 2013). *See also* 20 C.F.R. §§ 10.300, 10.304.

[17] *L.D.*, Docket No. 16-1289 (issued December 8, 2016).

CONCLUSION

The Board finds that appellant failed to establish that his claimed right knee condition is causally related to the accepted November 5, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 17, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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