United States Department of Labor
Employees' Compensation Appeals Board

J.T., Appellant **and** **DEFENSE AGENCIES, DEFENSE INFORMATION SYSTEMS AGENCY, Indianapolis, IN, Employer**	)	**Docket No. 18-1755** **Issued: April 4, 2019**

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 17, 2018 appellant filed a timely appeal from a June 11, 2018 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the June 11, 2018 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 his burden of proof to establish a right knee condition causally related to the accepted March 7, 2018 employment incident.

FACTUAL HISTORY

On May 1, 2018 appellant, then a 51-year-old information technology (IT) specialist, filed a traumatic injury claim (Form CA-1) alleging that on March 7, 2018 he sustained a severe right knee strain during an office move while in the performance of duty. He explained that he was bending down in his new cubicle to plug in his computer equipment when he strained his right knee. Appellant first received medical treatment on April 23, 2018 and notified his supervisor on May 1, 2018.

In support of his claim, appellant submitted an April 23, 2018 visit summary from Susan Arnold, a physician assistant. Ms. Arnold diagnosed right lower leg strain of muscle/tendon and noted March 7, 2018 as the date of injury.

On April 30, 2018 Dr. Peter Su, Board-certified in family medicine, recommended a magnetic resonance imaging (MRI) scan of appellant's right knee due to complaints of pain since March 7, 2018.

By development letter dated May 11, 2018, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It noted that the medical evidence received failed to document a diagnosed condition which could be related to the claimed employment incident. OWCP provided appellant with a questionnaire for completion and advised him of the medical evidence required to establish his claim. It afforded appellant 30 days to submit the necessary evidence.

In a narrative statement dated May 22, 2018, appellant responded to OWCP's questionnaire and described the circumstances surrounding the claimed March 7, 2018 employment incident. He reported that he did not file a Form CA-1 until May 1, 2018 because he thought his pain was temporary and did not know the severity of his injury at that time. Appellant noted submission of a signed witness statement on his Form CA-1 which corroborated his account of the March 7, 2018 employment incident.

In an April 30, 2018 report, Dr. Su reported that appellant complained of right knee pain for one to two months, and noted the mechanism of injury as "moving." He diagnosed right knee joint pain and recommended a right knee MRI scan.

In a May 14, 2018 diagnostic report, Dr. James Reinig, a Board-certified diagnostic radiologist, reported that appellant's right knee MRI scan revealed a tear of the posterior horn of the medial meniscus with extensive edema seen in the proximal medial tibia adjacent to that site.

By decision dated June 11, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish a diagnosed right knee condition causally related to the accepted March 7, 2018 employment incident. It concluded, therefore, that he had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[5] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish 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 supporting such causal relationship.[6] Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[7] 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 factors identified by the employee.[8] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[9]

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[3] *Gary J. Watling*, 52 ECAB 278 (2001).

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

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

[6] *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *I.J.,* 59 ECAB 408 (2008); *Victor J. Woodhams,* 41 ECAB 465 (2005).

[7] *L.D.,* Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[8] *L.D., id.; see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[9] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted March 7, 2018 employment incident.[10]

In support of his claim, appellant submitted an April 30, 2018 report from Dr. Su who noted appellant's complaints of right knee pain for one to two months. This report is of limited probative value as Dr. Su failed to provide a firm medical diagnosis, and only noted right knee joint pain. The Board has consistently held that pain is a symptom and is not considered a firm medical diagnosis.[11]

Dr. Reinig's May 14, 2018 diagnostic report is also insufficient to establish appellant's claim. While this report interpreted right knee diagnostic findings and noted a tear of the posterior horn of the medial meniscus, diagnostic studies lack probative value as they do not address whether the employment incident caused the diagnosed condition.[12]

Appellant also submitted an April 23, 2018 visit summary from Ms. Arnold, a physician assistant. This report does not constitute competent medical evidence because a physician assistant is not considered a "physician" as defined under FECA.[13] As such, this evidence is also insufficient to meet appellant's burden of proof.

The Board finds that the record of evidence lacks rationalized medical evidence establishing a diagnosed right knee condition causally related to the accepted March 7, 2018 employment incident. Thus, appellant has failed to meet his burden of proof.[14]

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's 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 his burden of proof to establish a right knee condition causally related to the accepted March 7, 2018 employment incident.

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[10] *See Robert Broome*, 55 ECAB 339 (2004).

[11] *See B.P.*, Docket No. 12-1345 (issued November 13, 2012) (regarding pain); *C.F.*, Docket No. 08-1102 (issued October 10, 2008) (regarding pain); *J.S.*, Docket No. 07-881 (issued August 1, 2007) (regarding spasm).

[12] *See L.T.*, Docket No. 18-1603 (issued February 21, 2019).

[13] *See M.M.,* Docket No. 17-1641 (issued February 15, 2018); *K.J.,* Docket No. 16-1805 (issued February 23, 2018); *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); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

[14] *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2019
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