United States Department of Labor
Employees' Compensation Appeals Board

F.S., Appellant	)	
and	)	**Docket No. 19-0205**
	)	**Issued: June 19, 2019**
DEPARTMENT OF THE INTERIOR, HOT SPRINGS NATIONAL PARK, Hot Springs, AR, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 5, 2018 appellant, through counsel, filed a timely appeal from a September 7, 2018 merit decision 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.[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 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 appellant submitted additional evidence on appeal. 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 that his left knee condition was causally related to the accepted December 1, 2017 employment incident.

FACTUAL HISTORY

On December 4, 2017 appellant, then a 45-year-old park ranger, filed a traumatic injury claim (Form CA-1) alleging that on December 1, 2017 he injured his left knee while performing sprints during a physical efficiency battery while in the performance of duty. On the reverse side of the claim form the employing establishment indicated that appellant was injured in the performance of duty.

In a report dated December 5, 2017, Dr. Mark Larey, an osteopath and internal medicine specialist, diagnosed left knee pain. He noted that the cause of appellant's condition was related to work activities. In a work status form of even date, Dr. Larey checked a box marked "yes" indicating that appellant's injury was work related. He also indicated that appellant should remain off work until December 7, 2017, and referred him for a magnetic resonance imaging (MRI) scan.

Dr. Larey, in a report dated December 7, 2017, diagnosed left knee pain and restricted appellant's employment activities to seated duties with a knee brace beginning on December 11, 2017. He also completed a work status form on the same date with the aforementioned work restrictions.

In an MRI scan report dated December 11, 2017, Dr. Mark Robbins, a Board-certified diagnostic radiologist, indicated impressions of degenerative left knee changes in the lateral joint space compartment, degenerative lateral meniscus tear, joint effusion, and Baker's cyst.

On December 19, 2017, Dr. Lawrence Dodd, a Board-certified orthopedic surgeon, after reviewing appellant's MRI scan, diagnosed left knee lateral meniscus tear. He requested authorization for left knee arthroscopy.

In a report dated December 27, 2017, Dr. Larey diagnosed left knee pain, and indicated that appellant could resume seated work on December 29, 2017.

On January 9, 2018 OWCP authorized left knee arthroscopy.

In a development letter dated January 9, 2018, OWCP noted that appellant's injury initially appeared to be a minor injury that resulted in minimal or no lost time from work. Consequently, it had administratively approved a limited amount of medical expenses. However, OWCP indicated that the case was now reopened for further consideration because appellant had requested authorization for knee surgery. It advised him of the deficiencies of his claim, requested additional factual and medical evidence and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested evidence.

In a separate development letter to the employing establishment dated January 9, 2018, OWCP requested that it submit comments regarding whether appellant was in the performance of duty when the alleged event occurred.

In a letter dated January 23, 2018, the employing establishment indicated that appellant was completing the mandatory physical fitness test at the time of his injury. It noted that he was on duty and on federal property when the claimed injury occurred.

In reports dated January 16 and 23, 2018, Dr. Dodd diagnosed left knee lateral meniscus tear and related that he was awaiting a "left knee scope to be scheduled." He indicated that appellant had continued pain in his left knee.

By decision dated February 21, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish causal relationship between the diagnosed condition and the accepted December 1, 2017 employment incident.

On February 26, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. The hearing was held on July 31, 2018.

In a letter dated August 17, 2018, Dr. Dodd indicated that appellant had been a patient of his for an employment-related left knee injury. He noted that he diagnosed lateral meniscus tear based on an MRI scan. Dr. Dodd opined that appellant's condition was caused by the employment-related incident on December 1, 2017 based on the acute development of his symptoms in that specific knee compartment.

By decision dated September 7, 2018, OWCP's hearing representative affirmed the February 21, 2018 decision, finding that appellant had not met his burden of proof to establish that he sustained a medical condition causally related to the accepted December 1, 2017 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish 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 timely filed within the applicable time limitation period 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 if an employee has 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

[4] *Supra* note 2.

[5] *E.S.*, Docket No. 18-1750 (issued March 11, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *C.P.*, Docket No. 18-1645 (issued March 8, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *C.P.*, *id.*; *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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.[8] The second component is whether the employment incident caused a personal injury.[9]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 incident.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his left knee condition was causally related to the accepted December 1, 2017 employment incident.

In support of his claim, appellant submitted a report dated December 5, 2017 from Dr. Larey. Dr. Larey initially diagnosed left knee pain prior to appellant receiving an MRI scan. In a work status form of even date, he checked the box marked "yes" indicating that appellant's injury was work related. The Board has held that pain is a symptom and not a compensable medical diagnosis.[11] Also, the Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[12] Accordingly, the reports from Dr. Larey are insufficient to establish appellant's claim.

Appellant also submitted reports dated December 19, 2017, January 16, and 23, 2018 from Dr. Dodd. Dr. Dodd reviewed appellant's MRI scan and diagnosed left knee lateral meniscus tear in each of his reports; however, he did not opine as to the cause of appellant's diagnosed condition. 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] Thus, Dr. Dodd's reports are insufficient to establish appellant's claim.

In a letter dated August 17, 2018, Dr. Dodd diagnosed lateral meniscus tear based on an MRI scan. He opined that appellant's condition was caused by the employment-related incident on December 1, 2017 based on the acute development of his symptoms in that specific knee compartment. The Board has frequently explained that conclusory medical opinions, are entitled to little probative weight and are insufficient to support a causal relationship claim.[14] Without

[8] *E.S., supra* note 5; *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[11] *M.J.*, Docket No. 18-1114 (issued February 5, 2019); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[12] *M.J., id.*; *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[13] *C.C.*, Docket No. 17-1841 (issued December 6, 2018); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[14] *M.E.*, Docket No. 18-0330 (issued September 14, 2018); *A.D.*, 58 ECAB 149 (2006).

explaining how physiologically the movements involved in the employment incident caused or contributed to the diagnosed knee condition, Dr. Dodd's opinion on causal relationship is equivocal in nature and of limited probative value.[15]

OWCP also received a diagnostic study dated December 11, 2017 from Dr. Robbins. However, diagnostic studies lack probative value as they do not address whether appellant's employment incident caused the diagnosed condition.[16]

As appellant has not submitted rationalized medical evidence establishing causal relationship between his diagnosed left knee condition and the accepted December 1, 2017 employment incident, the Board finds that he has not met his 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 his burden of proof to establish that his left knee condition was causally related to the accepted December 1, 2017 employment incident.

[15] *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

[16] *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

ORDER

IT IS HEREBY ORDERED THAT the September 7, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 19, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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