United States Department of Labor
Employees' Compensation Appeals Board

S.H., Appellant	)	
and	)	**Docket No. 19-0916**
	)	**Issued: October 4, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Mason, OH, Employer	)	

Appearances:
Alan J. Shapiro, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 25, 2019 appellant, through counsel, filed a timely appeal from a January 30, 2019 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.

[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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a right knee condition causally related to the accepted September 22, 2017 employment incident.

FACTUAL HISTORY

On September 22, 2017 appellant, then a 38-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his right knee when he felt something pop in his knee after exiting his truck to deliver mail to a cluster box unit (CBU) while in the performance of duty. On the reverse side of the claim form, appellant's supervisor indicated that he noticed that appellant had a wrap around his injured knee at the beginning of the week which was prior to the claimed date of injury. Appellant stopped work that day.

In a letter dated September 27, 2017, the employing establishment controverted the claim, asserting that appellant's knee injury may not be job related. It reiterated that the postmaster noticed appellant wearing a blue wrap on his right knee prior to the claimed date of injury.

In a development letter dated October 2, 2017, OWCP advised appellant that additional factual and medical evidence was necessary to establish his claim. It requested that he complete a questionnaire regarding the factual circumstances of his injury and provide additional medical evidence. OWCP afforded appellant 30 days to submit the requested evidence.

In a September 22, 2017 emergency room record, Dr. Robert Whitford, Board-certified in emergency medicine, noted that appellant presented with right knee pain and explained that he experienced an onset of severe pain after he felt a pop in his right knee while walking and delivering mail. On examination he found no evidence of a grossly unstable knee and referred appellant to orthopedic surgery for a magnetic resonance imaging (MRI) scan of the knee. An x-ray of the right knee revealed no fracture or dislocation.

In a letter of even date, Dr. Whitford indicated that he treated appellant that day and that he could return to work on September 24, 2017, but should not bear any weight on his injured leg.

OWCP also received a September 25, 2017 office note from Dr. Christopher Utz, a Board-certified orthopedic surgeon, who noted that appellant had pain in his right knee at full flexion and tenderness in his medial joint, but indicated that his knee was ligamentously stable. Dr. Utz assessed right knee pain with "possible meniscus tear." In a statement of even date, he opined that appellant could return to work, but with limitations for no prolonged standing or walking, no lifting greater than 10 pounds, no squatting, and mostly sedentary work.

A September 25, 2017 right knee x-ray interpreted by Dr. Brian Guarnieri, Board-certified in internal medicine, revealed no evidence of acute osseous abnormality.

On October 11, 2017 appellant responded to OWCP's development questionnaire. He explained that when he was walking from the first CBU to the second, he felt a pop in his right knee. Appellant indicated that he felt extreme pain in his right knee and could not bear any weight on his right side. He then secured the mail, returned to his truck, and called management.

Appellant asserted that he had no prior injuries or symptoms before the September 22, 2017 incident.

By decision dated November 6, 2017, OWCP denied appellant's claim finding that he had not submitted medical evidence containing a medical diagnosis in connection with the accepted September 22, 2017 employment incident.

OWCP continued to receive evidence, including previously submitted medical notes and records.

On February 5, 2018 appellant followed up with Dr. Utz for a postoperative examination following right knee arthroscopy with medial meniscus repair and chondroplasty performed on December 29, 2017. Dr. Utz noted that he was doing well, with minimal complaints of pain, and concluded that it was reasonable for appellant to return to work the following week.

In an April 16, 2018 progress note, Dr. Utz noted that appellant was recovering well and diagnosed acute right-sided medial meniscal tear.

On July 23, 2018 appellant, through counsel, requested reconsideration of OWCP's November 6, 2017 decision.

Along with his request, appellant submitted medical records from Dr. Jay Hayner, Board-certified in internal medicine, for the period December 2, 2014 through February 8, 2018. In a November 16, 2017 office visit note, Dr. Hayner diagnosed acute pain of the right knee and on examination appellant was found to have some tenderness along the medial joint with no evidence of effusion. He also noted that appellant was requesting a note providing that he could continue performing light-duty work.

In an office visit note dated December 19, 2017, Dr. Hayner noted that appellant had been referred by Dr. Utz for a preoperation physical examination and medical clearance for right knee arthroscopy scheduled on December 29, 2017. He was medically cleared for surgery and anesthesia.

Appellant also provided a February 8, 2018 note from Dr. Hayner indicating that appellant was seen in follow up for his depression.

By decision dated January 30, 2019, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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

[3] *Supra* note 2.

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 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.[7] 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.[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] 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.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted September 22, 2017 employment incident.

OWCP received February 5 and April 16, 2018 progress notes from Dr. Utz diagnosing an acute right medial meniscus tear in relation to a December 29, 2017 right knee arthroscopy. However, Dr. Utz' diagnosis is vague, as he did not provide a specific date of injury or describe a mechanism of injury in relation to appellant's medial meniscus tear.[12] Because his diagnosis does

[4] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[6] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[8] *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *T.M.*, Docket No. 19-0380 (issued June 26, 2019); *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[11] *T.M., id.; J.L.*, Docket No. 18-1804 (issued April 12, 2019).

[12] *C.L.*, Docket No. 18-1323 (issued January 3, 2019).

not comment on whether the September 22, 2017 employment incident caused appellant's meniscus tear, it is insufficient to establish appellant's burden of proof.[13]

In his September 25, 2017 medical record, Dr. Utz assesses right knee pain and a possible meniscus tear. The Board has held that, under FECA, the assessment of pain is not considered a diagnosis, as pain merely refers to a symptom of an underlying condition.[14] Additionally, Dr. Utz' diagnosis of a "possible meniscus tear" is also of diminished probative value as it is speculative in nature.[15] Accordingly, his September 25, 2017 report is insufficient to establish appellant's burden of proof.

Similarly, the medical records of Drs. Whitford and Hayner are also insufficient to establish appellant's burden of proof. Dr. Whitford's September 22, 2017 and Dr. Hayner's November 16 and December 19, 2017 medical records only made note of appellant's acute right knee pain. As previously noted, pain is not considered a valid diagnosis and; therefore, these medical records are also of limited probative value and insufficient to establish appellant's burden of proof.[16]

Dr. Hayner's remaining medical records are of no probative value as they either do not address appellant's claimed right knee injury or are dated prior to the accepted September 22, 2017 employment incident.

Additionally, appellant submitted x-ray reports dated September 22 and 25, 2017, neither of which contain a diagnosis of an injury to appellant's right knee. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between the accepted employment factors and a diagnosed condition.[17]

As the medical evidence of record is insufficient to establish a medical diagnosis in connection with the accepted employment incident, the Board finds that appellant has not met his burden of proof to establish his claim.

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.

[13] *Supra* note 9.

[14] *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, not a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[15] Medical opinions that are speculative or equivocal in character are not well rationalized and are of diminished probative value. *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

[16] *Supra* note 12.

[17] *See J.M.*, Docket No. 17-1688 (issued December 13, 2018).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted September 22, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 4, 2019
Washington, DC

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

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

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