United States Department of Labor
Employees' Compensation Appeals Board

O.C., Appellant	)	
and	)	**Docket No. 19-0551**
	)	**Issued: September 17, 2019**
DEPARTMENT OF THE ARMY, ARMY BENEFIT CENTER, Fort Riley, KS, 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:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 14, 2019 appellant, through counsel, filed a timely appeal from a December 19, 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted February 20, 2018 employment incident.

[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.*

FACTUAL HISTORY

On March 2, 2018 appellant, then a 54-year-old professor, filed a traumatic injury claim (Form CA-1) alleging that, on February 20, 2018, he slipped on an icy curb while stepping from the parking lot onto a sidewalk, and sustained injury to his left wrist, right hip, and right knee while in the performance of duty. He stopped work on the date of injury and returned to work on February 21, 2018. The employing establishment acknowledged on the reverse side of the claim form that the incident occurred while appellant was in the performance of duty.

In a development letter dated March 19, 2018, OWCP informed appellant that he had not submitted sufficient factual or medical evidence to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a February 20, 2018 treatment note, Dr. Michael Dlugopolski, a Board-certified family practitioner, noted that appellant walked across a handicap parking lot adjacent to his building and when he reached the sidewalk, he stepped up, slipped and fell on his left wrist, right hip, and right knee. He noted that appellant was given a wrist brace. Dr. Dlugopolski also noted that appellant had previously undergone a total right knee arthroscopy in February 2004.

A February 20, 2018 x-ray of appellant's right knee read by Dr. Jon Jaksha, a Board-certified diagnostic radiologist, found that appellant had a total knee prosthesis, and no acute fractures. A March 5, 2018 x-ray of appellant's left wrist, was read by Dr. Matthew R. Mendlick, a diagnostic radiologist, who found no fracture or other acute findings.

A March 14, 2018 computerized tomography (CT) scan of the right knee read by Dr. Wyatt Hadley, a Board-certified diagnostic radiologist, revealed postsurgical changes of a right knee total arthroplasty, chronic soft tissue calcification or intra-articular loose bodies, and calcific densities with the posterior joint space at the level of the polyethylene spacer, consistent with several intra-articular loose bodies and no clear peri-implant fracture. A March 14, 2018 CT scan of the left wrist, also read by Dr. Hadley, revealed moderate osteoarthritis of the wrist.

In an April 2, 2018 attending physician's report (Form CA-20), Dr. Dlugopolski diagnosed left wrist and right knee pain. He checked a box marked "yes" indicating that he believed the conditions found were caused or aggravated by the employment incident.

Appellant completed OWCP's questionnaire on April 2, 2018. He noted that he was on the employing establishment premises while walking to work when he slipped and fell. Appellant also confirmed that he had permission to use the "handicap parking lot."

In an April 16, 2018 letter, W.J., the employing establishment deputy director, confirmed that appellant was on the employing establishment premises at the time of the incident.

By decision dated May 14, 2018, OWCP found that the employment incident occurred in the performance of duty as alleged, but denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted incident.

On May 22, 2018 appellant, through counsel, requested a telephonic hearing, before an OWCP hearing representative. The telephonic hearing was held on October 11, 2018.

In an October 10, 2018 report, Dr. Kelly J. Hendricks, a Board-certified orthopedic surgeon, noted that appellant was seen for complaints of right knee pain. He related that appellant had undergone a total right knee replacement in 2004, and that he was doing "great" until he fell on ice in February 2018. Dr. Hendricks explained that, prior to the fall, appellant had no knee pain or need for assistive devices. He explained that, after the fall, appellant reported symptoms, as well as limits on range of motion that he believed were due to the fall as well as to the prior knee replacement. Dr. Hendricks found evidence of significant posterior capsule calcification and noted that he suspected a posterior cruciate ligament (PCL) injury.

By decision dated December 19, 2018, OWCP's hearing representative affirmed the May 14, 2018 decision finding that appellant had not established "a medical diagnosis in conjunction with the injury event."

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,[3] 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.[4] 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.[5]

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. 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]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[8] 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

[3] *See C.W.*, Docket No. 19-0231 (issued July 15, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[5] *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).

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

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

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

between the diagnosed condition and the specific employment factors identified by the employee.[9] 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.[10]

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.[11] Section 10.126 of Title 20 of the Code of Federal Regulations provides that a decision shall contain findings of fact and a statement of reasons. The Board has held that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.[12]

ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant submitted reports from Dr. Hadley who diagnosed postsurgical changes of a right knee total arthroplasty, chronic soft tissue calcification or intra-articular loose bodies, and calcific densities with the posterior joint space at the level of the polyethylene spacer, consistent with several intra-articular loose bodies. Dr. Hadley also noted that as to the left wrist, a March 14, 2018 CT scan which revealed moderate osteoarthritis of the wrist.

The Board finds that the medical reports of Dr. Hadley provide medical diagnoses. The Board further finds, however, that OWCP has not made findings of fact or legal conclusions as to causal relationship.[13] As such, it did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that appellant could understand the basis for the decision, as well as the precise defect and the evidence needed to overcome the denial of his traumatic injury claim.[14] As noted above, 5 U.S.C. § 8124(a) provides: "[OWCP] shall determine and make a finding of facts and make an award for or against payment of compensation." Also, 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP shall contain findings of fact and a statement of reasons. As OWCP did not provide findings of fact and a statement of reasons, appellant was unable to understand the precise defect of the claim and the kind of evidence which would overcome it.

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

[10] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[11] 5 U.S.C. § 8124(a).

[12] *L.M.*, Docket No. 13-2017 (issued February 21, 2014); *D.E.*, Docket No. 13-1327 (issued January 8, 2014); *L.C.*, Docket No. 12-0978 (issued October 26, 2012); Federal (FECA) Procedure Manual Part 2 -- Claims, *Disallowances* Chapter 2.1400.5 (February 2013) (all decisions should contain findings of fact sufficient to identify the benefit being denied and the reason for the disallowance).

[13] *Id.*

[14] *M.J.*, Docket No. 18-0605 (issued April 12, 2019); *K.J.*, Docket No. 14-1874 (issued February 26, 2015). *See also J.J.*, Docket No. 11-1958 (issued June 27, 2012).

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 17, 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