United States Department of Labor
Employees' Compensation Appeals Board

J.D., Appellant	)	
and	)	**Docket No. 19-0382**
	)	**Issued: January 3, 2020**
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, Washington, DC, Employer	)	

Appearances:
Appellant, pro se
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 12, 2018 appellant filed a timely appeal from August 16 and November 5, 2018 merit decisions of the Office of Workers' Compensation Programs (OWCP).[1] 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] Appellant timely requested oral argument before the Board. By order dated December 4, 2019, the Board exercised its discretion and denied the request as the matter could be adequately addressed based on a review of the case record. *Order Denying Oral Argument*, Docket No. 19-0382 (issued December 4, 2019).

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that appellant submitted additional evidence to OWCP following the November 5, 2018 decision. 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 an injury in the performance of duty on May 2, 2018, as alleged.

FACTUAL HISTORY

On May 3, 2018 appellant, then a 46-year-old line sergeant, filed a traumatic injury claim (Form CA-1) alleging that on May 2, 2018 he experienced left knee pain when he stepped on uneven ground as he was jogging during physical fitness training while in the performance of duty. He related that he stopped jogging and applied ice to his knee. Appellant did not stop work. S.B., his supervisor, acknowledged on the claim form that appellant was in the performance of duty at the time of the alleged injury.

In a report dated May 17, 2018, Dr. Debra K. Spatz, an osteopath, evaluated appellant for pain in his left knee that had occurred when "he was running for physical training and stepped on uneven ground and his knee buckled and he had to limp back to the office." On examination she found grade 1 effusion and pain. Dr. Spatz diagnosed pain of the left knee medial compartment with a positive McMurray's sign and to rule out a medial meniscus tear.

In a development letter dated June 28, 2018, OWCP advised appellant of the deficiencies of his claim. It requested that he submit additional factual and medical evidence and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

Thereafter, OWCP received a May 2, 2018 incident record form from the employing establishment. Appellant reported that, on that date, he was jogging as part of authorized physical fitness training "when he stepped on uneven ground and his left knee buckled causing pain to his left knee." He went on to explain that he could no longer jog and returned to the office to apply ice to his knee and complete a traumatic injury claim form.

A June 19, 2018 computerized tomography (CT) scan of appellant's left knee revealed a radial tear in the body of the medial meniscus.

In a progress report dated June 25, 2018, Dr. Spatz indicated that appellant had sustained an employment injury to his left knee when his knee buckled while he was jogging in May as part of physical training. She diagnosed a left knee torn meniscus and recommended surgery.

By decision dated August 16, 2018, OWCP denied appellant's traumatic injury claim. It found that he had failed to establish that the May 2, 2018 employment incident occurred as alleged, noting that he had not responded to its request for additional factual and medical evidence. OWCP further found that the medical evidence submitted was insufficient to establish that he had sustained a diagnosed medical condition due to the employment incident, noting that appellant had sustained prior employment injuries to his left knee. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On August 24, 2018 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received a supplemental incident report dated May 7, 2018, wherein S.B. related that appellant had emailed him on May 2, 2018 advising that he had injured his left knee when he had stepped on uneven ground while jogging during physical fitness training. S.B. asserted that he did not see appellant limping on May 2, 2018, but that the following week he had a "significant and obvious limp." Appellant told S.B. that he was still having difficulties "from the injury of the previous week."

By decision dated November 5, 2018, OWCP's hearing representative affirmed the August 16, 2018 decision. The hearing representative found that appellant had not factually established the occurrence of the alleged May 2, 2018 employment incident and additionally found that the medical evidence failed to explain how any condition was caused by the claimed employment injury.

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 filed within the applicable time limitation period of FECA,[5] 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 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 on a traumatic injury or an occupational disease.[7]

To determine whether an employee 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, 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.[8] The second component is whether the employment incident caused a personal injury.[9]

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of

[4] *Supra* note 2.

[5] *See R.B.*, Docket No. 18-1327 (issued December 31, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *Y.K.*, Docket No. 18-0806 (issued December 19, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *R.E.*, Docket No. 17-0547 (issued November 13, 2018; *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *D.C.*, Docket No. 18-1664 (issued April 1, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

action.[10] The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence that cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[11]

ANALYSIS

The Board finds that appellant has established that the May 2, 2018 employment incident occurred, as alleged.

In his May 3, 2018 traumatic injury claim (Form CA-1), appellant related that he had sustained left knee pain on May 2, 2018 when he stepped on uneven ground while jogging during physical fitness training. He immediately notified his supervisor of the incident and completed an incident report for the employing establishment on May 2, 2018 detailing the mechanism of injury. Appellant related that he stopped jogging and returned to his office to apply ice to his knee and complete a traumatic injury claim form. The medical reports of record provided a consistent history of him injuring his knee when he stepped on uneven ground while jogging. Furthermore, the employing establishment acknowledged on the reverse side of the claim form that appellant was injured in the performance of duty. Appellant's supervisor, S.B., indicated that he had emailed him on May 2, 2018 advising that he had injured his left knee when stepping on uneven ground while jogging as part of his physical fitness training.

As noted above, the Board has held that a claimant's statement that an injury occurred as a given time, place, and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[12] The Board finds that, given the consistency and specificity of appellant's description of the May 2, 2018 employment incident and the lack of contradictory evidence, he has established that the May 2, 2018 incident occurred as alleged.

The question therefore becomes whether the May 2, 2018 accepted employment incident resulted in an injury to his left knee.

On May 17, 2018 Dr. Spatz obtained a history of appellant experiencing left knee pain after he stepped on uneven ground while running during physical training. She diagnosed left knee medial compartment pain and to rule out a medial meniscal tear. While Dr. Spatz provided a history of the May 2, 2018 employment incident, she failed to provide a firm diagnosis or address causation. The Board has held that pain is a symptom and not a compensable medical diagnosis.[13]

[10] *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

[11] *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464 (2007).

[12] *T.J.*, Docket No. 17-0831 (issued November 7, 2017); *D.B.*, 58 ECAB 464 (2007).

[13] *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

Lacking a firm diagnosis and reasoned medical opinion regarding causal relationship, Dr. Spatz' report is insufficient to meet appellant's burden of proof.[14]

In a June 25, 2018 report, Dr. Spatz advised that appellant had sustained an employment injury to his left knee while jogging in May 2018 while participating in physical training. She diagnosed a tear of the left meniscus. While Dr. Spatz indicated that appellant had experienced an employment injury, she failed to provide any rationale for her opinion or directly relate the left meniscal tear to the May 2018 employment incident. The Board has held that a medical report is of limited probative value on a given medical issue if it contains a medical opinion which is unsupported by medical rationale.[15]

Appellant has the burden of proof to submit rationalized medical evidence establishing that he sustained a left knee injury causally related to the accepted May 2, 2018 employment incident.[16] He failed to submit such evidence and thus did not meet his burden of proof.[17]

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has established an injury in the performance of duty on May 2, 2018, as alleged. The Board further finds, however, that appellant has not established an injury causally related to the accepted May 2, 2018 employment incident.

[14] *T.G.*, Docket No. 19-0904 (issued November 25, 2019).

[15] *See L.S.*, Docket No. 19-0959 (issued September 24, 2019).

[16] *See D.T.*, Docket No. 17-1734 (issued January 18, 2018).

[17] *See D.S.*, Docket No. 18-0061 (issued May 29, 2018).

ORDER

IT IS HEREBY ORDERED THAT the November 5 and August 16, 2018 decisions of the Office of Workers' Compensation Programs are affirmed as modified.

Issued: January 3, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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