United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 20-1066**
	)	**Issued: June 7, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Bound Brook, NJ, Employer	)	

Appearances:
Robert D. Campbell, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 21, 2020 appellant, through counsel, filed a timely appeal from a March 23, 2020 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 established his burden of proof for a right knee injury causally related to the accepted June 10, 2014 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 11, 2014 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 10, 2014 his right knee buckled when he was descending stairs while in the performance of duty. He stopped work on June 11, 2014. Appellant's supervisor noted that appellant had previous problems with his knees.[4]

By decision dated July 24, 2014, OWCP accepted that the June 10, 2014 incident occurred as alleged, but denied the claim as the medical evidence of record was insufficient to establish that appellant's diagnosed conditions, including right knee strain, were causally related to the accepted June 10, 2014 employment incident.

On January 28, 2015 OWCP received a January 19, 2015 request for reconsideration, counsel's brief in support of reconsideration, and medical evidence. By decision dated April 20, 2015, it denied modification of its July 24, 2014 decision.

On November 20, 2015 OWCP received appellant's November 15, 2015 request for reconsideration, counsel's brief in support of reconsideration, and new evidence. By decision dated February 18, 2016, it denied modification of its prior.

Appellant filed a timely appeal to the Board on March 23, 2016. By decision dated November 25, 2016, the Board affirmed OWCP's February 18, 2016 decision.

Appellant, through counsel, requested reconsideration by OWCP on June 27, 2017. In an attached brief, counsel argued that the March 26, 2017 report of Dr. Hari P. Bezwada, a Board-certified orthopedic surgeon, established causal relationship. OWCP received a duplicate copy of an October 3, 2014 magnetic resonance imaging (MRI) scan of the right knee, which noted a medial meniscal tear, and a copy of Dr. Bezwada's March 26, 2017 report.

In his March 26, 2017 report, Dr. Bezwada noted that on December 19, 2013 he began treating appellant regarding bilateral knee pain with some degree of progressive symptoms. He noted that appellant had a prior history of bilateral knee arthroscopies in 2009. Dr. Bezwada indicated that he evaluated appellant on September 30, 2014 as a result of his June 10, 2014 work

[3] Docket No. 16-0885 (issued November 25, 2016), *petition for recon. denied*, Docket No. 16-0885 (issued December 19, 2017); *Order Dismissing Appeal*, Docket No. 18-0241 (issued July 19, 2018).

[4] The employing establishment indicated that appellant had been on light duty since December 19, 2013 as an accommodation for nonwork-related medical conditions.

injury, when appellant's right knee buckled while descending the staircase from a second floor bathroom. He indicated that appellant was holding onto a handrail when his right knee buckled, causing him to fall down onto the stairs, landing on his buttock. Dr. Bezwada indicated that this flexion and twisting event led to meniscal tear and meniscal pathology. He noted appellant's September 30, 2014 examination findings and medical course, including a recurrent meniscal tear in April 2015. Dr. Bezwada indicated that appellant's September 30, 2014 examination findings were similar to his December 19, 2013 examination findings, but with increased pain and symptoms. He indicated that, while appellant had some preexisting symptoms, his pain pattern acutely changed following the June 10, 2014 work-related injury, developing acute strain and aggravation involving the right knee which became symptomatic. Dr. Bezwada explained that the hyperflexion twisting event was enough to aggravate appellant's preexisting arthritis and probably enough to create strain and tearing of the posterior horn of the medial meniscus and additional meniscal tear and pathology involving the medial meniscus. He further explained that it was not uncommon to develop a new tear of degenerative meniscus with minor or normal events because the degenerative changes allow the meniscus to retear in a new area or in the same area or advancement. Dr. Bezwada pointed out "[n]ormal activities, work-related activities can certainly do that and especially a hyperflexion twisting event as [appellant] sustained can do that as well." He concluded that appellant had sustained an employment-related right knee injury which "is a limiting factor for [appellant]."

By decision dated September 25, 2017, OWCP denied modification of its prior decision.

On December 17, 2019 appellant, through counsel, requested reconsideration.

OWCP received a November 13, 2018 statement from appellant describing the June 10, 2014 employment incident. Appellant related that as he was descending a stairway he attempted to place both of his hands on the left hand rail, he pivoted towards the left handrail, as he pivoted, his right knee buckled, he lost his balance, and fell on his buttocks on the step.

Narrative reports from Dr. David Weiss, a pain medicine specialist, dated December 10, 2018 and June 21, 2019 were also received. In the December 10, 2018 report, he indicated that appellant sustained an employment-related injury on June 10, 2014 when while descending a flight of stairs, appellant twisted to grab a handrail and felt a pop in his right knee, which caused him to fall down the stairs. Dr. Weiss described appellant's course of treatment, MRI scan findings, and physical examination finding. He also noted that appellant had previously undergone bilateral knee surgery in 2009 and had returned to work with no restrictions. Dr. Weiss diagnosed post-traumatic internal derangement to the right knee secondary to mechanical instability with recurrent medial and lateral meniscus tears, post-traumatic patellofemoral pain syndrome to the right knee, osteochondral injury to the patellofemoral joint of the right knee, aggravation of preexisting right knee pathology with history of medial, and lateral meniscectomy, November 3, 2014 recurrent tears of the medial and lateral meniscus; progressive chondromalacia of the patellofemoral joint of the right knee, status post arthroscopic surgery with partial medial and lateral meniscectomies, May 27, 2015, and status post repeat chondroplasty of the patellofemoral joint, May 27, 2015. He indicated that the mechanism of injury was that of a mechanical instability secondary to descending steps. The injury occurred as appellant was holding onto the bilateral rails going down steps which precipitated the "mechanical instability of the asymptomatic right knee for which, afterwards, he sustained recurrent tears of the medial and lateral meniscus and an osteochoncral

injury to the right knee for which he has since undergone two defined surgeries, on November 3, 2014 and May 27, 2015."

In the June 21, 2019 report, Dr. Weiss discussed Dr. Bezwada's reports. He indicated that, in reviewing the pre and postaccident physical examination findings from Dr. Bezwada, that there were two differences. First, appellant had a positive McMurray test post-employment-related injury of June 10, 2014, which was not present before June 10, 2014. Second, he had exquisite medial joint line tenderness and a positive valgus load test consistent with some instability, which were not present in the examination prior to the June 10, 2014 employment injury.

By decision dated March 23, 2020, OWCP denied modification of prior decision.[5]

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,[7] 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.[8] 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.[9]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[10]

[5] The Board notes that, in its March 23, 2020 decision, OWCP indicated that appellant requested reconsideration of the Board's July 19, 2018 order. However, OWCP has no jurisdiction to review a Board order. The decisions and orders of the Board are final as to the subject matter appealed and such decisions and orders are not subject to review, except by the Board. *See* 20 C.F.R. § 501.6(d). The proper subject of review was OWCP's September 25, 2017 merit decision.

[6] *Supra* note 2.

[7] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[8] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[9] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[10] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[11] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.[12]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[13]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a right knee injury causally related to the accepted June 10, 2014 employment incident.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence that was previously considered in its November 25, 2016 decision. Findings made in prior Board decisions are *res judicata*, absent any further review by OWCP under section 8128 of FECA.[14]

Following the Board's November 25, 2016 decision, appellant requested reconsideration of his claim and submitted additional medical evidence in support of his request. In his March 26, 2017 report, Dr. Bezwada reported first treating appellant on December 19, 2013 almost seven months prior to the June 10, 2014 work injury. He noted that appellant's September 30, 2014 examination was similar to the examination findings of December 19, 2013 with increased pain and symptoms. Dr. Bezwada opined, with some explanation, that the June 10, 2014 hyperflexion twisting event was enough to aggravate appellant's preexisting arthritis and "probably" enough to create strain and tearing of the posterior horn of the medial meniscus and additional meniscal tear and pathology involving the medial meniscus. His opinion is speculative in nature.[15] Furthermore, while Dr. Bezwada related that the twisting incident was enough to aggravate appellant's preexisting arthritis, he failed to distinguish the effects of appellant's preexisting knee conditions from the claimed employment-related aggravation or sufficiently explain how the June 10, 2014

[11] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[12] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013); *see T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[14] *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020).

[15] *H.A.*, Docket No. 18-1455 (issued August 23, 2019) (medical opinions that are speculative or equivocal are of diminished probative value).

employment incident caused the alleged aggravation.[16] This report, therefore, is insufficient to establish that appellant's right knee conditions are causally related to the June 10, 2014 employment incident.

In his December 10, 2018 report, Dr. Weiss noted the history of the June 10, 2014 employment injury and provided diagnoses. He indicated that the mechanism of injury was a mechanical instability secondary to an asymptomatic right knee which occurred as appellant was holding onto the bilateral rails while descending steps. Dr. Weiss also noted, in his June 21, 2019 report, that Dr. Bezwada had reported some positive objective findings after the June 10, 2014 employment incident, which were not present in the examination prior to the employment incident. Dr. Weiss opined that appellant sustained recurrent tears of the medial and lateral meniscus and an osteochondral injury to the right knee for which he underwent surgery on November 3, 2014 and May 27, 2015. While he provided an affirmative opinion that, supported causal relationship, he provided no medical reasoning explaining how the June 10, 2014 employment incident would cause or aggravate a diagnosed medical condition.[17] Further, while Dr. Weiss noted differences between appellant's examination findings pre- and post- June 10, 2014, he did not provide a pathophysiological explanation as to how the accepted employment incident either caused or contributed to the diagnosed conditions and how those differences noted on appellant's examinations were due to the mechanism of injury.[18] The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.[19] For these reasons, the Board finds that his reports are also insufficient to meet appellant's burden of proof.

Appellant also submitted a duplicate copy of an October 3, 2014 MRI scan report. The Board has explained that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[20]

As the case record does not contain rationalized medical evidence sufficient to establish causal relationship between the accepted June 10, 2014 employment incident and his diagnosed conditions, the Board finds that he has not met his burden of proof.[21]

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.

[16] *Id.*; *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

[17] *See J.B.*, Docket No. 18-1006 (issued May 3, 2019).

[18] *See K.W.*, Docket No. 19-1906 (issued April 1, 2020); *R.D.*, Docket No. 18-1551 (issued March 1, 2019); *supra* note 13 at Chapter 2.805.3(e) (January 2013).

[19] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

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

[21] *See S.Y.*, Docket No. 20-0470 (issued July 15, 2020); *T.J.*, Docket No. 19-1339 (issued March 4, 2020).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right knee injury causally related to the accepted June 10, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 7, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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