United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 20-1525**
	)	**Issued: June 8, 2021**
DEPARTMENT OF THE TREASURY, U.S. MINT, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, *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 August 20, 2020 appellant, through counsel, filed a timely appeal from an April 30, 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.[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, following the April 30, 2020 decision, OWCP received additional evidence. 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 a right knee condition causally related to the accepted October 25, 2018 employment incident.

FACTUAL HISTORY

On October 26, 2018 appellant, then a 51-year-old metal forming machine operator, filed a traumatic injury claim (Form CA-1) alleging that on October 25, 2018 he felt his right knee snap as he stepped down from the platform of press 902 while in the performance of duty. On the reverse side of the claim form, his supervisor, C.C., acknowledged that the incident occurred in the performance of duty and that there was no willful misconduct involved. Appellant stopped work on October 25, 2018.

In support of his claim appellant submitted an October 26, 2018 witness statement from G.M., a supervisor, who reported that on October 25, 2018 as appellant was stepping out of the press he came down awkwardly and was immediately rubbing his right knee. G.M. recounted that appellant stated "that hurt" and was treated in the employing establishment dispensary.

Appellant was treated by Dr. Matthew McLean, a Board-certified orthopedist, on October 30, 2018, for right knee pain that began after he stepped out of a mint at work and felt a pop and burning pain in the medial aspect of the right knee. Dr. McLean reported a history of a prior knee arthroscopy; however, he was not sure if it was his left or right knee. He noted findings of an antalgic gait on the right, effusion, hypersensitivity, and pain in the medial joint line. Dr. McLean noted that x-rays of the right knee revealed mild medial joint space narrowing. He diagnosed pain in the right knee, other tear of medial meniscus, right knee, initial encounter, and effusion of the right knee. Dr. McLean aspirated appellant's right knee and provided a cortisone injection. He took appellant off work and referred him for a magnetic resonance imaging (MRI) scan. In a medical note dated October 30, 2018, Dr. McLean diagnosed right knee medial meniscus tear/effusion and aspirated the right knee. He indicated that appellant was temporarily totally disabled.[4]

In a November 14, 2018 development letter, OWCP advised appellant of the deficiencies of his claim, requested additional factual and medical evidence, and provided a questionnaire for his completion. It afforded him 30 days to respond.

Appellant submitted a signed statement of certification dated December 6, 2018, which was attached to OWCP's development letter; however, he did not respond to the development questionnaire.

In a December 6, 2018 attending physician's report (Form CA-20), Dr. McLean noted that appellant was injured at work on October 25, 2018 when appellant was stepping out of a mint and felt a pop and burning pain in the right knee. He diagnosed right knee medial meniscus tear and

[4] In a note dated November 1, 2018, Molly Pacius, a registered nurse and assistant to Dr. McLean, reported faxing a prescription for an MRI scan of the right knee to OWCP and was awaiting authorization for the test and the diagnostic results before returning appellant to work. By letter dated November 5, 2018, OWCP denied authorization for the MRI scan of the right knee because his claim was not adjudicated.

effusion of the right knee and checked a box marked "Yes" indicating that appellant's condition had been caused or aggravated by an employment activity.

By decision dated December 18, 2018, OWCP denied appellant's traumatic injury claim finding that the factual evidence of record was insufficient to establish that the employment incident occurred as described. Specifically, it noted that, as he had failed to respond to its development questionnaire, there was insufficient evidence to establish the injury or event occurred. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. Appellant was treated in the employing establishment dispensary on October 25, 2018 for right knee pain. In a patient care injury report dated October 25, 2018, a health care provider whose signature was illegible, noted that as appellant stepped out of press 903 he felt a sensation in the medial aspect of the right knee. Physical examination revealed pain in the right medial meniscus with range of motion and walking. Appellant was diagnosed with right knee pain, rule out internal derangement, and history of meniscal injury 25 years prior. He was released to sedentary duty. In an employee disposition form dated October 25, 2018, the health care provider diagnosed right knee pain and recommended sedentary work only. In a form report dated January 3, 2019, an employing establishment registered nurse noted appellant was able to fully perform the physical requirements of the position.

Dr. McLean evaluated appellant in follow-up on December 27, 2018, for right knee pain. He reported improvement in his right knee range of motion. Appellant provided clarification of how the injury occurred stating that he was stepping out of a press at the mint while at work. Dr. McLean reviewed prior medical records, which showed that appellant had surgery on the left knee on October 11, 2001. He diagnosed other tear of the medial meniscus, current injury, right knee, subsequent encounter, and right knee medial meniscus tear. Dr. McLean noted that there was no history of prior surgery on the affected right knee. He indicated that the initial injury occurred when appellant was stepping out of a press at the mint. In a medical note dated December 27, 2018, Dr. McLean diagnosed right knee medial meniscus tear and returned appellant to work full duty on January 3, 2019.

In a statement dated January 10, 2019, appellant indicated that on October 25, 2018 while stepping off a platform to exit a press he felt his knee snap and give out. He indicated that his supervisor, G.M., witnessed the incident and sent him to the infirmary. Appellant sought treatment from Dr. McLean on October 30, 2018 who aspirated appellant's right knee and provided a cortisone injection. He also reported a prior injury to his left knee in 2001.

On January 14, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on April 4, 2019.

By decision dated July 23, 2019, OWCP's hearing representative modified the December 18, 2018 decision, finding that appellant had established that the employment incident occurred as alleged, but affirmed the denial of the claim, finding that the medical evidence of record was insufficient to establish a causal relationship between appellant's diagnosed conditions and the accepted October 25, 2018 employment incident.

OWCP received an October 3, 2019 report from Dr. McLean, who reviewed a September 10, 2019 MRI scan of the right knee, which revealed a complex tear of the posterior horn of the medial meniscus and degenerative changes in the medial compartment.[5] Appellant reported continued sharp pain across the medial aspect of the right knee. Examination of the right knee revealed positive medial joint line tenderness and positive McMurray's to the medial joint. Dr. McLean diagnosed other tear of the medial meniscus, current injury, right knee, subsequent encounter, and pain in the right knee. He administered a cortisone injection into the right knee.

In a January 23, 2020 narrative, Dr. McLean summarized his examination findings and treatment of appellant's right knee on October 30 and December 27, 2018 and October 3, 2019. He opined that appellant developed a symptomatic right knee medial meniscus tear as a result of the work injury on October 25, 2018 with acute effusion and onset of pain. Appellant reported an acute effusion and an acute onset of pain. He underwent an MRI scan of the right knee on September 10, 2019, which confirmed that he had a meniscal tear. Dr. McLean noted administering several cortisone injections with short-term relief and opined that appellant would be a candidate for knee arthroscopy and partial medial meniscectomy. He indicated that his opinions were based upon a reasonable degree of medical certainty.

On January 31, 2020 appellant requested reconsideration.

By decision dated April 30, 2020, OWCP denied modification of the decision dated July 23, 2019.

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the

[5] This diagnostic study is not in the case record before the Board.

[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).

employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[10]

The medical evidence required to establish a causal relationship 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 incident identified by the employee.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted October 25, 2018 employment incident.

In support of his claim appellant submitted an October 30, 2018 report from Dr. McLean who repeated appellant's history of injury, noting that his right knee pain began after he stepped out of a press at the mint where he worked. He diagnosed pain in the right knee, other tear of medial meniscus, right knee, effusion of the right knee, and right knee medial meniscus tear. The Board has held that the mere recitation of patient history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.[13] Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's report is of limited probative value.[14]

In a December 27, 2018 report, Dr. McLean noted that appellant clarified that his injury occurred while stepping out of a press at the mint where he worked. He diagnosed other tear of the medial meniscus, current injury, right knee, subsequent encounter, and right knee medial meniscus tear. Dr. McLean noted that there was no history of prior surgery on the affected right knee and opined that the initial injury occurred when appellant was stepping out of a press at the mint. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was related to an accepted employment incident.[15] Without explaining how stepping out of a press at the mint caused or contributed to appellant's injuries, Dr. McLean's December 27, 2018 report is of limited probative value.[16] Therefore, his medical report is insufficient to meet appellant's burden of proof.

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[10] *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[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] *N.S.*, Docket No. 19-0167 (issued June 21, 2019); *J.G.*, Docket No. 17-1382 (issued October 18, 2017).

[14] *M.N.*, Docket No. 19-0694 (issued September 3, 2019); *A.B.*, Docket No. 16-1163 (issued September 8, 2017).

[15] *G.R.*, Docket No. 19-0940 (issued December 20, 2019); *D.L.*, Docket No. 19-0900 (issued October 28, 2019).

[16] *See R.C.*, Docket No. 19-1770 (issued March 27, 2020); *A.P.*, Docket No. 19-0224 (issued July 11, 2019).

In medical note dated October 30, 2018, Dr. McLean diagnosed right knee medical meniscus tear and opined that appellant was temporarily totally disabled. In a medical note dated December 27, 2018, he diagnosed right knee medial meniscus tear and returned appellant to work full duty on January 3, 2019. Similarly, an October 3, 2019 report from Dr. McLean noted reviewing a September 10, 2019 MRI scan of the right knee and diagnosed other tear of the medial meniscus, current injury, right knee, subsequent encounter, and pain in the right knee. The Board has held that medical evidence that does not provide an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[17] As these notes do not address causation, they are of no probative value and insufficient to meet appellant's burden of proof.

In a Form CA-20 dated December 6, 2018, Dr. McLean diagnosed right knee medial meniscus tear and effusion of the right knee and checked a box marked "Yes" indicating that the condition was caused or aggravated by the employment incident. The Board has held, however, that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the employment incident caused or aggravated the diagnosed condition, is of diminished probative value and insufficient to establish causal relationship.[18]

In a January 23, 2020 narrative, Dr. McLean opined that appellant developed a symptomatic right knee medial meniscus tear as a result of the work injury on October 25, 2018. Appellant reported an acute effusion and an acute onset of pain and an MRI scan of the right knee confirmed a meniscal tear. Dr. McLean indicated that his opinions were based upon a reasonable degree of medical certainty. While he provided affirmative opinions, which supported causal relationship, he did not offer a rationalized medical explanation in any of these reports to support his opinion. Medical evidence that provides a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[19]

The record contains a patient care injury report dated October 25, 2018, from a health care provider whose signature was illegible, who diagnosed right knee pain, rule out internal derangement. Similarly, in an employee disposition form dated October 25, 2018, the health care provider diagnosed right knee pain and recommended sedentary work only. The Board has held that a report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[20] These reports are, therefore, insufficient to establish appellant's claim.

Appellant submitted a November 1, 2018 medical note and a January 3, 2019 medical information duty status note, both from a registered nurse. However, certain healthcare providers such as registered nurses, physical therapists, and social workers are not considered "physician[s]"

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

[18] *See K.R.*, Docket No. 19-0375 (issued July 3, 2019); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[19] *C.V.*, Docket No. 18-1106 (issued March 20, 2019); *M.E.*, Docket No. 18-0330 (issued September 14, 2018); *A.D.*, 58 ECAB 149 (2006).

[20] *I.M.*, Docket No. 19-1038 (issued January 23, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019).

as defined under FECA.[21] Consequently, these reports do not constitute competent medical evidence.[22]

The record contains x-rays of the right knee. 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.[23]

As the case record does not contain rationalized medical evidence sufficient to establish causal relationship between the accepted October 25, 2018 employment incident and appellant's diagnosed conditions, the Board finds that appellant has not met his burden of proof.

On appeal, counsel contends that Dr. McLean's reports were sufficient to establish causal relationship. As discussed, however, appellant has not submitted rationalized medical evidence establishing that he sustained a right knee condition causally related to the accepted October 25, 2018 employment incident, and thus, has not met his burden of proof to establish his claim.[24]

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 a right knee condition causally related to the accepted October 25, 2018 employment incident.

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[21] Section 8101(2) provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." *See* 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA).

[22] *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

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

[24] *See K.K.*, Docket No. 19-1193 (issued October 21, 2019).

ORDER

IT IS HEREBY ORDERED THAT the April 30, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 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