

**United States Department of Labor
Employees' Compensation Appeals Board**

M.V., Appellant)	
)	
and)	Docket Nos. 21-1121
)	Issued: April 4, 2022
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Union, NJ, Employer)	
)	

Appearances:
Michael D. Overman, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 16, 2021 appellant, through counsel, filed a timely appeal from a February 3, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 met her burden of proof to establish a medical condition causally related to the accepted September 18, 2019 employment incident.

FACTUAL HISTORY

On September 26, 2019 appellant, then a 64-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on September 18, 2019 she injured her right knee when she tripped and fell on uneven ground while in the performance of duty. She did not stop work.³

In a development letter dated October 3, 2019, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received x-ray interpretations dated August 16, 2019 noting a normal pelvic interpretation and right knee osteoarthritis.

In a report dated October 4, 2019, Dr. Vincent K. McInerney, a Board-certified orthopedic surgeon, noted that on September 18, 2019 appellant injured her right knee when she tripped while walking with a coworker and fell onto her right knee at work. He noted findings on physical examination, diagnosed right knee acute meniscal tear and right hip trochanteric bursitis. Dr. McInerney related that appellant also had increasing right hip trochanteric bursa pain, which he believed was due to the fact that she had been limping with her right foot and had changed her gait pattern which further aggravated her right hip pain. In a work status report form of even date, he diagnosed right medial meniscus tear, right knee patellofemoral arthritis, and right hip trochanteric bursitis and he concluded that appellant should remain off work.

An October 4, 2019 right knee x-ray interpretation revealed mild lateral and patellofemoral osteoarthrosis.

In an October 10, 2019 report, Dr. Tifani Gleeson, a Board-certified occupational medicine physician, reviewed the medical record at the request of the employing establishment. She noted that appellant stopped work on October 7, 2019 and that the claim was under review. Dr. Gleeson noted that appellant had preexisting right knee and hip conditions that were being treated at the time of the fall on September 18, 2019. She opined that the diagnosed conditions had not been caused or aggravated by the September 18, 2019 employment incident.

³ OWCP assigned the present claim OWCP File No. xxxxxx552. On October 10, 2019 appellant filed another traumatic injury claim (Form CA-1) under OWCP File No. xxxxxx822 alleging that on February 23, 2019 she injured her hip when pushing a cart loaded with two full water cooler bottles while in the performance of duty. OWCP denied that claim by decisions dated November 22, 2019 and February 1, 2021. Appellant's claims have not been administratively combined by OWCP.

In a report dated October 24, 2019, Dr. McInerney noted that appellant complained of right knee pain. Appellant's physical examination findings were related as full right knee range of motion (ROM), no obvious right knee instability and normal bilateral lower extremity motor strength. Dr. McInerney diagnosed right hip trochanteric bursitis and acute right medial meniscal tear.

In an attending physician's report (Form CA-20) dated October 25, 2019, Dr. McInerney referenced OWCP File No. xxxxxx822 wherein appellant had fallen at work on February 23, 2019. He diagnosed right hip greater trochanteric bursitis. In a duty status form (Form CA-17) of even date, Dr. McInerney diagnosed trochanteric bursitis. He again noted the injury date of February 23, 2019 under OWCP File No. xxxxxx822.

By decision dated November 7, 2019, OWCP accepted that the September 18, 2019 employment incident occurred, as alleged, but denied appellant's claim as causal relationship had not been established between a diagnosed medical condition and the accepted employment incident.

Dr. McInerney, in a December 6, 2019 report, reiterated the findings and conclusions from his prior reports. In a work status report form of even date, he diagnosed right medial meniscus tear, right knee patellofemoral arthritis, and right hip trochanteric bursitis.

In a December 20, 2019 report, Dr. McInerney related that appellant continued to experience right hip trochanteric bursa pain from her claimed February 23, 2019 employment injury under OWCP File No. xxxxxx822. He also related that her new injury of September 18, 2019 was more consistent with right knee medial meniscal tear and some exacerbation of her chondromalacia patella. Dr. McInerney, in a work status report form of even date, diagnosed right medial meniscus tear and right knee patellofemoral arthritis.

In a March 10, 2020 report, Dr. McInerney diagnosed right hip trochanteric bursitis and right knee acute medial meniscal tear. He noted that appellant had increased tenderness of the right hip in the trochanteric region following a January 25, 2020 incident during which a chair appellant was sitting on at work collapsed and she landed on her right hip. In a work status report form of even date, Dr. McInerney diagnosed right medial meniscus tear, right knee patellofemoral arthritis, and right hip trochanteric bursitis.

On November 5, 2020 appellant, through counsel, requested reconsideration. In support of her request, she submitted a September 3, 2019 report from Dr. McInerney. Dr. McInerney noted that appellant had been struggling with right hip pain. He diagnosed right knee localized osteoarthritis and right acetabular labrum tear.

OWCP also received a magnetic resonance imaging (MRI) scan of appellant's right knee dated September 9, 2020. The report revealed findings of new small tear of the medial meniscus junction of the anterior horn and body extending to the inferior articular surface; finding consistent with prior meniscectomy of the posterior horn and body medial and lateral meniscus, no new lateral tear; progression of chronic ACL tear; new subchondral cystic changes with progressing articular chondromalacia and osteoarthritis; suggestion of small loose intra-articular bodies; and synovitis.

By decision dated February 3, 2021, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must be determined whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁸

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁹ 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.¹⁰

In a 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

⁴ *Id.*

⁵ *B.P.*, Docket No. 21-0872 (issued December 8, 2021); *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).

⁶ *B.P.*, *id.*; *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).

⁷ *B.P.*, *id.*; *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).

⁸ *B.P.*, *id.*; *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).

⁹ *B.P.*, *id.*; *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).

¹⁰ *B.P.*, *id.*; *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).

physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹¹

ANALYSIS

The Board finds appellant has not met her burden of proof to establish a medical condition causally related to the accepted September 18, 2019 employment incident.

In an October 4, 2019 report, Dr. McInerney diagnosed right knee acute meniscal tear and right hip trochanteric bursitis. He noted that appellant injured her right knee when she tripped and fell onto her right knee at work on September 18, 2019. However, this generalized statement does not establish causal relationship because it merely repeats her allegation and is unsupported by sufficient medical rationale explaining how the accepted September 18, 2019 employment incident actually caused a diagnosed medical condition.¹² 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.¹³ Thus, this report is of limited probative value and insufficient to establish that appellant sustained an employment-related injury.

In reports dated September 3, October 24, and December 6 and 20, 2019 and March 10, 2020, Dr. McInerney diagnosed right knee patellofemoral arthritis, right knee acute medial meniscal tear, right knee localized osteoarthritis, right acetabular labrum tear, and right hip trochanteric bursitis. However, he did not provide an opinion on a cause of appellant's diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁴ As Dr. McInerney has not offered an opinion as to whether appellant's diagnosed conditions are causally related to the accepted September 18, 2019 employment incident, his reports are of no probative value and are, therefore, insufficient to meet appellant's burden of proof.

The record also contains a Form CA-20 and a Form CA-17 dated October 25, 2019 from Dr. McInerney noting an injury date of February 23, 2019 under and OWCP File No. xxxxxx822 and diagnosed right hip greater trochanteric bursitis. Dr. McInerney's diagnosis was related to a February 23, 2019 injury date, which was prior to the accepted employment incident of September 18, 2019. As such, the right hip diagnosis contained in his October 25, 2019 Form CA-17 and Form CA-20 reports, appear to be related to a separate incident occurring prior to the accepted employment incident of September 18, 2019, are insufficient to establish a diagnosis of

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); see also *L.S.*, Docket No. 18-0518 (issued February 19, 2020).

¹² See *E.S.*, Docket No. 21-0341 (issued August 10, 2021); *J.B.*, Docket No. 18-1006 (issued May 3, 2019).

¹³ *E.S.*, *id.*; *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *D.S.*, Docket No. 20-0584 (issued June 15, 2021); *L.G.*, Docket No. 20-0433 (issued August 6, 2020); *S.D.*, Docket No. 20-0413 (issued July 28, 2020); *S.K.*, Docket No. 20-0102 (issued June 12, 2020); *L.B.*, *id.*; *D.K.*, *id.*

a right hip condition in connection with the accepted employment incident.¹⁵ Thus, these reports are insufficient to establish appellant's claim.

OWCP also received an October 10, 2019 report from Dr. Gleeson who opined that the diagnosed right knee and hip conditions had not been caused or aggravated by the accepted September 18, 2019 employment incident. The Board has held that medical evidence that negates causal relationship is of no probative value.¹⁶ For this reason, this report is insufficient to establish causal relationship.

While OWCP also received x-rays dated August 16 and October 4, 2019 and an MRI scan dated September 9, 2020, the Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁷ Such reports are, therefore, insufficient to establish appellant's claim.

As the medical evidence of record does not contain rationalized medical evidence establishing causal relationship between appellant's diagnosed conditions and the accepted September 18, 2019 employment incident, the Board finds that appellant has not met her burden of proof.

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 met not her burden of proof to establish a medical condition causally related to the accepted September 18, 2019 employment incident.

¹⁵ See *J.D.*, Docket No. 16-0887 (issued November 4, 2016); *M.E.*, Docket No. 14-399 (issued June 20, 2014); *C.G.*, Docket No. 11-1602 (issued March 23, 2012).

¹⁶ *C.M.*, Docket No. 21-0435 (issued October 22, 2021); *E.T.*, Docket No. 21-0014 (issued May 20, 2021); *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *M.C.*, Docket No. 19-1074 (issued June 12, 2020).

¹⁷ *A.B.*, Docket No. 20-1017 (issued June 11, 2021); *B.P.*, Docket No. 21-0872 (issued December 8, 2021); *T.J.*, Docket No. 19-1339 (issued March 4, 2020); *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

ORDER

IT IS HEREBY ORDERED THAT the decision dated February 3, 2021 of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2022
Washington, DC

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

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

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