United States Department of Labor
Employees' Compensation Appeals Board

C.D., Appellant	)	
and	)	**Docket No. 22-1191**
	)	**Issued: December 23, 2022**
DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Albuquerque, NM, 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:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 12, 2022 appellant, through counsel, filed a timely appeal from a July 14, 2022 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 has met his burden of proof to establish a left lower extremity condition causally related to the accepted February 24, 2021 employment incident.

FACTUAL HISTORY

On March 2, 2021 appellant, then a 36-year-old engineering technician, filed a traumatic injury claim (Form CA-1) alleging that on February 24, 2021 he twisted his left foot and felt a popping sensation and sharp pain in his left knee when climbing a wet soiled steep cut-slope while in the performance of duty. He did not stop work.

Appellant submitted visit notes from a February 25, 2021 encounter with Alexandra Thompson, a certified nurse practitioner, noting a chief complaint of knee pain. Ms. Thompson related that appellant reported that he was side-stepping at work yesterday when his leg did a counterclockwise turn and he felt a pop in his left knee, after which he could not put weight on the knee. She assessed an injury of the left knee and ordered ice, elevation, and a stability brace.

On February 25, 2021 Dr. Kimberly Martin, a Board-certified family medicine practitioner, provided an imaging order and referral for an orthopedic consultation.

A February 25, 2021 x-ray report of appellant's left knee noted an impression of no acute abnormality.

In a March 17, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical evidence needed to establish his claim and afforded him 30 days to submit the necessary evidence.

By decision dated April 20, 2021, OWCP accepted that the February 24, 2021 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a medical diagnosis in connection with the accepted February 24, 2021 employment incident. Thus, OWCP concluded that the requirements to establish an injury under FECA had not been met.

On May 10, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on August 10, 2021.

OWCP continued to receive evidence, including June 22, 2021 procedure notes from Dr. Brent Johnson, a Board-certified orthopedic surgeon, diagnosing a left medial meniscus tear and left knee chondromalacia. Dr. Johnson further described the arthroscopic partial medial meniscectomy and arthroscopic chondroplasty of medial femoral condyle, lateral femoral condyle, and trochlea that he performed on appellant.

By decision dated October 7, 2021, OWCP modified the April 20, 2021 decision to find that appellant had established a medical diagnosis in connection with the accepted February 24, 2021 employment incident. However, it denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted February 24, 2021 employment incident.

On April 20, 2022 appellant, through counsel, requested reconsideration and submitted additional evidence.

In a March 29, 2022 report, Dr. Johnson noted that appellant presented to his office on May 24, 2021 with a complaint of knee pain from a February 24, 2021 work injury. He related that appellant reported stepping to the side while on a slope, pivoting on his left leg, and feeling a pop in his left knee followed by immediate pain. Dr. Johnson interpreted his May 25, 2021 magnetic resonance imaging (MRI) scan results and diagnosed a complex tear of the left medial meniscus and chondromalacia of the knee. He noted that appellant had prior arthroscopic knee surgery in 2011 and left medial meniscus arthroscopic repair in 2016, and that chondromalacic changes in his knee (articular cartilage injury/degeneration) were observed during those surgeries. Dr. Johnson opined that the injury described would create a rotational shearing stress between the femur and tibia, resulting in the transfer of that force to the medial meniscus, causing it to tear. He concluded that the February 24, 2021 injury caused the medial meniscus tear, which required surgery on June 22, 2021. Dr. Johnson further indicated that, while he could not provide an opinion with medical certainty regarding the acute changes of the preexisting chondromalacia related to the injury, a loss of meniscus function is associated with increased degenerative change of the involved compartment over time and could exacerbate the preexisting degenerative findings, due to the increase in contact pressure created by the loss of the meniscus function.

By decision dated July 14, 2022, OWCP denied modification of its October 7, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[4] 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.[5] 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.[6]

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. The first component is whether he or she actually experienced the employment incident at the time and place, and in the manner alleged.

[3] *Supra* note 2.

[4] *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).

[5] *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).

[6] *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).

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] 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 the specific employment incident identified by the claimant.[9]

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.[10]

ANALYSIS

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

In his March 29, 2022 letter, Dr. Johnson recounted the history of injury as reported by appellant and diagnosed a complex tear of the left medial meniscus and chondromalacia of the knee. He noted that appellant had prior left knee arthroscopic surgeries and preexisting degenerative changes in his left knee. Dr. Johnson explained that the accepted February 24, 2021 injury created a rotational shearing stress between the femur and tibia, resulting in the transfer of that force to the medial meniscus, causing it to tear. He further opined that the loss of meniscus function could exacerbate the preexisting degenerative changes in appellant's left knee due to the increase in contact pressure created by the loss of the meniscus function.

The Board finds that, while Dr. Johnson's March 29, 2022 report is insufficiently rationalized to establish appellant's claim, it is sufficient to require further development of the medical evidence. Dr. Johnson provided an affirmative opinion on causal relationship and a pathophysiological explanation as to how the accepted February 24, 2021 employment incident caused appellant's diagnosed medical condition and aggravated his preexisting left knee condition. There is no evidence contradicting Dr. Johnson's opinion on causation. His report raises an

[7] *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).

[8] *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).

[9] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

uncontroverted inference between his diagnosed medical conditions and the accepted employment incident and is, therefore, sufficient to require OWCP to further develop appellant's claim.[11]

The Board will, therefore, remand the case to OWCP for further development of the medical evidence. On remand OWCP shall refer appellant, a statement of accepted facts (SOAF) and the medical evidence of record to a specialist in the appropriate field of medicine. The referral physician shall provide a rationalized opinion on whether the diagnosed conditions are causally related to the accepted employment incident. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why his or her opinion differs from that of Dr. Johnson. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the July 14, 2022 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: December 23, 2022
Washington, DC

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

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

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

[11] *D.V.*, Docket No. 21-0383 (issued October 4, 2021); *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *H.T.*, Docket No. 18-0979 (issued February 4, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018); *John J. Carlone*, 41 ECAB 354, 358-60 (1989).