United States Department of Labor
Employees' Compensation Appeals Board

C.M., Appellant	)	
and	)	**Docket No. 22-0114**
	)	**Issued: May 11, 2022**
U.S. POSTAL SERVICE, WEST MILWAUKEE POST OFFICE, Milwaukee, WI, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 1, 2021 appellant, through counsel, filed a timely appeal from a September 21, 2021 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 knee injury causally related to the accepted November 4, 2020 employment incident.

FACTUAL HISTORY

On December 5, 2020 appellant, then a 51-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 3, 2020 he twisted his left knee when he ran into a utility cart used to transport mail while in the performance of duty. He alleged that this incident caused a lateral tear in his left knee. Appellant did not stop work.

In support of his claim, appellant submitted a magnetic resonance imaging (MRI) report dated November 15, 2020 from Dr. Charles Player, a osteopath Board-certified in family practice. Dr. Player diagnosed left knee complex tear of the medial meniscus, radial tear of the posterior horn/root of the lateral meniscus, and other degenerative changes.

OWCP received notes dated December 1, 2020 from Dr. Jonathan R. Berry, a Board-certified orthopedic surgeon, December 14, 2020 from Dr. Player, and December 29, 2020 from Diana Rawson, a nurse practitioner, which provided appellant's work restrictions.

In a letter dated January 15, 2021, the employing establishment controverted appellant's claim, contending that he was not at work on November 3, 2020.

On January 15, 2021 appellant submitted an undated statement in which he explained that on the date of the alleged injury he went to batch outgoing mail and tried to get out of the way of a utility cart, which caused him to twist his left knee. The next day, after he finished his mail route, he had extreme pain in his left knee. Appellant also filed a second Form CA-1 on January 15, 2021, reflecting the foregoing.

In a development letter dated January 19, 2021, OWCP informed appellant of the deficiencies in his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By decision dated February 26, 2021, OWCP denied appellant's claim, finding that the evidence of record did not establish that the November 3, 2020 incident occurred, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant submitted letters clarifying that the date of his injury occurred on November 4, 2020 and that he was off work on November 3, 2020. He added that he requested that his supervisors update his paperwork to reflect the corrected date.

OWCP received medical notes dated November 9, 2020 from Dr. Player and December 1, 2020 and January 12, 2021 from Dr. Berry, which provided appellant with work restrictions.

In a note dated February 5, 2021, Dr. Player noted that appellant was unsure of the date of the employment incident, but that it may have happened on November 6, 2020. He related that appellant attempted to dodge a utility cart and twisted his left knee. Appellant later developed pain. Dr. Player opined that, based on "the proposed mechanism of action of the injury, [appellant] could have sustained the injury at work." He noted that "[l]ikely, the injury at work worsened already present degenerative changes of the knee."

In a letter dated March 10, 2021, Dr. Berry related that appellant tried to avoid a piece of equipment at work and injured his knee. He diagnosed medial meniscus tear and noted that appellant underwent surgery to have it repaired.

On March 22, 2021 appellant, through counsel, timely requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on July 14, 2020. During the telephonic hearing, he clarified again that the accident occurred on November 4, 2020. The hearing representative allotted him 30 days to submit additional documentation in support of his claim.

In response, appellant submitted a medical report dated December 23, 2020 from Dr. Berry. Dr. Berry detailed appellant's left knee partial medial meniscectomy, which was performed that day, and provided a postoperative diagnosis of a tear of the lateral meniscus with complete articular cartilage defect on the anterior medial tibial plateau.

OWCP received a letter dated August 9, 2021 from Dr. Berry wherein he responded to the query as to the mechanism of injury and how a twisting motion could result in a torn meniscus. Dr. Berry explained that the knee had two different types of cartilage. The first was an articular cartilage which was cartilage glued to the bone. The second was a c-shaped cartilage that acted as a shock absorber. The most common way to injure the meniscus was a twisting motion which placed a force such that it could tear. Dr. Berry noted that his notes reflected that appellant was injured on November 20, 2020.

By decision dated September 21, 2021, OWCP's representative modified the February 26, 2021 decision to accept that the November 4, 2020 employment incident occurred, as alleged. However, she denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between a diagnosed medical condition and the accepted employment incident.

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 FECA, that the claim was timely filed within the applicable time limitation period of FECA,[4] that an injury was sustained in the performance of duty as alleged,

[3] *Id*.

[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).

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 must first be determined whether a fact of injury has been established. There are two components involved in establishing fact of injury. The first component to be established is that 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. The second component is whether the employment incident caused a personal injury and 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 specific employment incident identified by the employee.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left knee injury causally related to the accepted November 4, 2020 employment incident.

In a report dated February 5, 2021, Dr. Player related that appellant attempted to dodge a gaylord and twisted his left knee. He opined that, based on the proposed mechanism of action of the injury, appellant could have sustained the injury at work. Dr. Player noted that likely the injury worsened already present degenerative changes in appellant's knee. While he provided an opinion on the causal relationship, his opinion was speculative in nature. The Board has held that speculative and equivocal medical opinions regarding causal relationship have diminished probative value.[10] This report is, therefore, insufficient to establish causal relationship.

[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).

[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] *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).

[10] *See P.P.*, Docket No. 21-1163 (issued March 30, 2022); *M.G.*, Docket No. 21-0747 (issued October 15, 2021).

OWCP also received reports dated December 23, 2020 and March 10, 2021 from Dr. Berry, which listed appellant's diagnosis as a medial meniscus tear. However, Dr. Berry did not provide his own medical opinion explaining the 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.[11] As such, these reports are insufficient to establish appellant's claim.

In a letter dated August 9, 2021, Dr. Berry explained in general terms that the knee had two different types of cartilage; an articular cartilage which was cartilage glued to the bone, and a c-shaped cartilage that acted as a shock absorber. He related that the most common way to injure the meniscus was a twisting motion which placed a force such that it could tear. The Board has held that a medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.[12] This report is, therefore, insufficient to establish the claim.

OWCP also received a series of notes listing appellant's work restrictions. As these notes did not address causal relationship they are of no probative value regarding the issue of causal relationship.[13]

Appellant submitted an MRI scan report dated November 15, 2020 from Dr. Player. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment incident and a diagnosed condition.[14] For this reason, Dr. Player's report is insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish a left knee injury causally related to the accepted November 4, 2020 employment incident, the Board finds that appellant has not met his 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 his burden of proof to establish a left knee injury causally related to the accepted November 4, 2020 employment incident.

[11] *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[12] *See J.M.*, Docket No. 17-1002 (issued August 22, 2017).

[13] *See A.W.*, Docket No. 19-0327 (issued July 19, 2019); *see also supra* note 11.

[14] *See W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 2022
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