

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

O.R., Appellant)	
)	
and)	Docket No. 23-0158
)	Issued: August 22, 2023
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Miami, FL, Employer)	
)	

Appearances:
Appellant, pro se
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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 17, 2020 appellant filed a timely appeal from an August 5, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a right knee condition causally related to the accepted August 6, 2014 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior decision and orders are incorporated herein by reference. The relevant facts are as follows.

On May 22, 2017 appellant, then a 34-year-old former transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on August 6, 2014 he injured his right knee doing lunges as part of a physical therapy/work conditioning program while in the performance of duty. He maintained that his right knee pain worsened over time at work. Appellant described his claimed condition as right knee joint effusion with a ruptured popliteal cyst and vastus medialis obliquus atrophy. He stopped work on November 16, 2015.³ On the reverse side of the claim form, a supervisor indicated that August 6, 2014 was a scheduled day off for appellant. OWCP assigned OWCP File No. xxxxxx404.

OWCP previously accepted that on April 22, 2013 appellant sustained lumbar sprain, displacement of a lumbar intervertebral disc without myelopathy, and right thoracic or lumbar neuritis or radiculitis, assigned OWCP File No. xxxxxx033, and an aggravation of a herniated disc at L5-S1 on May 14, 2013, assigned OWCP File No. xxxxxx403.⁴

Appellant submitted physical therapy treatment records covering the period August 6 through 11, 2014 as part of his treatment for his April 22, 2013 employment injury. An August 6, 2014 physical therapy record indicated that he had complained of increased right knee pain after he performed lunges.

On April 8, 2015 Dr. Francis McCormick, an orthopedic surgeon, evaluated appellant for complaints of right knee pain exacerbated by activity. She noted that he had undergone a laminectomy a year earlier. On examination Dr. McCormick found no instability and medial and joint line tenderness. She diagnosed right knee pain.

An April 23, 2015 magnetic resonance imaging (MRI) scan of appellant's right knee revealed a cartilage defect superiorly in the trochlea, joint effusion and intact cruciate ligaments and menisci.

In a report dated April 5, 2016, Dr. Samy Bishai, an orthopedic surgeon, recounted the history of appellant's April 22, 2013 employment injury lifting luggage. He diagnosed a herniated lumbar disc at L5-S1 with right-sided radiculopathy, status post right surgery, and slight atrophy

² *Order Remanding Case*, Docket No. 18-0013 (issued April 9, 2018); Docket No. 18-1458 (issued August 2, 2019); *Order Dismissing Appeal*, Docket No. 20-0373 (issued June 23, 2020).

³ Appellant was removed from employment, effective April 14, 2016.

⁴ Under OWCP File No. xxxxxx033 OWCP accepted that a ppellant sustained a lumbar sprain and herniated disc at L5-S1 on April 22, 2013. Under OWCP File No. xxxxxx403 OWCP accepted that appellant sustained an a ggravation of herniated disc at L5-S1 on May 14, 2013. OWCP denied appellant's claims for a traumatic injury on December 9, 2014, assigned OWCP File No. xxxxxx125, and his occupational disease claim for an emotional condition, assigned OWCP File No. xxxxxx667. Appellant's claims have been administratively combined, with OWCP File No. xxxxxx033 serving as the master file.

of the vastus medialis right knee joint. Dr. Bishai opined that appellant's vastus medialis atrophy was not related to a primary pathology of the right knee joint, but instead due to a back condition arising from the May 14, 2013 injury.

On May 12, 2017 appellant advised that he had attended physical therapy and/or a work conditioning program following employment-related back surgery. On or around August 6, 2014 he experienced pain in his right knee after performing lunges. Appellant's knee pain worsened with time. After he returned to his usual employment on August 25, 2014 his right leg and back condition deteriorated. Appellant asserted that he was unable to bend, squat, push, drag, or lift more than 50 pounds.

In a June 2, 2017 development letter, OWCP advised appellant of the deficiencies of his claim. It informed him of the type of additional factual and medical information needed and afforded him 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated July 7, 2017, OWCP denied appellant's traumatic injury claim. It found that the evidence of record was insufficient to establish that the August 6, 2014 employment incident occurred as alleged.

On August 14, 2017 appellant requested reconsideration. He submitted an August 6, 2014 report from Dr. Jesse Z. Shaw, an osteopath, who advised that he was treating appellant for April 22 and May 14, 2013 employment injuries. Appellant noted that, during visit 15 of physical therapy, he had experienced right knee pain performing lunges. Dr. Shaw described findings on MRI scans of the right knee, and found that appellant was disabled from his usual employment due to his right knee condition beginning October 5, 2015.

In a treatment note dated January 23, 2015, Dr. Jonathan A. Hyde, an orthopedic surgeon, provided findings on examination, and diagnosed lumbar disc displacement and lumbar/lumbosacral disc degeneration. His examination findings of the right knee were benign with full joint strength and motion.

In a report dated June 14, 2017, Dr. Bishai repeated his prior finding that appellant's vastus medialis atrophy was not related to a primary pathology in the right knee joint, but rather to his back condition and to a second injury on May 14, 2013. He asserted that appellant's work duties may have contributed to his right knee joint problems.

By decision dated September 20, 2017, OWCP modified its July 7, 2017 decision to find that appellant had established the employment incident occurred as alleged and that he had a medical diagnosis in connection with the accepted employment incident. It determined, however, that the medical evidence was insufficient to establish causal relationship between his diagnosed conditions and the accepted employment incident.

Appellant appealed the September 20, 2017 decision to the Board. By order dated April 9, 2018, the Board set aside OWCP's September 20, 2017 decision and remanded the case for further development.⁵ It found that OWCP had referenced an August 22, 2014 treatment note from

⁵ *Supra* note 2.

Dr. Hyde, and an undated report from Dr. Shaw, an osteopath, both obtained from OWCP File No. xxxxxx033, but had not included the referenced evidence in the current case record, OWCP File No. xxxxxx404.

On remand, OWCP received additional evidence. In an August 22, 2014 treatment note, Dr. Hyde examined appellant for a follow-up after physical therapy. He found that physical therapy had helped appellant, and that he was ready to return to work. Dr. Hyde noted that appellant described pain radiating down his left leg with flexibility stretches. On examination, he provided normal findings in the right knee and bilateral lower extremities. Dr. Hyde diagnosed lumbar disc displacement, and opined that appellant had reached maximum medical improvement.

In a report dated October 5, 2015, Dr. Shaw evaluated appellant for an April 22, 2013 injury lifting luggage at work. He noted that appellant complained of right knee pain and leg spasms after a lumbar laminectomy/discectomy on April 1, 2014. Dr. Shaw diagnosed right quadriceps atrophy due to appellant's April 22, 2013 lumbar spine injury, which he found had led to altered gait mechanics and pathologic knee symptoms.

On October 26, 2015 Dr. Shaw evaluated appellant for pain in the right thigh and knee. On examination of the right thigh, he found tenderness on palpation, 4/5 strength, and full active and passive range of motion without pain. Dr. Shaw diagnosed right joint effusion, right muscle wasting and atrophy, and generalized right muscle weakness. He opined that appellant had atrophy of the right quadriceps, leading to a nonphysiologically altered gait and pathological knee symptoms. Dr. Shaw attributed appellant's symptoms to a prior injury.

In an accompanying undated letter, Dr. Shaw discussed appellant's history of an April 22, 2013 employment injury to his back lifting luggage at work and complaints of pain radiating down his right leg. He noted that, after lumbar surgery on April 1, 2014, he underwent physical therapy and began having right knee pain and spasms. On examination, Dr. Shaw observed tenderness of the right thigh with weakness on strength testing of the quadriceps. He diagnosed right quadriceps muscle weakness and atrophy, right knee effusion, and right knee cartilage defect of the trochlea. Dr. Shaw opined that the atrophy of the right quadriceps resulted from the April 22, 2013 lumbar spine injury, which caused a nonphysiological altered gait and pathologic knee symptoms.

In a report dated October 26, 2017, Dr. Sarnia Fahmi Zaki, Board-certified in family medicine, treated appellant for an acute exacerbation of chronic back pain.

On May 19, 2018 appellant asserted that physical therapy notes supported that he experienced knee pain around August 11, 2014. He noted that he had no history of knee pain prior to his physical therapy sessions. Appellant attributed his knee condition to physical therapy and subsequent duties of his federal employment.

By decision dated July 9, 2018, OWCP denied appellant's traumatic injury claim. It found that the medical evidence was insufficient to establish that performing lunge exercises on August 6, 2014 had caused his diagnosed right knee conditions.

Thereafter, OWCP received an unsigned March 7, 2016 report from Dr. Stephen S. Wender, who found that appellant was status post an April 22, 2013 work injury and right L5-S1 hemilaminectomy. Dr. Wender opined that he had 10 percent whole person impairment.

Appellant appealed to the Board. By decision dated August 2, 2019, the Board affirmed the July 9, 2018 decision.⁶

In a report dated August 21, 2019, Dr. Shaw evaluated appellant for bilateral pain in his thighs. He noted that appellant had complained of an “injury during physical therapy” and listed the date of onset as August 6, 2014. Dr. Shaw provided findings on examination, and diagnosed left hip pain, a strain of the bilateral thighs, and right thigh pain. He advised that appellant’s right knee was higher than his left knee when he squatted. Dr. Shaw reviewed his postoperative notes which he indicated showed that appellant experienced right knee pain after performing lunges. Appellant further described symptoms “associated with a rupture cyst or joint effusion such as swelling and pain behind the knee and right calf muscle.” Dr. Shaw noted that he had attributed appellant’s right thigh atrophy to his lumbar injury. He related, “Now with respect to the other symptoms of mild joint effusion found on the MRI [scan] of April 23, 2015 and joint effusion with a ruptured popliteal cyst found on the MRI [scan] of April 1, 2016, in my opinion these symptoms can be directly attributed to the exercises [appellant] performed as part of his mandatory post[operative] physical therapy around/or on August 6, 2014 and due to other work[-]related factors.” Dr. Shaw noted that after appellant’s back surgery he had pain performing lunges and symptoms consistent with a ruptured cyst or joint effusion. He advised that appellant had no history of a previous injury to the right knee, and opined that the swelling around the S1 nerve root following his lumbar surgery caused an imbalance between the lower extremities, “ultimately rendering his right leg to become more injury prone to the rapid physical exercise activity he experience[d]” during his two months of physical therapy. Dr. Shaw further attributed the worsening of appellant’s right knee condition to repeated kneeling and squatting while performing his job duties.

In a report dated September 5, 2019, an unidentified physician treated appellant for chronic back pain.

On September 5, 2019 appellant requested reconsideration.

By decision dated December 2, 2019, OWCP denied modification.

By decision dated August 5, 2020, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA,⁸ that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed is causally related to

⁶ *Id.*

⁷ *Supra* note 1.

⁸ *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.⁹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.¹⁰

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.¹¹ Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.¹² The second component is whether the employment incident caused a personal injury.¹³

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁴ The opinion of the physician must be based upon a complete factual and medical background, 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.¹⁵

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted August 6, 2014 employment incident.

Preliminarily, the Board notes that it is unnecessary for it to consider the evidence that was previously considered in its August 2, 2019 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹⁶

In a report dated August 21, 2019, Dr. Shaw evaluated appellant for bilateral pain in his thighs. He indicated that appellant described an injury during physical therapy and listed the date of onset as August 6, 2014. Dr. Shaw provided findings on examination, and diagnosed left hip pain, a strain of the bilateral thighs, and right thigh pain. He advised that appellant's right knee

⁹ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

¹⁰ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

¹¹ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

¹² *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

¹³ *Id.*

¹⁴ *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *T.H.*, 59 ECAB 388 (2008).

¹⁵ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁶ *N.T.*, Docket No. 21-0236 (issued January 24, 2023); *T.B.*, Docket No. 20-1413 (issued July 1, 2021); *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

was higher than his left knee when he squatted. Dr. Shaw related that appellant had experienced right knee pain after performing lunges and had also described symptoms suggesting a ruptured cyst or joint effusion. He attributed the findings of joint effusion found on the April 23, 2015 MRI scan and the joint effusion and ruptured popliteal cyst found on the April 1, 2016 MRI scan to appellant's performing physical therapy exercises on August 6, 2014, as well as other work factors. Dr. Shaw advised that he had no history of a previous injury to the right knee and opined that the swelling around the S1 nerve root following his lumbar surgery had caused an imbalance between the lower extremities resulting in his right leg becoming prone to injury during physical exercises in his two months of physical therapy. He further attributed the worsening of appellant's right knee condition to repeated kneeling and squatting performing his job duties. While Dr. Shaw advised that appellant's back injury had caused him to become more susceptible to injury, he did not explain physiologically how performing lunges on August 6, 2014 caused the diagnosed condition of joint effusion with a ruptured popliteal cyst. The Board has held that a medical opinion should offer a medically-sound explanation of how the specific employment incident physiologically caused the diagnosed condition.¹⁷ Such rationale is particularly necessary given that, in his October 5, 2015 report, which was significantly more contemporaneous to the accepted incident, Dr. Shaw attributed appellant's knee symptoms to atrophy from the right quadriceps leading to an altered gait. Further, while he noted that appellant had not sustained a prior right knee injury, the Board has held that an opinion finding causal relationship because an employee was asymptomatic before the injury, but symptomatic after is insufficient, without supporting rationale, to establish causal relationship.¹⁸ As Dr. Shaw failed to provide sufficient rationale explaining how appellant's participation in physical therapy on August 6, 2014 caused or aggravated a diagnosed condition, his opinion is insufficient to meet appellant's burden of proof.¹⁹

Appellant further submitted an unsigned March 7, 2016 report from Dr. Wender and a September 5, 2019 report from an unidentified healthcare provider. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.²⁰ Accordingly, these reports are also insufficient to establish appellant's claim.

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.

¹⁷ See *G.H.*, Docket No. 21-1225 (issued January 30, 2023); *M.O.*, Docket No. 21-0940 (issued January 25, 2023).

¹⁸ See *V.V.*, Docket No. 20-0175 (issued May 22, 2022); *J.F.*, Docket No. 19-1694 (issued March 18, 2020); *John F. Glynn*, 53 ECAB 562 (2002); *Thomas Petrylak*, 39 ECAB 276, 281 (1987).

¹⁹ *Id.*

²⁰ *A.H.*, Docket No. 22-0001 (issued July 29, 2022); *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted August 6, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board