

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

T.B., Appellant)	
)	
and)	Docket No. 23-0279
)	Issued: August 14, 2023
DEPARTMENT OF HOMELAND SECURITY,)	
CUSTOMS & BORDER PROTECTION,)	
OFFICE OF FIELD OPERATIONS, El Paso, TX,)	
Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 21, 2022 appellant, through counsel, filed a timely appeal from a December 9, 2022 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 to consider 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 an 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 condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On July 10, 2022 appellant, then a 65-year-old customs and border protection officer, filed an occupational disease claim (Form CA-2) alleging that he developed chronic left knee pain due to factors of his federal employment, including carrying his uniform, gun, gun belt, radio, ammunition, and handcuffs which weighed 30 to 35 pounds, along with his body armor weighing another 20 pounds. He noted that he first became aware of his left knee condition on January 1, 2022 and first realized its relation to his federal employment on July 8, 2022. Appellant did not stop work.

In a July 11, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. By separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's occupational disease claim, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statements. It afforded both parties 30 days to respond.

On July 26, 2022 the employing establishment noted no points of disagreement with regard to appellant's assertion that he developed chronic knee pain due to 20 years of carrying all the accumulated weight involved in his law enforcement uniform, gear, gun belt, and body armor. It reported that he walked on concrete, walked up and down the steep grade of a port of entry bridge and engaged in the physical activity of inspecting vehicles. The employing establishment advised that appellant was required to carry his law enforcement gear on a daily basis and was required to wear body armor on training days or port of entry emergencies.

On July 31, 2022 appellant responded to OWCP's development questionnaire and indicated that he attributed his left knee condition to carrying the weight of all his law enforcement uniform and gear for 20 years. He also noted that his position required extensive walking including up the steep incline of a port of entry bridge.

In an August 5, 2022 note, Dr. Erick Gabriel Torres, an orthopedic surgeon, diagnosed acute tear of the medial meniscus of the left knee. In a separate note of even date, he provided work restrictions including limited prolonged walking, no lifting greater than 10 pounds, no body armor, and no gun belt.

By decision dated August 11, 2022, OWCP denied appellant's occupational disease claim finding that he failed to submit a rationalized opinion from his treating physician explaining how his diagnosed conditions were causally related to the accepted factors of his federal employment.

OWCP subsequently received an August 5, 2022 treatment note from Dr. Torres recounting appellant's history of left knee pain with insidious onset and no traumatic event. Dr. Torres diagnosed acute tear of the medial meniscus of the left knee. On August 18, 2022 appellant underwent a left knee magnetic resonance imaging (MRI) scan which demonstrated a

prominent horizontal tear within the posterior horn of the medial meniscus and a small radial tear that extended to the tibial articular surface, femoral condylar cortical edema, suspected stress fracture, joint effusion, popliteal cyst, and chondromalacia of the patella and medial femoral condyle. In an August 25, 2022 note, Dr. Torres continued to provide work restrictions.

On September 12, 2022 appellant requested reconsideration.

In support of his request, appellant submitted a September 12, 2022 report from Dr. Thomas E. Alost, an orthopedic surgeon, recounting his history of injury, including wearing heavy body gear and walking, repetitively bending, squatting, and pivoting on his left knee. Dr. Alost opined that as a direct result of these activities appellant had developed increased pain with locking in his knee. He reviewed the left knee MRI scan and diagnosed an acute complex tear of the medial meniscus which was directly related to the work activities. Dr. Alost recommended left knee arthroscopic surgery.

In September 19 and 27, 2022 notes, Dr. Alost provided work restrictions and noted appellant's left knee surgery scheduled for October 3, 2022. He released appellant to return to full-duty work on December 5, 2022.

By decision dated December 9, 2022, OWCP denied modification of the August 11, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA,³ 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. 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.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁵

³ *T.M.*, Docket No. 20-1460 (issued December 20, 2022); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁵ *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁶ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁷ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted factors of his federal employment.

Appellant provided reports from Dr. Alost dated September 12 through 27, 2022. Dr. Alost opined that appellant's left knee condition was caused by wearing heavy body gear and walking, repetitively bending, squatting, and pivoting on his left knee while performing his job duties. While Dr. Alost provided an affirmative opinion on causal relationship, he did not provide sufficient rationale to explain why he believed that appellant's employment duties resulted in or contributed to his diagnosed condition. Without explaining how wearing heavy body gear and walking, repetitively bending, squatting, and pivoting on his left knee caused an acute complex tear of the left medial meniscus, Dr. Alost's September 2022 narrative reports are of limited probative value. 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/disability was related to employment factors.⁹ Dr. Alost's September 2022 reports are therefore insufficient to meet appellant's burden of proof.

In notes dated August 5 through 25, 2022, Dr. Torres diagnosed acute tear of the medial meniscus of the left knee and described appellant's history of left knee pain with no traumatic event. He did not offer an opinion on causal relationship between appellant's diagnosed condition and his implicated employment duties. 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.¹⁰ As such, these medical reports are also insufficient to establish the claim.

Appellant also submitted an August 18, 2022 left knee MRI scan. The Board has held, however, that diagnostic studies standing alone lack probative value on the issue of causal

⁶ *T.M.*, *supra* note 3; *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *T.M.*, *id.*; *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁸ *Id.*; *Victor J. Woodhams*, *supra* note 5.

⁹ *See T.M.*, *supra* note 3; *A.P.*, Docket No. 19-0224 (issued July 11, 2019).

¹⁰ *D.H.*, Docket No. 20-1410 (issued December 21, 2022); *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

relationship as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.¹¹

As the medical evidence of record is insufficient to establish a left knee condition causally related to the accepted factors of federal employment, 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 not met his burden of proof to establish a left knee condition causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

¹¹ *N.B.*, Docket No. 20-0794 (issued July 29, 2022); *C.F.*, Docket No. 19-1748 (issued March 27, 2020); *L.B.*, *id.*; *D.K.*, *id.*