

FACTUAL HISTORY

On July 5, 2021 appellant, then a 50-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that at 9:00 a.m. on July 3, 2021 he experienced sharp pain, swelling, and limited mobility of the left knee when he stepped out of a postal truck while in the performance of duty.

OWCP, by development letter dated July 12, 2021, informed appellant of the evidence required to establish his claim and provided a questionnaire for his completion. In a separate development letter of even date, it requested that the employing establishment provide information as to whether appellant was scheduled to work on July 3, 2021. OWCP afforded both parties 30 days to respond.

In a July 3, 2021 note, Dr. Douglas Kerr, an emergency medicine physician, advised that appellant may return to work on July 9, 2021.

In a July 6, 2021 statement, appellant related that while delivering mail between 9:00 a.m. and 10:00 p.m. he noticed a sharp pain in his left knee when he stepped out of his truck. He continued to work, but later experienced pain and swelling in his knee.

In reports dated July 7, 2021, Dina Jackson, a certified physician assistant, noted a history of injury that on July 2, 2021 appellant stepped out of his truck and experienced pain in his left knee. She also noted that he had a history of meniscal tear. Ms. Jackson diagnosed chronic pain and chronic meniscal tear of left knee. She advised that it did not appear that appellant's conditions were caused by his work duties because he denied the occurrence of any trauma or injury. Ms. Jackson concluded that he could continue to perform full-duty work.

In a July 7, 2021 state form report, Dr. Jill Russom, a family practitioner, noted a history of injury that on July 2, 2021 appellant immediately felt sharp pain in his left knee when he stepped out of his truck and felt a sharp pain. She discussed her findings on physical examination, and diagnosed chronic pain and chronic meniscal tear of left knee. Dr. Russom advised that appellant could perform his usual work.

OWCP received work restriction forms by Dr. Peter T. Simonian, a Board-certified orthopedic surgeon. In work restriction forms dated July 9 and 22, 2021, Dr. Simonian advised that appellant was temporarily totally disabled from work from July 9 through August 10, 2021. He noted that appellant could return to work without restrictions on August 10, 2021. In an August 5, 2021 work restriction form, Dr. Simonian advised that appellant was temporarily totally disabled through August 20, 2021.

In a July 12, 2021 response to OWCP's development letter, the employing establishment contended that appellant was not in the performance of duty on July 3, 2021. It noted that he was scheduled to work on that day but, called in sick.

OWCP, by decision dated August 9, 2021, denied appellant's traumatic injury claim, finding that the evidence did not support that the injury and/or event(s) occurred, as alleged, based on the employing establishment's July 12, 2021 response to its development letter and

Ms. Jackson's July 7, 2021 reports. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On February 14, 2022 appellant requested reconsideration. In an accompanying January 31, 2022 letter, he contended that his claimed injury occurred on July 2, 2021 rather than July 3, 2021. Appellant noted that he sought medical treatment on July 3, 2021. He also noted that he worked in Madera, California rather than Santa Clarita, California.

Appellant submitted a timeline of his claimed July 2, 2021 employment injury and medical treatment. He also submitted text messages dated July 2, 3, 5, and 6, 2021 in which he informed C.T., his supervisor, that he was unable to work due to his knee condition.

Appellant also submitted additional medical evidence. In a work activity status report and other reports dated July 7, 2021, Ms. Jackson noted a case date as July 2, 2021. She restated her diagnoses of chronic pain and chronic meniscal tear of the left knee. Ms. Jackson also restated her opinions that appellant's diagnosed conditions were not work related and he could return to full-duty work.

In a July 22, 2021 work restriction form, Dr. Simonian noted that appellant was temporarily totally disabled from work commencing July 15, 2021, and could return to work without restrictions on August 10, 2021.

Dr. Simonian, in an October 15, 2021 report, noted that appellant presented for follow-up evaluation of his left knee, three months' status post arthroscopic multicompartement synovectomy, partial medial meniscectomy, and chondroplasty. He discussed his findings on physical examination. Dr. Simonian noted that appellant wanted him to clarify that on July 2, 2021 he experienced severe pain on the medial side of his left knee when he stepped out of his vehicle. He further noted that appellant reported his injury to his workers' compensation provider, but no further workup was performed. Dr. Simonian indicated that a magnetic resonance imaging (MRI) scan demonstrated a lateral meniscal tear, while appellant's pain and injury were on the medial side, where his new tear was present at the time of surgery. Thus, Dr. Simonian believed that the July 2, 2021 incident most likely resulted in his medial meniscal tear.

In response to appellant's request for reconsideration, the employing establishment, by letter dated May 10, 2022, contended that the medical evidence of record established that appellant had preexisting knee problems and, thus, did not sustain a work-related left knee injury.

By decision dated May 11, 2022, OWCP modified the August 9, 2021 decision to find that the evidence of record established the date of injury as July 2, 2021, noting that the incident was accepted as having occurred as alleged while in the performance of duty. However, the claim remained denied because the medical evidence of record was insufficient to establish that appellant's chronic left knee meniscal tear was causally related to the accepted employment incident.

On August 11, 2022 appellant requested reconsideration.

OWCP, by decision dated August 26, 2022, denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On November 15, 2022 appellant, through counsel, requested reconsideration. In support of the request, counsel submitted a June 17, 2022 report by Dr. Simonian who clarified that appellant sustained a left knee medial meniscus tear, which necessitated surgery, due to his work-related injury based on his symptoms and surgical findings. He related that the prior MRI scan incorrectly indicated a lateral meniscus tear and, thus, appellant did not have a preexisting left knee condition.

OWCP subsequently received additional medical evidence from Dr. Simonian. In an April 23, 2020 work restriction form, Dr. Simonian advised that appellant could return to full-duty work without restrictions. On April 23, 2020 he ordered an MRI scan of both of appellant's knees.

OWCP also received an April 23, 2020 bilateral knee x-ray report by Dr. Phillip Tran, a diagnostic radiologist, who provided an impression of early right knee patellofemoral compartment degenerative changes.

In a May 8, 2020 left knee MRI scan report, Dr. Ivan Ramirez, a diagnostic radiologist, provided impressions of a tear of the lateral meniscus; mild mucoid degeneration of the anterior cruciate ligament (ACL); popliteus, medial gastrocnemius, and semimembranosus tendinopathy; chondral flap and fissure on the patella; and Baker's cyst. In a right knee MRI scan report of even date, he provided impressions of torn lateral meniscus; mild mucoid degeneration of the ACL; mild degenerative joint disease; multiple chondral fissures on the patella; popliteus, patellar, medial gastrocnemius, and semimembranosus tendinopathy; and Baker's cyst.

Reports dated April 24, 2020 and June 2 and July 9, 2021 by Johnathan Crosby, Nathan Miller, and Kaitlyn Crouch, physician assistants, respectively, addressed the treatment of appellant's bilateral knee conditions.

In a July 15, 2021 operative report, Dr. Simonian described appellant's arthroscopic left knee multicompartement synovectomy, and arthroscopic partial medial meniscectomy and chondroplasty. He diagnosed left knee medial meniscal tear and arthritis with synovitis.

By decision dated February 9, 2023, OWCP denied modification of the August 26, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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

³ *Id.*

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 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

In a case in which 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 appellant has not met his burden of proof to establish a left knee condition causally related to the accepted July 2, 2021 employment incident.

⁴ *V.L.*, Docket No. 20-0884 (issued February 12, 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).

⁵ *C.H.*, Docket No. 20-1212 (issued February 12, 2021); *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 *V.L.*, *supra* note 4; *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 *C.H.*, *supra* note 5; *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 *V.L.*, *supra* note 4; *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 Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *R.S.*, Docket No. 21-0803 (issued February 23, 2023); *J.L.*, Docket No. 20-0717 (issued October 15, 2020).

In support of his claim, appellant submitted a series of reports from Dr. Simonian. In reports dated October 15, 2021 and June 17, 2022, Dr. Simonian diagnosed a left knee medial meniscal tear, noting that a prior MRI scan incorrectly revealed a lateral meniscal tear of the left knee. In the October 15, 2021 report, he opined that the diagnosed condition was “most likely” caused by the July 2, 2021 employment incident. The Board has held, however, that medical opinions that are speculative or equivocal in nature are of diminished probative value.¹¹ In the June 17, 2022 report, Dr. Simonian opined that appellant’s left knee medial meniscus tear and resultant left knee surgery were causally related to the accepted employment incident. While he provided an affirmative opinion on causal relationship, he did not offer sufficient medical rationale to explain how the July 2, 2021 employment incident could have resulted in or contributed to appellant’s diagnosed condition and surgery. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain sufficient medical rationale explaining how a given medical condition is physiologically caused by the accepted employment incident.¹² Dr. Simonian’s remaining April 23, 2020 imaging request, July 15, 2021 operative report, and work restriction forms dated April 23, 2020 through August 5, 2021 addressed appellant’s need for diagnostic testing, left knee surgery, and intermittent temporary total disability from work during the period July 9 through August 20, 2021. This evidence, however, did not provide an opinion addressing whether appellant’s need for diagnostic testing and surgery, and resultant disability were causally related to the accepted employment incident. Medical reports lacking an opinion regarding causal relationship are insufficient to establish appellant’s claim.¹³ For these reasons, Dr. Simonian’s reports are insufficient to establish appellant’s claim.

Similarly, Dr. Russom’s July 7, 2021 report also did not provide an opinion addressing whether appellant’s diagnosis of chronic pain and chronic meniscal tear of left knee were caused or aggravated by the July 2, 2021 employment incident. As noted, without explaining how stepping out of a postal truck caused or contributed to appellant’s injuries, Dr. Russom’s July 7, 2021 report is of no probative value.¹⁴ As such, the Board finds that her report is insufficient to establish appellant’s claim.

Dr. Kerr’s July 3, 2021 note addressed appellant’s work capacity. He did not provide a history of injury, a firm medical diagnosis, or an opinion as to whether the July 2, 2021

¹¹ See *R.S.*, Docket No. 21-1309 (issued February 10, 2023); *A.D.*, Docket No. 21-0510 (issued September 29, 2022); *H.A.*, Docket No. 18-1455 (issued August 23, 2019).

¹² See *R.S.*, *id.*; *V.D.*, Docket No. 20-0884 (issued February 12, 2021); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹³ See *E.K.*, Docket 22-1130 (issued December 30, 2022); *L.K.*, Docket No. 21-1155 (issued March 23, 2022); *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, 19-0285 (issued September 24, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *Id.*

employment incident caused a diagnosed medical condition and disability from work.¹⁵ Thus, Dr. Kerr's note is insufficient to establish appellant's claim.

The remaining medical evidence of record includes MRI scans, and x-ray reports. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.¹⁶

Reports were also received from Ms. Jackson, Mr. Crosby, Mr. Miller, and Ms. Crouch, physician assistants. The Board has also held that certain healthcare providers such as physician assistants are not considered physicians as defined under FECA and, thus, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁷ As such, this evidence is insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence to establish a left knee condition causally related to the accepted July 2, 2021 employment incident, the Board finds that he 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 July 2, 2021 employment incident.

¹⁵ See *S.D.*, Docket No. 22-0405 (issued October 5, 2022); *D.L.*, Docket No. 19-1053 (issued January 8, 2020); *C.C.*, Docket No. 18-1099 (issued December 21, 2018).

¹⁶ See *E.K.*, *supra* note 13; *N.B.*, Docket No. 20-0794 (issued July 29, 2022); *C.F.*, Docket No. 19-1748 (issued March 27, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁷ Section 8101(2) provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law," 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (September 2020); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). See also *M.M.*, Docket No. 20-1649 (issued January 4, 2023) (physician assistants are not considered physicians as defined by FECA).

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2023 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 1, 2023
Washington, DC

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

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

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