

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

K.C., Appellant)	
)	
and)	Docket No. 24-0187
)	Issued: April 17, 2024
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, San Diego, CA, Employer)	

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 18, 2023 appellant, through counsel, filed a timely appeal from an October 16, 2023 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 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 traumatic injury in the performance of duty on October 18, 2022, as alleged.

FACTUAL HISTORY

On October 18, 2022 appellant, then a 57-year-old compliance inspector, filed a traumatic injury claim (Form CA-1) alleging that on that date he was walking to the security identification display area (SIDA) at 8:25 a.m. when he felt his left knee pop, while in the performance of duty. On the reverse side of the claim form, appellant's supervisor checked a box marked "Yes" in response to the question of whether appellant had been injured while in the performance of duty.

In an October 18, 2022 report, Dr. Michael J. Song, an osteopath specializing in pain medicine, noted that appellant indicated that he was walking to renew his security badge when he felt a "sudden pop on his left knee." He examined appellant, noted that x-rays were performed, and diagnosed left knee sprain. Dr. Song opined that based upon appellant's presenting symptoms, the mechanism of injury, a review of the medical file, the physical examination, and the absence of evidence to the contrary, appellant's presenting complaints and objective findings were causally related to the described event. He noted that appellant did not provide a history of any outside employment activities or injuries to which he could associate the onset of his present condition. Dr. Song opined that the most proximate cause was the physical activities of appellant's employment.

An October 19, 2022 left knee x-ray read by Dr. Andrew Song, Board-certified in interventional and diagnostic radiology, related findings consistent with mild joint space narrowing, small osteophyte formation, mild subchondrial sclerosis, and KL2 classification for osteoarthritis grading.

In a report dated October 21, 2022, Dr. Michael Song noted appellant's medical course and diagnosed left knee sprain.

In a November 17, 2022 report, Dr. Sterling Roaf, Jr., Board-certified in occupational medicine, related that he had reviewed appellant's record but had not spoken to or examined appellant. He noted that appellant reported injuring his left knee while walking. Dr. Roaf opined that there was no objective evidence or sound medical rationale to definitively establish a cause-and-effect relationship between the alleged work event and the current diagnosed condition. He further opined that there was no objective evidence or sound medical rationale to support total disability. Dr. Roaf explained that appellant's physical examination was unremarkable and without any positive findings, his left knee x-ray findings were consistent with osteoarthritis, and the low energy mechanism of injury "would be highly unlikely to cause anything more than an aggravation of an already preexisting injury." He recommended that an OWCP District Medical Adviser (DMA) review the claim.

In a November 18, 2022 report, Dr. Michael Song noted that appellant was seen for severe left knee pain and evaluated for fracture. He reviewed appellant's x-ray findings and noted that

they were consistent with a KL2 classification for osteoarthritis grading. Dr. Song diagnosed left knee sprain.

In a report dated December 15, 2022, Dr. Gregroy Dishan Bouyer, an occupational medicine specialist, related that after examining appellant's left knee, he noted "no diagnosis found."

A December 13, 2022 magnetic resonance imaging (MRI) scan of appellant's left knee, read by Dr. Henry Han Lin Sung, Board-certified in family practice, demonstrated large suprapatellar joint effusion with patellar plicae and moderate synovitis; tear of the medial meniscus, involving a focal radial tear of the inner rim, with undersurface tear of the anterior horn of the medial meniscus and partial tear of the root; moderate strain of the medial collateral ligament; low grade sprain of the anterior cruciate ligament; mild thickening of the intact posterior cruciate ligament; moderate quadriceps tendinosis; mild tendinosis along the proximal patellar tendon insertion with prepatellar bursitis; low grade fraying of the lateral patellar facet; moderate grade fissuring along the weight bearing surfaces of the lateral femoral condyle as well as the adjacent tibial plateau.

OWCP continued to receive reports from Dr. Michael Song repeating appellant's diagnoses.

In a December 28, 2022 development letter, OWCP informed appellant of the deficiencies in 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. OWCP afforded appellant 30 days to respond.

OWCP thereafter received an October 18, 2022 incident report from H.H., a supervisor, who noted that on that date appellant returned to baggage after renewing his SIDA badge and reported that he felt a sharp pop in his knee. Appellant further noted that after approximately 30 minutes the knee became swollen.

In a January 4, 2023, attending physician's report (Form CA-20), Dr. Michael Song diagnosed left meniscus tear, synovitis, and anterior cruciate ligament (ACL) sprain. He also opined that it was possible that appellant aggravated existing knee degeneration.

In a January 5, 2023 response to OWCP's questionnaire, appellant explained that on October 18, 2022 four hours prior to his injury, he was performing his job duties, conducting bag searches, which entailed lifting, carrying, bending, squatting, and twisting approximately 50 pounds and sometimes more with assistance. He noted that this placed a strain on his arms and knees, and he was overworked. Appellant explained that during his scheduled work time, he had an appointment to renew his badge and as he was walking from his post, he felt his knee pop and felt an immediate sharp pain which inhibited him from continuing to work. He noted that he believed his injury was the result of the strenuous work duties he was performing, that he was diagnosed with a torn meniscus. Appellant related that the immediate effects of his injury were an extreme stabbing pain in his knee and the inability to walk without limping. He noted that he continued to limp to his badge renewal appointment in order to sit down and relieve some pain and

then limped back to his work location and informed his supervisor. Appellant denied any prior medical conditions to his lower extremities prior to October 18, 2022.

In a December 15, 2022, report, Dr. Bouyer again noted appellant's diagnoses of left knee sprain, and current left knee meniscal tear. He placed appellant on modified duty from December 15, 2022 to January 5, 2023.

In January 18, 2023 reports, Dr. Michael Song reiterated appellant's diagnoses and related that appellant's symptoms were improving. In response to whether appellant was received medical treatment for a workers' compensation condition, Dr. Song responded "yes."

By decision dated February 2, 2023, OWCP denied appellant's traumatic injury claim, finding that the medical evidence was insufficient to establish causal relationship between a diagnosed condition and the accepted October 18, 2022 employment incident.

In February 15, March 15, and April 26, 2023 reports, Dr. Michael Song repeated his prior diagnoses and noted that appellant was improving and continued to tolerate full-duty work.

On February 26, 2023 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on August 11, 2023.

By decision dated October 16, 2023, OWCP's hearing representative modified the February 2, 2023 decision to reflect that appellant did not establish the first component of fact of injury, as he did not establish that he experienced a specific incident or exposure occurring on October 18, 2022 at the time and place, and in the manner alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of their claim, including the fact that the individual is an employee of the United States within the meaning of FECA and that the claim was filed within the applicable time limitation period of FECA, 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.³ 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 determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. 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

³ See *C.M.*, Docket No. 23-1037 (issued December 6, 2023); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

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).

occurred at the time and place, and in the manner alleged.⁵ The second component is whether the employment incident caused an injury.⁶

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁷ The employee has not met his or her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statements in determining whether a case has been established. An employee's statement alleging that an injury occurred at a given time, and in a given manner, is of great probative value and will stand unless refuted by strong or persuasive evidence.⁸

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on October 18, 2022, as alleged.

Appellant alleged on his CA-1 form that on October 18, 2022 he felt his left knee pop at 8:30 a.m. while walking to the SIDA. H.H., appellant's supervisor, indicated that appellant was walking from the SIDA when his left knee popped. Appellant also provided a January 5, 2023 statement explaining that he felt his left knee popped when walking to renew his badge. The Board notes that he promptly sought medical treatment from Dr. Michael Song on October 18, 2022, the date of the alleged injury.

Appellant's claim that his left knee popped when he was walking in or around the SIDA occurred on October 18, 2022 has not been refuted by strong or persuasive evidence. There are no discrepancies in the case record regarding appellant's claimed October 18, 2022 incident so as to cast serious doubt that it occurred on that date in the manner alleged.⁹ The Board, thus, finds that the evidence of record is sufficient to establish that appellant's left knee popped in the performance of duty on October 18, 2022, as alleged.

As appellant has established that the October 18, 2022 employment incident factually occurred, the question becomes whether this incident caused an injury. Since OWCP found that

⁵ *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *See E.S.*, Docket No. 22-0209 (issued July 14, 2022); *J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

⁸ *N.A.*, Docket No. 21-0773 (issued December 28, 2021); *J.T.*, Docket No. 21-0561 (issued November 22, 2021); *see M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

⁹ *See E.S.*, Docket No. 22-0209 (issued July 14, 2022); *C.G.*, Docket No. 19-1404 (issued April 14, 2020); *D.L.*, Docket No. 18-1189 (issued February 15, 2019).

appellant had not established fact of injury, it did not evaluate the medical evidence. The case must, therefore, be remanded for consideration of the medical evidence.¹⁰ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden of proof to establish an injury causally related to the accepted October 18, 2022 employment incident.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on October 18, 2022, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the October 16, 2023 decision of the Office of Workers' Compensation Programs is reversed, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 17, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁰ *P.G.*, Docket No. 23-0683 (issued December 27, 2023); *J.M.*, Docket No. 23-0293 (issued June 15, 2023); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).