United States Department of Labor
Employees' Compensation Appeals Board

R.D., Appellant	)	
and	)	**Docket No. 21-0857**
	)	**Issued: August 20, 2024**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, FEDERAL PRISON CAMP ALDERSON, Alderson, WV, 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:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On May 19, 2021 appellant, through counsel, filed a timely appeal from an April 1, 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 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 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 recurrence of total disability on or after August 1, 2020 causally related to the accepted May 7, 2019 employment injury.

FACTUAL HISTORY

On May 9, 2019 appellant, then a 40-year-old electrician, filed a traumatic injury claim[3] (Form CA-1) alleging that on May 7, 2019 he injured his right knee when his foot slipped as he exited his work vehicle causing him to fall while in the performance of duty. He explained that his right knee buckled and twisted as he fell and that he later developed swelling. On July 18, 2019 OWCP accepted appellant's claim for aggravation of unspecified internal derangement of the right knee. Appellant continued to perform full-duty work.

In a note dated May 21, 2019, appellant's attending physician, Dr. Edward McDonough, a Board-certified orthopedic surgeon, described appellant's history of injury. He reported that appellant had episodes when he felt as though his knee was stuck in place. Appellant also reported locking and catching of his right knee. On physical examination, Dr. McDonough found negative Lachman's sign, negative anterior drawer testing, negative posterior drawer testing, and negative valgus and varus. He diagnosed right knee internal derangement, right knee pain, and right knee locking and catching. Dr. McDonough recommended a magnetic resonance imaging (MRI) scan and additional right knee arthroscopy for evaluation of the meniscus and previous matrix-associated autologous chondrocyte implantation (MACI) repair.

On July 30, 2019 appellant underwent a right knee MRI scan which demonstrated a suspected new radial tear of the posterior root of the medial meniscus, as well as suspected hypertrophy and new fissuring of the articular cartilage and marrow edema of the subchondral bone plate at the site of the prior osteochondritis dissecans repair, and progressive mucoid degeneration or partial tear of the anterior cruciate ligament (ACL).

In a July 30, 2019 treatment note, Dr. McDonough described appellant's continued symptoms of his right knee giving way and catching sensations. He diagnosed right knee pain with mechanical symptoms with a history of MACI procedure following osteochondral defect. Dr. McDonough reported that appellant continued to have medial-sided joint pain with mechanical symptoms and some evidence of posteromedial meniscus injury. He found that appellant could continue to perform full-duty work.

[3] On January 3, 2011 appellant filed a Form CA-1 under OWCP File No. xxxxxx701 alleging he caught his foot in wires and twisted his right knee resulting in pain and swelling while in the performance of duty. The record currently before the Board does not contain a decision from OWCP on this claim. Appellant subsequently filed a Form CA-1 on September 3, 2014 under OWCP assigned File No. xxxxxx021, which was accepted for right knee anterior cruciate ligament (ACL) and articular cartilage tears. On April 17, 2015 it expanded acceptance of appellant's claim to include right knee sprain and closed fracture of the right femoral condyle. OWCP also accepted osteochondritis dissecans, right knee, and patellar tendinitis, right knee. On April 1, 2021 OWCP administratively combined File Nos. xxxxxx701, and xxxxxx021 with the present case, File No. xxxxxx728, serving as the master file.

On July 22, 2020 appellant sought treatment at the emergency room due to unspecified internal derangement of the right knee with effusion. He was released to return to work on August 3, 2020.

On August 8, 2020 appellant filed a claim for compensation (Form CA-7) for total disability from work commencing August 1, 2020.

In an August 11, 2020 development letter, OWCP informed appellant that it appeared that he was claiming disability due to a material change or worsening of his accepted work-related conditions. It requested that he submit additional factual and medical information in support of his claim, including a reasoned opinion from a physician explaining how his disability was causally related to his accepted employment injury. OWCP afforded appellant 30 days to submit the requested information.

Appellant submitted additional records from his July 22, 2020 emergency room visit. He reported that earlier on that date his right knee locked, he fell, and twisted his right knee. Appellant heard a pop and could no longer walk or put weight on his right leg. Dr. Jeremy Proctor, an osteopath, examined appellant on that date, and reviewed an x-ray report diagnosing unspecified internal derangement of the right knee with effusion.

On August 10, 2020 appellant underwent a right knee MRI scan which demonstrated a partial tear of the ACL with increased laxity, multifocal bone contusions with suspected impacted fracture at the posterior aspect of the lateral tibial condyle, progressive fraying of the posterior horn of the medial meniscus, and moderate to large joint effusion.

Appellant submitted an August 11, 2020 report from Kristopher Smith, a physician assistant. He also provided a series of notes beginning August 27, 2020 from physical therapists.

On August 11, 2020 Dr. McDonough found that appellant was totally disabled for two weeks. He completed a narrative report on September 22, 2020 and related that he had examined appellant on July 28, 2020 following a fall at home on July 22, 2020. Appellant recounted a locking episode of the right knee which caused him to fall awkwardly and feel a pop in the right knee with immediate swelling and inability to bear weight. Dr. McDonough reviewed appellant's August 20, 2020 MRI scan and found a partial thickness ACL tear with bone contusions. He noted that appellant underwent physical therapy, but continued to report episodes of instability in the right knee and exhibited a significantly antalgic gait. Dr. McDonough further noted that he was previously treated for a right knee osteochondral defect with continuing episodes of locking and catching. He related that appellant reported that locking of his right knee caused his fall that resulted in his current ACL tear. In a separate note of even date, Dr. McDonough found that he was totally disabled for six weeks.

By decision dated September 29, 2020, OWCP denied appellant's claim for a recurrence of disability commencing August 1, 2020 due to his accepted employment injury. It explained

that the medical evidence of record was insufficient to establish disability from work due to a material change/worsening of his accepted work-related conditions.[4]

On October 9, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on January 15, 2021, at which appellant testified.

Following the hearing, appellant submitted additional medical evidence. On January 19, 2016 Dr. McDonough noted that appellant had a prior work injury in September 2014 and that he had previously undergone a right knee arthroscopy.[5] He related that appellant described occasional sensations of instability with his knee giving way.

On May 2, 2016 Dr. McDonough performed a revision of a microfracture surgery to appellant's right knee with a shaving chondroplasty of the right medial femoral condyle, debridement of the superomedial plica, and harvesting of chondrocytes.[6] On August 21, 2017 Dr. McDonough performed right knee MACI reconstruction.

In February 13 and March 20, 2018 notes, Dr. McDonough related symptoms of locking and catching in appellant's right knee along the medial side following the incident. Appellant reported that when this happened it felt as though he was going to fall. His knee became stuck in place on occasion, and he had to shift the knee so that it would straighten. Dr. McDonough requested an additional right knee MRI scan and then requested a diagnostic arthroscopy.

On April 16, 2018 Dr. McDonough performed a right knee arthroscopy with limited debridement.

In August 24, and October 12, 2018 notes, Dr. McDonough reported that appellant was experiencing intermittent episodes of locking and catching in his right knee which had caused him to fall. He again requested an MRI scan and performed an injection.

In a July 28, 2020 note, Dr. McDonough recounted appellant's history of injury at home on July 22, 2020 while walking experiencing a locking episode of his right knee, falling awkwardly and feeling a pop on his way to the ground in the right knee. He diagnosed right knee internal derangement, right knee locking, and right knee pain. Dr. McDonough requested an MRI scan.

On August 14, 2020 Dr. McDonough noted appellant's symptoms of pain and instability, but no further locking or catching. He reviewed appellant's MRI scan and found a partial thickness ACL tear with bone contusion pattern. Dr. McDonough diagnosed right knee partial ACL tear and right knee pain. He recommended physical therapy.

[4] OWCP did not discuss whether appellant's additional right knee injury occurred as a consequence of his accepted right knee derangement as discussed in Dr. McDonough's September 22, 2020 report.

[5] Appellant underwent an OWCP-authorized right knee arthroscopy on December 19, 2014 which demonstrated a partial ACL tear and a large loose articular cartilage lesion.

[6] On May 2, 2016 appellant underwent a second OWCP-authorized right knee arthroscopy performed by Dr. McDonough which entailed a shaving chondroplasty of the right medial femoral condyle and debridement of the superomedial plica.

In September 25, 2020 notes, Dr. McDonough found that appellant's symptoms had not improved after physical therapy. He diagnosed right knee ACL tear, and right knee instability. Dr. McDonough noted that he had previously treated appellant for an osteochondral defect of the right knee and that appellant continued to report locking and catching symptoms. He opined, that "[h]e did have a fall secondary to this locking and catching which he reports is what caused the fall, which did result in an ACL tear."

On November 3, 2020 Dr. McDonough noted that appellant had three previous right knee surgeries and evidence of instability. He opined that appellant's July 22, 2020 fall resulted in an ACL tear. Dr. McDonough provided findings on physical examination including trace knee effusion, loss of range of motion, and an antalgic gait. He also noted a positive Lachman's sign and positive anterior drawer test. In reviewing appellant's MRI scan, Dr. McDonough found a complete tear in the ACL. He recommended right knee arthroscopy with ACL reconstruction with hamstring autograft. He found appellant was totally disabled for at least three months following surgery.

On December 10, 2020 Dr. McDonough performed a right knee arthroscopy with ACL reconstruction utilizing hamstring tendon autograft and loose body removal.

By decision dated April 1, 2021, OWCP's hearing representative affirmed the September 29, 2020 decision. She determined that appellant had submitted insufficient medical evidence to establish that he was disabled for work due to the accepted conditions or that there was a material worsening of the accepted condition such that appellant was totally disabled beginning August 1, 2020.[7]

LEGAL PRECEDENT

An employee seeking benefits under FECA[8] has the burden of proof to establish the essential elements of his or her claim including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[9] Under FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[10] For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.[11] Whether a particular injury causes an employee to become disabled from

[7] OWCP's hearing representative directed OWCP to combine appellant's right knee claims. She did not discuss whether appellant's disability beginning August 1, 2020 was due to a consequential injury. As there is no final adverse decision on this issue, it is not before the Board on this appeal. *See* 20 C.F.R. §§ 501.2(c) and 501.3.

[8] *Supra* note 2.

[9] *See D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[10] 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

[11] *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.[12]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[13] A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment injury must be based on a complete factual and medical background.[14] 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 employment injury.[15]

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.[16] This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations.[17] OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. The change must result from a previous injury or occupational illness, rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.[18]

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment

[12] *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

[13] *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[14] *J.P.*, Docket No. 23-0975 (issued April 25, 2024); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[15] *Id*.

[16] 20 C.F.R. § 10.5(x); *see M.A.*, Docket No. 23-0713 (issued April 26, 2024); *T.J.*, Docket No. 18-0831 (issued March 23, 2020); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

[17] *Id*.

[18] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

injury, and supports that conclusion with medical reasoning.[19] Where no such rationale is present, the medical evidence is of diminished probative value.[20]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a recurrence of total disability commencing August 1, 2020, causally related to his accepted May 7, 2019 employment injury.

Appellant continued to perform full-duty work following his May 7, 2019 employment injury. He submitted medical evidence from his July 22, 2020 emergency room visit relating that earlier on that date his right knee locked, he fell, and twisted his right knee. Appellant heard a pop and could no longer walk or put weight on his right leg. He stopped work and filed a Form CA-7, claiming disability from work commencing August 1, 2020, which OWCP adjudicated as a claim for a recurrence of disability.

In support of his claim, appellant submitted a series of reports from Dr. McDonough dated January 19, 2016 through July 30, 2019 discussing his medical history and the accepted May 7, 2019 employment injury. These reports did not address his diagnosis or disability from work on or after August 1, 2020. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[21] As such, these reports are insufficient to establish appellant's recurrence claim.[22]

On July 22, 2020 Dr. Proctor diagnosed unspecified internal derangement of the right knee. However, Dr. Proctor did not provide an opinion that appellant was disabled from work commencing August 1, 2020, due to a spontaneous recurrence of his May 7, 2019 employment injury. In a series of reports commencing July 28 through December 10, 2020, Dr. McDonough related appellant's right knee condition, disability from work, and medical treatment following the July 22, 2020 fall at his home. He noted that appellant recounted a locking episode of the right knee which caused him to fall awkwardly and feel a pop in the right knee with immediate swelling, and inability to bear weight. Dr. McDonough diagnosed right knee internal derangement, right knee locking, and right knee pain and right knee partial ACL tear. He did not offer an opinion that appellant was disabled from work commencing August 1, 2020, due to a spontaneous recurrence of his May 7, 2019 employment injury. As noted above, medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability, is of no probative value on

[19] *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *C.C.*, Docket No. 18-0719 (issued November 9, 2018); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

[20] *E.M., supra* note 13; *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

[21] *P.L.*, Docket No. 22-0337 (issued September 9, 2022); *K.F.*, Docket No.19-1846 (issued November 3, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[22] *Id.*

the issue of causal relationship.[23] Therefore, this evidence is insufficient to establish appellant's claim.

In a September 25, 2020 report, Dr. McDonough diagnosed right knee ACL tear, and right knee instability. He noted that he had previously treated appellant for an osteochondral defect of the right knee and that he continued to report locking and catching symptoms. Dr. McDonough opined, that "[h]e did have a fall secondary to this locking and catching which he reports is what caused the fall, which did result in an ACL tear." He, however, did not sufficiently explain with medical rationale how appellant's disability was causally related to the accepted employment injury.[24] This report is, therefore, insufficient to establish appellant's recurrence claim.[25]

OWCP also received the results of diagnostic studies and laboratory tests. However, diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address causation.[26]

Appellant also submitted reports from a physician assistant and physical therapists. The Board has held that the reports of physician assistants and physical therapists do not constitute probative medical evidence as these practitioners are not physicians under FECA.[27] Consequently, this report is of no probative value regarding appellant's disability 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(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 recurrence of total disability commencing August 1, 2020 causally related to his accepted May 7, 2019 employment injury.

[23] *Id.*; *A.B.*, Docket No. 24-0449 (issued July 10, 2024).

[24] *T.P.*, Docket No. 22-1335 (issued June 23, 2023); *see K.B.*, Docket No. 18-0226 (issued August 6, 2018).

[25] *M.P.*, Docket No. 23-1131 (issued June 18, 2024).

[26] *O.R.*, Docket No. 23-0156 (issued August 22, 2023); *K.R.*, Docket No. 20-1103 (issued January 5, 2021); *F.S.*, Docket No. 19-0205 (issued June 19, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

[27] Section 8101(2) of FECA provides that a 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 (May 2023); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA); *see also S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA); *see also P.D.*, Docket No. 21-0920 (issued January 12, 2022) (physical therapists are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2024
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