United States Department of Labor
Employees' Compensation Appeals Board

C.V., Appellant	)	
and	)	**Docket No. 24-0716**
	)	**Issued: August 5, 2024**
DEPARTMENT OF AGRICULTURE, U.S. FOREST SERVICE, MASTEAD ANNEX, Albuquerque, NM, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 25, 2024 appellant filed a timely appeal from a January 26, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted August 23, 2021 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the January 26, 2024 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

FACTUAL HISTORY

On August 26, 2021 appellant, then a 24-year-old forestry technician, filed a traumatic injury claim (Form CA-1) alleging that on August 23, 2021 he injured his right knee when walking on uneven, rocky terrain in the performance of duty. He did not stop work.

In a report dated August 24, 2021, Beaver E. Eller, a nurse practitioner, noted that appellant related complaints of right knee pain, which he attributed to walking downhill on an uneven surface at work on August 23, 2021. He indicated that there was no fall or other acute injury, but that appellant's knee "just started hurting." Mr. Eller performed a physical examination, which revealed a slight limp. He diagnosed right knee pain and ordered an x-ray, which was normal. In a work status note of even day, Mr. Eller noted that appellant had sustained a work-related right knee injury on August 23, 2021 and recommended modified-duty restrictions including no climbing ladders, no lifting over 30 pounds, and no walking more than four hours per day.

On August 24, 2021 appellant accepted a full-time, modified-duty position as a forestry technician with restrictions of no hiking over four miles or for more than one hour, no downhill walking, and no bending, stooping, squatting, or climbing ladders.

In a report dated August 31, 2021, David Moran, a nurse practitioner, indicated that appellant related complaints of pain in the right lateral patella, which he attributed to twisting his knee while hiking at work on August 23, 2021. He performed a physical examination, which revealed tenderness to palpation and knee pain with motion. Mr. Moran diagnosed right knee pain and recommended physical therapy. In a work status note of even date, he released appellant to return to work with restrictions.

In a follow-up report dated September 21, 2021, Mr. Moran noted that appellant's physical examination was normal except for knee pain with motion. He recommended physical therapy and ongoing work restrictions.

On September 21, 2021 appellant began treatment with Keith Kirscher, a physical therapist.

On October, 5, 2021 Mr. Moran recommended magnetic resonance imaging (MRI) scan of the right knee and ongoing work restrictions.

In a report dated October 21, 2021, Robert Poutre, a physician assistant, noted that appellant related complaints of right knee pain, which he attributed to walking on an uneven trail at work on August 23, 2021. He further noted that his left knee had been hurting for three to four weeks but that there had been no specific injury to the left knee. Mr. Poutre performed a physical examination, which revealed a positive McMurray's sign in both knees. He diagnosed knee sprain and knee pain and recommended bilateral knee MRI scans.

In a follow-up report dated November 4, 2021, Mr. Poutre reviewed the MRI scan results noting that the left knee study was normal, and that the right knee study demonstrated mild tendinopathy of the distal quadriceps tendon. He diagnosed knee pain and knee sprain.

In a December 16, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP thereafter received an October 26, 2021 report of MRI scan of the left knee, which was normal, and a report of MRI scan of the right knee of even date, which revealed mild tendinopathy involving lateral fibers of the distal quadriceps tendon.

By decision dated January 18, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted August 23, 2021 employment incident.

OWCP continued to receive evidence, including a January 12, 2022 report by Mr. Poutre, who noted that physical therapy had improved appellant's knee symptoms. Mr. Poutre performed a physical examination and diagnosed bilateral knee sprains and right quadriceps tendinitis.

On February 22, 2022 appellant requested reconsideration of OWCP's January 18, 2022 decision. In support of his request, he submitted updated copies of Mr. Poutre's November 4, 2021 and January 12, 2022 reports, which had been co-signed on February 7, 2022 by Dr. Brent P. Leedle, a Board-certified orthopedic surgeon.

By decision dated May 20, 2022, OWCP modified its January 18, 2022 decision, finding that the medical evidence of record established diagnoses of knee sprain and quadriceps tendinitis in connection with the accepted August 23, 2021 employment incident. The claim remained denied, however, as the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted August 23, 2021 employment incident.

OWCP thereafter received an amended copy of the January 12, 2022 report, signed by Dr. Leedle on August 10, 2022. Dr. Leedle diagnosed bilateral knee sprains and quadriceps tendinitis and opined that the injury was "likely caused by overuse" during the course of appellant's job duties, frequent hiking, and repetitive quadriceps flexion.

On August 19, 2022 appellant requested reconsideration of OWCP's May 20, 2022 decision.

By decision dated August 23, 2022, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), finding that his request for reconsideration neither raised substantial legal questions, nor included new or relevant evidence.[3]

In a May 16, 2023 report, Dr. Jonathan Jay Linthicum, a Board-certified orthopedic surgeon, noted that appellant related complaints of right knee pain, which he attributed to a prolonged descent on a trail on August 23, 2021. He performed a physical examination of both knees, which revealed mild tenderness on the medial aspect of the right knee and minimal pain with resisted knee extension. Dr. Linthicum reviewed appellant's prior medical reports and MRI

[3] On November 1, 2022 appellant appealed OWCP's August 23, 2022 decision to the Board. The Clerk of the Appellate Boards assigned Docket No. 23-0115. In a letter received on April 13, 2023, appellant requested that his appeal be withdrawn in order to enable him to request reconsideration before OWCP. By order dated May 25, 2023, the Board granted appellant's request and dismissed the appeal docketed as No. 23-0115.

scans and diagnosed work-related right knee quadriceps tendinitis and left knee strain. He opined that "it seems quite reasonable to conclude from my evaluation of the patient's records and history that his tendinitis and knee strain were directly related to his work and occurred during the course of his employment."

By decision dated June 7, 2023, OWCP denied modification of its Augst 23, 2022 decision.

On January 23, 2024 appellant requested reconsideration of OWCP's June 7, 2023 decision. In support of his request, he submitted an amended copy of the October 26, 2021 right knee MRI scan, which had been electronically signed by Dr. Bryan D. Berkey, a Board-certified diagnostic radiologist, who noted normal findings. Appellant also submitted duplicate copies of Dr. Linthicum's May 16, 2023 report.

By decision dated January 26, 2024, OWCP denied modification of its June 7, 2023 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,[4] that the claim was timely 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.[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 an injury.[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

[4] *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *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).

[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] *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).

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]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted August 23, 2021 employment incident.

In support of his claim, appellant submitted a May 16, 2023 report by Dr. Linthicum, who noted that appellant related complaints of knee pain, which he attributed to a prolonged descent on a trail on August 23, 2021. Dr. Linthicum diagnosed work-related right knee quadriceps tendinitis and a left knee strain and opined that "it seems quite reasonable to conclude from my evaluation of the patient's records and history that his tendinitis and knee strain were directly related to his work and occurred during the course of his employment." He did not, however, explain a pathophysiological process of how the accepted August 23, 2021 employment incident caused or contributed to appellant's condition.[10] The Board has held that a medical opinion that does not offer a medically-sound and rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions is of limited probative value.[11] Therefore, this evidence is insufficient to establish appellant's burden of proof.

In his August 10, 2022 report, Dr. Leedle diagnosed bilateral knee sprains and quadriceps tendinitis and opined that the injury was "likely caused by overuse" during the course of appellant's job duties, frequent hiking, and repetitive quadriceps flexion. He did not explain a pathophysiological process of how the accepted August 23, 2021 employment incident caused or contributed to appellant's condition.[12] Moreover, the Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.[13] Therefore, this evidence is insufficient to establish appellant's burden of proof.

Appellant also submitted copies of Mr. Poutre's November 4, 2021 and January 12, 2022 reports, which had been later co-signed on February 7, 2022 by Dr. Leedle and reflected a diagnosis of knee sprain. However, the reports did not offer an opinion regarding the cause of the diagnosed condition. The Board has held that an opinion which does not address the cause of an

[9] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[10] *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *J.C.*, Docket No. 18-1474 (issued March 20, 2019); *M.M.*, Docket No. 15-0607 (issued May 15, 2015); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

[11] *J.B.*, Docket No. 21-0011 (issued April 20, 2021); *A.M.*, Docket No. 19-1394 (issued February 23, 2021).

[12] *Supra* note 10.

[13] *D.B.*, Docket No. 18-1359 (issued May 14, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

employee's condition is of no probative value on the issue of causal relationship.[14] Thus, these reports are insufficient to establish appellant's claim.

Appellant also submitted reports by Mr. Eller and Mr. Moran, both nurse practitioners, Mr. Poutre, a physician assistant, and Mr. Kircher, a physical therapist. Certain healthcare providers such as nurses, physician assistants, and physical therapists are not considered "physician[s]" as defined under FECA.[15] Consequently, their medical findings or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[16]

The remaining evidence of record consisted of MRI scan reports. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.[17] Therefore, this evidence is also insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing a causal relationship between his diagnosed medical conditions and the accepted August 23, 2021 employment incident, the Board finds that he has not met his burden of proof to establish his claim.[18]

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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted August 23, 2021 employment incident.

[14] *T.D.,* Docket No. 19-1779 (issued March 9, 2021): *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.* Docket No, 17-1549 (issued July 6, 2018).

[15] Section 8101(2) of FECA 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) (January 2013); *A.B.*, Docket No. 23-0827 (issued December 27, 2023) (nurse practitioners are not considered physicians as defined under FECA); *C.G.*, Docket No. 22-0536 (issued January 11, 2023) (nurse practitioners are not considered physicians as defined under FECA); *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).

[16] *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk, id*.

[17] *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

[18] *See J.T.*, Docket No. 18-1755 (issued April 4, 2019); *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 5, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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