United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 24-0270**
	)	**Issued: July 10, 2024**
U.S. POSTAL SERVICE, NASHVILLE MAIN POST OFFICE, Nashville, TN, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 24, 2024 appellant, through counsel, filed a timely appeal from a December 20, 2023 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 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 left knee condition causally related to the accepted April 15, 2021 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 21, 2021 appellant, then a 44-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on April 15, 2021 he heard a pop and injured his left knee when walking between work buildings while in the performance of duty. He stopped work on April 16, 2021 and returned to full-time, modified-duty work on June 30, 2021.

In a note dated April 16, 2021, a health care provider with an illegible signature indicated that appellant was seen in the emergency room on that date. The provider excused appellant from work through April 19, 2021.

In an April 20, 2021 narrative statement, appellant asserted that while walking on April 15, 2021 at approximately 10:50 p.m., he felt that something in his knee had "snapped." He noted that he could no longer walk or put any weight on his leg. Thereafter, appellant presented to the emergency room and, while there, notified the supervisor on duty of his injury. He remained off work until April 20, 2021.

An authorization for examination and/or treatment (Form CA-16) completed on April 21, 2021 by supervisor J.N., noted that appellant was injured on April 15, 2021 and described the injury as a pop in the knee while walking.

In an April 23, 2021 statement, H.B., a coworker, recalled that he observed appellant on the night of April 15, 2021 as he was walking in his direction. He indicated that appellant suddenly stopped, grabbed his leg, and related that his knee had popped, causing him pain.

On May 7, 2021 appellant sought treatment with Dr. David West, a Board-certified orthopedic surgeon, for complaints of sudden onset left knee pain. Dr. West noted that, on physical examination, appellant had decreased range of motion, pain with movement, and an inability to complete any activities without pain. He opined that the mechanism of injury "includes work related." Dr. West noted that a left knee x-ray was performed, diagnosed acute pain of the left knee, and administered a steroid injection.

[3] Docket No. 22-0919 (issued October 18, 2022).

A May 27, 2021 magnetic resonance imaging (MRI) study of the left knee demonstrated a complex articular surface tear of the posterior horn of the medial meniscus, and mild patellofemoral compartment chondromalacia.

In a development letter dated June 7, 2021, 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. In a separate development letter of the same date, OWCP requested that the employing establishment provide additional information regarding appellant's alleged injury, including comments from a knowledgeable supervisor regarding the accuracy of his allegations and witness statements from employees with additional information. It afforded both parties 30 days to submit the requested evidence.

On May 16, 2021 the employing establishment offered appellant a limited-duty assignment, which he accepted on May 19, 2021.

In an undated response to OWCP's development questionnaire, J.N. asserted that appellant failed to notify management of his alleged injury. He noted that appellant had driven himself to the emergency room and subsequently sent him a text message indicating that he had been experiencing knee pain for days prior. J.N. further related that appellant was on the employing establishment's premises at the time of his alleged injury.

In a June 1, 2021 after-visit summary, Dr. West reported that appellant found minimal relief from the May 7, 2021 intra-articular injections. He noted that a left knee MRI scan revealed a displaced medial meniscus tear with root tear displacement. On physical examination appellant had a positive medial McMurray test, effusion, locking of the knee and reduced range of motion with pain. Dr. West recommended a left knee arthroscopy with medial meniscectomy and continued work restrictions including no bending and squatting. In a work release note of the same date, he released appellant to work as of June 2, 2021, and provided work restrictions pending surgery. On June 23, 2021 Dr. West reiterated his work restrictions.

By decision dated July 12, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed condition and the accepted April 15, 2021 employment incident.

On December 12, 2021 appellant requested reconsideration of OWCP's July 12, 2021 decision. In support thereof, he submitted a November 16, 2021 report wherein Dr. West noted that appellant was under his care since sustaining a left knee injury at work on April 15, 2021. Dr. West related that an MRI scan revealed a medial meniscus tear and requested authorization for surgical repair. He concluded that his examination, diagnostic imaging, and appellant's reports of a work injury supported his diagnosis and proposed treatment plan.

By decision dated March 11, 2022, OWCP denied modification of its July 12, 2021 decision.

Appellant appealed to the Board.

By decision dated October 18, 2022, the Board affirmed OWCP's March 11, 2022 decision.[4]

On September 28, 2023,appellant, through counsel, requested reconsideration. Counsel submitted an April 24, 2023 report by Dr. Neil Allen, a Board-certified neurologist and internist, who reviewed medical reports and imaging studies. Dr. Allen recounted that prior to the April 15, 2021 employment incident, appellant reported "minimal knee pain" when climbing into his vehicle, relieved with rest, without swelling, locking, catching, instability, or difficulty walking. He opined that the April 15, 2021 employment incident caused a left medial meniscal tear as appellant fell on a twisted, planted left knee, which overstretched and tore the medial meniscus. Dr. Allen noted that the mechanism of injury was consistent with medical literature, which noted that meniscal tears often occurred during a twisting injury. He opined that appellant's objective findings, and subjective symptoms as documented in medical records, were consistent with the meniscal injury demonstrated by the May 27, 2021 MRI scan.

By decision dated December 20, 2023, OWCP denied modification of its October 18, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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 limitation of FECA,[6] 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.[7] 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.[8]

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the

[4] *Id.*

[5] *Supra* note 1.

[6] *R.C.*, Docket No. 23-0768 (issued December 22, 2023); *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).

[7] *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).

[8] *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).

time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.[9]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[10] 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 the employment incident identified by the employee.[11]

In any case where 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.[12]

ANALYSIS

The Board finds that this case is not in posture for decision.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's March 11, 2022 decision because the Board considered that evidence in its October 18, 2022 decision.[13] Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.[14]

Appellant subsequently submitted an April 24, 2023 report, wherein Dr. Allen reviewed medical reports and imaging studies. Dr. Allen recounted that prior to the April 15, 2021 employment incident, appellant reported "minimal knee pain" when climbing into his vehicle, relieved with rest, without swelling, locking, catching, instability, or difficulty walking. He opined that the April 15, 2021 employment incident caused a left medial meniscal tear as appellant fell on a twisted, planted left knee, which overstretched and tore the medial meniscus. Dr. Allen noted that the mechanism of injury was consistent with medical literature, which noted that meniscal tears often occurred during a twisting injury. He opined that appellant's objective findings, and

[9] *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).

[10] *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).

[11] *S.C.*, Docket No. 21-0929 (issued April 28, 2023); *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).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023). *See O.R.*, Docket No. 24-0184 (issued February 27, 2024); *J.T.*, Docket No. 22-1308 (issued May 25, 2023); *R.D.*, Docket No. 18-1551 (issued March 1, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

[13] *Supra* note 3.

[14] *A.A.*, Docket No. 20-1399 (issued March 10, 2021); *Clinton E. Anthony, Jr.*, *supra* note 12.

subjective symptoms as documented in medical records, were consistent with the meniscal injury demonstrated by the May 27, 2021 MRI scan.

The Board finds that while Dr. Allen's April 24, 2023 report is insufficient to establish the claim, it is sufficient to require further development of the medical evidence.[15]

The Board notes that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.[16] It has an obligation to see that justice is done.[17]

The Board will, therefore, remand the case to OWCP for further development of the medical evidence. On remand, OWCP shall refer appellant, along with a statement of accepted facts and the medical record to a specialist in the appropriate field of medicine. The referral physician shall provide a rationalized opinion on whether appellant's diagnosed conditions are causally related to the accepted April 15, 2021 employment incident. If the physician opines that the diagnosed conditions are not causally related, they must explain with rationale how or why their opinion differs from that of Dr. Allen. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.[18]

CONCLUSION

The Board finds that this case is not in posture for decision.

[15] *D.V.*, Docket No. 21-0383 (issued October 4, 2021); *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *H.T.*, Docket No. 18-0979 (issued February 4, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[16] *Id*.

[17] *Id*.

[18] The Board notes that the employing establishment executed a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *T.H.*, Docket No. 23-0811 (issued February 13, 2024); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the December 20, 2023 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 10, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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