United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 24-0606**
	)	**Issued: July 2, 2024**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PATROL, Douglas, AZ, 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:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On May 15, 2024 appellant, through counsel, filed a timely appeal from an April 25, 2024 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 March 16, 2020 employment incident.

FACTUAL HISTORY

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

On March 17, 2020 appellant, then a 44-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on March 16, 2020 he injured his left knee when dismounting an all-terrain vehicle after loading it onto a trailer while in the performance of duty. On the reverse side of the claim form, appellant's supervisor, acknowledged that appellant was in the performance of duty when injured. Appellant did not stop work.

On March 18, 2020 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) authorizing appellant to seek medical care related to pain in the left knee. In the accompanying attending physician's report, Part B of the Form CA-16, Dr. Adrienne Yarnish, an emergency medicine specialist, noted his complaints of left knee pain after dismounting his ATV. She diagnosed left knee pain and opined that she was unsure whether the condition was caused or aggravated by the employment activity described, as there was no direct trauma to the knee.

In a duty status report (Form CA-17) dated March 19, 2020, Dr. Yarnish noted a history of left knee pain after appellant dismounted his service ATV. She diagnosed left knee pain and released him to return to full-duty work. In emergency room patient discharge forms and aftercare instructions of even date, Dr. Yarnish indicated that appellant complained of left knee pain and swelling. She diagnosed left knee pain and recommended rest, ice, compression, and elevation.

By development letter dated March 20, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of evidence needed to establish his claim and afforded him 30 days to submit the necessary evidence.

OWCP thereafter received a report of x-rays of the left knee dated March 19, 2020, which were negative for acute fracture or dislocation.

In a medical report dated April 6, 2020, Dr. Suezie Kim, a Board-certified orthopedic surgeon, noted that appellant complained of left knee pain which he attributed to twisting his left knee while loading an ATV on March 16, 2020.[4] She performed a physical examination of the left knee, which revealed tenderness of the medial joint line, a positive medial McMurray's sign, and patellar crepitus. Dr. Kim reviewed x-rays performed in the office that day and noted mild

[3] Docket No. 22-0293 (issued June 15, 2023); Docket No. 23-1090 (issued December 20, 2023).

[4] The Board notes that Dr. Kim reported a date of injury of March 6, 2020; however, this appears to be a typographical error.

medial joint space narrowing, but no acute fracture or dislocation. She diagnosed left knee pain and chondromalacia versus medial meniscus tear and recommended physical therapy, light duty for six weeks, and a knee brace. In a Form CA-17 of even date, Dr. Kim indicated that appellant was loading an ATV and twisted his left knee on March 16, 2020. She diagnosed left knee pain and recommended light-duty restrictions with no kneeling or squatting.

OWCP also received a report dated April 14, 2020 by Justin Embry, a physical therapist, who noted that appellant related a history of left knee burning while stepping down from an ATV.

By decision dated April 23, 2020, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted March 16, 2020 employment incident.

OWCP thereafter received an emergency room medical report by Dr. Yarnish dated March 19, 2020, who noted that appellant was complaining of left knee pain and burning after dismounting his ATV on March 16, 2020. Dr. Yarnish indicated that he denied feeling any pop, twist, or crack in the left knee and denied any direct trauma to the knee. She performed a physical examination and observed diffuse mild tenderness to palpation over the medial left knee with no associated swelling, edema, crepitus, or deformity. Dr. Yarnish diagnosed left knee pain.

In a Part B, attending physician's report, dated April 7, 2020, Dr. Kim noted a history that appellant was loading an ATV and twisted his left ankle. In a Form CA-17 of even date, she indicated that he was loading an ATV and twisted his left knee on March 16, 2020 and diagnosed left knee pain.

Physical therapy reports dated April 17 through May 5, 2020 indicated that appellant underwent ongoing therapeutic treatments to the left knee.

A magnetic resonance imaging (MRI) scan of the left knee dated June 12, 2020, noted a history left knee pain since an injury on March 16, 2020 and revealed a degenerative tear of the posterior horn/body of the medial meniscus, minor medial, lateral, and patellofemoral compartment osteoarthritis, and an intraarticular ganglion cyst associated with the posterior cruciate ligament (PCL).

In a follow-up report dated July 6, 2020, Dr. Kim noted that appellant related a history of twisting his left knee while loading an ATV on March 16, 2020. On physical examination, she again noted a positive medial McMurray's sign and subpatellar crepitus. Dr. Kim reviewed the June 12, 2020 MRI scan, and diagnosed early left knee osteoarthritis, a degenerative medial meniscus tear involving the posterior horn and body, and intraarticular ganglion associated with the PCL. She indicated that appellant elected to proceed with left knee arthroscopy and partial meniscectomy.

On August 17, 2020 appellant requested reconsideration of OWCP's April 23, 2020 decision.

By decision dated November 9, 2021, OWCP modified its April 23, 2020 decision, finding that appellant had not established the factual component of his claim. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 10, 2021 appellant, through counsel, appealed the November 9, 2021 decision to the Board.

By decision dated June 15, 2023,[5] the Board reversed OWCP's November 9, 2021 decision, finding that appellant had established that the March 16, 2020 employment incident occurred, as alleged. The Board remanded the claim to OWCP for consideration of the medical evidence.

By decision dated July 27, 2023, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish that appellant's diagnosed conditions were casually related to the accepted March 16, 2020 employment incident.

On April 14, 2023 appellant, through counsel, appealed the July 27, 2023 decision to the Board.

By decision dated December 20, 2023,[6] the Board affirmed OWCP's July 27, 2023 decision.

On April 17, 2024 appellant, through counsel, requested reconsideration of OWCP's December 20, 2023 decision. In support of the request, he submitted an April 1, 2024 medical report by Dr. Kim, who noted that her April 7, 2020 report erroneously documented a history that appellant was loading an ATV and twisted his left ankle. Dr. Kim clarified that appellant twisted his left knee. She performed a physical examination, which was normal. Dr. Kim diagnosed left knee pain and meniscus tear. She opined that "based on the patient's injury, physical exam[inaton], review of imaging at that time he did have some early degenerative changes, but his medial meniscus tear is very likely to have been directly caused by the injury at work."

By decision dated April 25, 2024, OWCP denied modification of the December 20, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[7] 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,[8] 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

[5] Docket No. 22-0293 (issued June 15, 2023).

[6] Docket No. 23-1090 (issued December 20, 2023).

[7] *Supra* note 2.

[8] *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).

employment injury.[9] 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.[10]

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 which can be established only by medical evidence.[11]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[12] A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background. 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 the specific employment incident.[13]

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.[14]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted March 16, 2020 employment incident.

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of the July 27, 2023 decision because the Board considered that

[9] *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).

[10] *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).

[11] *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).

[12] *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[13] *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

evidence in its December 20, 2023 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.[15]

Dr. Kim, in her April 1, 2024 medical report, noted a normal physical examination and clarified that her prior report erroneously indicated that appellant twisted his left ankle rather than his left knee. She diagnosed left knee pain and meniscus tear and opined that "based on the patient's injury, physical exam[ination], review of imaging at that time he did have some early degenerative changes, but his medial meniscus tear is very likely to have been directly caused by the injury at work." The Board has held that medical opinions that are speculative or equivocal are of diminished probative value.[16] Therefore, this evidence is insufficient to establish the claim.

As the medical evidence of record is insufficient to establish a left knee condition causally related to the accepted March 16, 2020 employment incident, the Board finds that appellant has not met his burden of proof.[17]

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 March 16, 2020 employment incident.

[15] *G.W.*, Docket No. 22-0301 (issued July 25, 2022); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1988).

[16] *See L.B.*, Docket No. 23-0099 (issued July 26, 2023); *C.C.*, Docket No. 22-0609 (issued October 25, 2022); *H.A.*, Docket No. 18-1455 (issued August 23, 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).

[17] The Board notes that the employing establishment issued a Form CA-16, dated March 18, 2020. 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); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 2, 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