United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 24-0858**
	)	**Issued: January 17, 2025**
DEPARTMENT OF HOMELAND SECURITY, U.S. SECRET SERVICE, Washington, DC, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 21, 2024 appellant filed a timely appeal from a July 18, 2024 merit decision and a July 31, 2024 nonmerit 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.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a recurrence of the need for medical treatment, commencing July 2, 2023, causally related to his accepted November 6, 2006 employment injury; and (2) whether OWCP properly denied appellant's request for a review of the written record, pursuant to 5 U.S.C. § 8124(b).

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On November 7, 2006 appellant, then a 24-year-old recruit, filed a traumatic injury claim (Form CA-1) alleging that on November 6, 2006 he injured his left knee when running during physical fitness training while in the performance of duty. On November 17, 2006 OWCP accepted the claim for tear of the lateral meniscus of the left knee. Appellant stopped work on November 7, 2006 and worked intermittently thereafter.

In a November 6, 2006 authorization for examination and/or treatment (Form CA-16), the employing establishing authorized appellant to seek medical care. In Part B of the Form CA-16, attending physician's report, of even date, Dr. Jerry Ann Hunter, a Board-certified internist, reported that appellant slipped as he ran up hill during fitness training. She diagnosed knee sprain. Dr. Hunter checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by the described employment activity. She opined that appellant was totally disabled from work commencing November 6, 2006.

In separate report dated November 6, 2006, Dr. Hunter noted his treatment of appellant for left knee pain. She diagnosed sprain of the knee and indicated that x-rays were not performed secondary to appellant's inability to extend the knee. In a visit summary dated November 6, 2006, Dr. Hunter diagnosed knee sprain and prescribed a knee immobilizer and crutches. In a medical clearance checklist of even date, she provided work restrictions.

On November 7 and 9, 2006 Dr. Andrew Cosgarea, a Board-certified orthopedic surgeon, treated appellant for left knee pain. He diagnosed suspected displaced lateral meniscal tear and continued appellant's non-weightbearing status with crutches. On November 9, 2006 Dr. Cosgarea noted that a magnetic resonance imaging (MRI) scan of the left knee demonstrated a displaced bucket-handle lateral meniscus tear. He diagnosed locked left knee secondary to displaced bucket-handle meniscus tear and recommended surgery. On November 10, 2006 Dr. Cosgarea performed OWCP-authorized left knee arthroscopy and inside-out suture repair of the left lateral meniscus. He diagnosed displaced bucket-handle lateral meniscus tear of the left knee.

On January 20, 2009 appellant filed a claim for compensation (Form CA-7) for a schedule award.[2] By decision dated August 26, 2011, OWCP granted him a schedule award for two percent permanent impairment of the left leg. The period of the award ran from October 8 through November 17, 2008.

In a statement received by OWCP on August 1, 2023, appellant related that in 2006 he tore his left meniscus during training at work. He noted that he underwent surgery and returned to duty. Appellant reported continuing left knee pain and advised that, while playing with his kids on a water mat on July 2, 2023, he felt a sharp pain in his left knee, and he was unable to straighten his knee. He believed that this was a consequential injury related to his previously accepted

[2] On March 27, 2009 Dr. James M. Weiss, a Board-certified orthopedic surgeon, evaluated appellant for a schedule award. He determined that appellant sustained two percent permanent partial impairment of the left lower extremity under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*).

November 6, 2006 employment injury and was consistent with a retear of the prior lateral meniscus bucket-handle tear.

On August 2, 2023 appellant filed a notice of recurrence (Form CA-2a) alleging a recurrence of the need for medical treatment on July 2, 2023, causally related to the accepted November 6, 2006 employment injury. He noted that he continued to experience symptoms related to his accepted tear of the lateral meniscus of the left knee. Appellant indicated that he did not stop work.

In an August 8, 2023 development letter, OWCP informed appellant of the deficiencies of his recurrence claim. It advised him of the type of additional factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP received additional medical evidence. In a July 3, 2023 report, Dr. David L. Bernholt, a Board-certified orthopedic surgeon, treated appellant on that date for left knee pain. Appellant reported an acute onset of pain that began two days prior when he was on a floating pad in a lake and sustained a twisting type of injury to the knee and heard and felt a "pop." His history was significant for prior lateral meniscus bucket-handled tear that was repaired surgically. Dr. Bernholt diagnosed tear of medial meniscus of knee. He treated appellant in follow up on July 11, 2023 and after review of an MRI scan indicated that appellant sustained a recurrent lateral meniscus bucket-handle tear. Dr. Bernholt opined that not having access to the prior MRI scan of the left knee, it was "not possible to determine whether this is the exact same tear plane as prior" but his suspicion was that this was related to the initial bucket-handle tear. He diagnosed unspecified tear of unspecified meniscus, left knee and recommended knee arthroscopy with meniscectomy. On July 19, 2023 Dr. Bernholt performed a left knee debridement of bucket-handle meniscus tear with subtotal meniscectomy and diagnosed left knee displaced lateral meniscus bucket-handle tear, recurrent, and discoid lateral meniscus. In an employing establishment medical clearance checklist dated July 21, 2023, he diagnosed left bucket-handle medial meniscus tear. On August 22, 2023 Dr. Bernholt noted that appellant made substantial improvement since surgery. He diagnosed bucket-handle tear of lateral meniscus of the knee. Dr. Bernholt returned appellant to full duty on September 4, 2023. He noted that appellant sustained reinjury of the left knee involving the lateral meniscus. Dr. Bernholt described a twisting/bent knee incident, which resulted in displacement of a bucket-handle meniscus tear. He indicated that an MRI scan of the left knee was consistent with a displaced bucket-handle meniscus tear, and opined that appellant sustained a retear of his meniscus in July 2023 that was related to his accepted November 6, 2006 employment injury.

An MRI scan of the left knee dated July 7, 2023 demonstrated a large bucket-handle tear of the lateral meniscus, focal high-grade chondral loss in the lateral tibial plateau posteriorly with subjacent reactive bone marrow edema, low-grade chondral loss in the central trochlea, and moderate joint effusion.

By decision dated September 11, 2023, OWCP denied appellant's recurrence claim, beginning July 2, 2023, causally related to his accepted November 6, 2006 employment injury, finding that he had not established that he required additional medical treatment due to a worsening of the accepted work-related conditions, without intervening cause.

On June 17, 2024 Dr. John W. Ellis, a Board-certified family practitioner, indicated that appellant sustained a recurrence of a prior medical condition on July 2, 2023. He noted that appellant sustained a left knee injury on November 6, 2006, which contributed to the subsequent reinjury on July 2, 2023. Dr. Ellis noted that the initial injury involved a bucket-handle tear of the lateral meniscus which was surgically repaired; however, he noted that this type of injury often compromises the structural integrity of the knee making it susceptible to future injuries. He opined that the 2006 employment injury and subsequent surgeries contributed significantly to the recurrence and worsening of appellant's knee condition, leading to further complications and need for medical treatment. Dr. Ellis explained that recurrent injuries are common due to the initial damage altering the biomechanics and stability of the joint. He noted that the weakened meniscus and changes in the knee's load distribution from the initial injury likely predisposed appellant to further injury when he experienced a similar meniscal tear in 2023. Dr. Ellis opined that based on his examination, review of the medical records, education, training, experience, to a reasonable degree of medical certainty the injuries, impairments, and disabilities set forth in his diagnosis, findings, and impairments arose out of and in the course of appellant's employment factors.

On July 16, 2024 appellant requested reconsideration.

By decision dated July 18, 2024, OWCP denied modification of the September 11, 2023 decision.

On July 24, 2024 appellant, requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

By decision dated July 31, 2024, OWCP denied appellant's request for a review of the written record. It found that, because he had previously requested reconsideration, he was not, as a matter of right, entitled to another review by the Branch of Hearings and Review. OWCP further explained that appellant's request was denied as the issue of the case could equally well be addressed by requesting reconsideration from the district office and submitting evidence not previously considered. It also indicated that, alternatively, appellant could file an appeal with the Board.

LEGAL PRECEDENT -- ISSUE 1

The United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation.[3]

A recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.[4] An employee has the burden of proof to establish that he or she sustained a recurrence of a medical condition that is causally related to his or her accepted

[3] *Supra* note 1 at § 8103(a).

[4] 20 C.F.R. § 10.5(y).

employment injury without intervening cause.[5] If a claim for recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report supporting a causal relationship between the employee's current condition and the original injury in order to meet his or her burden.[6]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a recurrence of the need for medical treatment, commencing July 2, 2023, causally related to his accepted November 6, 2006 employment injury.

Appellant filed a Form CA-2a alleging a recurrence of the need for medical treatment causally related to his accepted November 6, 2006 employment injury. In support of this claim, he submitted a July 3, 2023 report from Dr. Bernholt who treated him after an acute onset of pain that began two days prior when he was on a floating pad in a lake and sustained a twisting type of injury to his knee. Dr. Bernholt noted that appellant's history was significant for prior lateral meniscus bucket-handle tear that was repaired surgically. He diagnosed possible recurrent bucket-handle tear and performed arthroscopic surgery on July 19, 2023. This report, however, did not offer an opinion on causal relationship between appellant's current need for medical treatment and the accepted November 6, 2006 employment injury.[7] The Board has held that a medical report is of no probative value on a given medical matter if it does not contain an opinion on that matter.[8] Rather this report attributes appellant's injury to an intervening twisting injury when he was on a floating pad. In reports dated July 21 and August 22, 2023, Dr. Bernholt further discussed appellant's medical condition, but these reports also did not offer an opinion on causal relationship between appellant's current need for medical treatment and the accepted November 6, 2006 employment injury. Therefore, these reports are insufficient to establish appellant's claim for a recurrence of the need for medical treatment causally related to the accepted November 6, 2006 employment injury.

On July 11, 2023 Dr. Bernholt indicated that appellant sustained a recurrent lateral meniscus bucket-handle tear. He opined that because he did not have access to the prior MRI scan of the left knee, it was "not possible to determine whether this is the exact same tear plane as prior" but his suspicion was that this was related to the initial bucket-handle tear. While an opinion supporting causal relationship does not have to reduce the cause or etiology of a disease or a condition to an absolute certainty, it must be one of reasonable medical certainty and not

[5] *W.B.*, Docket No. 22-0985 (issued March 27, 2023); *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *M.P.*, Docket No. 19-0161 (issued August 16, 2019); *E.R.*, Docket No. 18-0202 (issued June 5, 2018); *Mary A. Ceglia*, 55 ECAB 626 (2004).

[6] Federal (FECA) Procedural Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4b (June 2013); *see also M.F.*, Docket No. 21-1221 (issued March 28, 2022); *J.M.*, Docket No. 09-2041 (issued May 6, 2010).

[7] Federal (FECA) Procedural Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4 (June 2013); *see also A.M.*, Docket No. 22-0322 (issued November 17, 2022); *M.F.*, Docket No. 21-1221 (issued March 28, 2022); *J.M.*, Docket No. 09-2041 (issued May 6, 2010). *See also T.B.*, Docket No. 18-0672 (issued November 2, 2018); *O.H.*, Docket No. 15-0778 (issued June 25, 2015).

[8] *Id.*; *see also L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

speculative or equivocal in character.[9] As Dr. Bernholt's opinion regarding causal relationship was speculative and unexplained, it is insufficient to meet appellant's burden of proof to establish his claim for a recurrence of the need for medical treatment.[10]

On August 22, 2023 Dr. Bernholt diagnosed bucket-handle tear of lateral meniscus of the left knee. He noted that appellant sustained reinjury of the left knee involving the lateral meniscus and described a twisting/bent knee episode, which resulted in displacement of a bucket-handle meniscus tear. Dr. Bernholt opined that appellant sustained a retear of his meniscus in the same location as his initial injury. However, he did not explain how appellant's accepted knee condition was related to his current left knee condition.[11] A well-rationalized opinion is particularly warranted when there is a history of preexisting conditions.[12] As Dr. Bernholt's opinion regarding causal relationship was conclusory and unexplained, it is insufficient to meet appellant's burden of proof to establish his claim for a recurrence of the need for medical treatment.[13]

On June 17, 2024 Dr. Ellis indicated that the initial left knee injury appellant sustained on November 6, 2006 contributed to the subsequent reinjury on July 2, 2023. He noted that the initial injury involved a bucket-handle tear of the lateral meniscus, which compromised the structural integrity of the knee and altered the biomechanics and stability of the joint. Dr. Ellis noted that the weakened meniscus and changes in the knee's load distribution from the initial injury likely predisposed appellant to further injury when he experienced a similar meniscal tear in 2023. Although he generally supported causal relationship, he did not offer medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's accepted November 6, 2006 left knee injury and his current left knee condition.[14] As noted above, the Board has held that a mere conclusion without the necessary rationale is insufficient to meet a claimant's burden of proof.[15] As such, this report is of limited probative value regarding appellant's claim for a recurrence of the need for medical treatment.

The record also contains an MRI scan. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injuries resulted in appellant's diagnosed medical conditions.[16]

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[9] *C.H.*, Docket No 19-0409 (issued August 5, 2019).

[10] *P.A.*, Docket No. 18-0559 (issued January 29, 2020).

[11] *See P.S.*, Docket No. 17-1013 (issued November 1, 2017).

[12] *D.M.*, Docket No. 16-0346 (issued June 15, 2017).

[13] *See A.T.*, Docket No. 19-0410 (issued August 13, 2019) (finding that a mere conclusion without the necessary rationale is insufficient to meet a claimant's burden of proof).

[14] *See P.L.*, Docket No. 19-1750 (issued March 26, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[15] *See supra* note 13.

[16] *L.A.*, Docket No. 22-0463 (issued September 29, 2022); *D.K.*, Docket No. 21-0082 (issued October 26, 2021); *O.C.*, Docket No. 20-0514 (issued October 8, 2020); *R.J.*, Docket No. 19-0179 (issued May 26, 2020).

As appellant has not submitted medical evidence sufficient to establish a recurrence of the need for medical treatment, commencing July 2, 2023, causally related to his accepted employment injury, the Board finds that he has not met his burden of proof.

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b) of FECA, concerning a claimant's entitlement to a hearing, states: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his or her claim before a representative of the Secretary."[17] Section 10.615 of OWCP's federal regulations, implementing this section of FECA, provides that a claimant who requests a hearing can choose between two formats, either an oral hearing or a review of the written record by an OWCP hearing representative.[18] As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.[19] The date of filing is fixed by postmark or other carrier's date marking,[20] or the date received in Employees' Compensation Operations and Management Portal (ECOMP), and before the claimant has requested reconsideration.[21]

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and that it must exercise this discretionary authority in deciding whether to grant a hearing.[22] Specifically, the Board has held that OWCP has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to FECA, which provided the right to a hearing,[23] when the request is made after the 30-day period for requesting a hearing,[24] when the request is for a second hearing on the same

[17] 5 U.S.C. § 8124(b)(1).

[18] 20 C.F.R. § 10.615.

[19] *T.A.*, Docket No. 18-0431 (issued November 7, 2018); *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

[20] 20 C.F.R. § 10.616(a).

[21] *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4a (February 2024).

[22] *T.A.*, *supra* note 19; *Marilyn F. Wilson*, 52 ECAB 347 (2001).

[23] *C.A.*, Docket No. 17-0944 (issued May 15, 2018); *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

[24] *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

issue,[25] and when the request is made after a reconsideration request was previously submitted.[26] In these instances, OWCP will determine whether a discretionary hearing should be granted or, if not, will so advise the claimant with reasons.[27]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for a review of the written record, pursuant to 5 U.S.C. § 8124(b).

Appellant's July 24, 2024 request for a review of the written record was made after he had previously requested reconsideration of OWCP's denial of his recurrence claim. The Board notes that on July 16, 2024 he requested reconsideration of OWCP's September 11, 2023 merit decision denying his claim for a recurrence. By decision dated July 18, 2024, OWCP denied modification of the September 11, 2023 decision. Consequently, the Board finds that he was not entitled to a review of the written record as a matter of right as he had previously requested reconsideration.[28]

While OWCP also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, OWCP, in its July 31, 2024 decision, properly exercised its discretion by considering appellant's request and finding that the issue of the case could be equally well addressed through the submission of a reconsideration request with evidence supporting his claim for a recurrence of the need for medical treatment due to a work-related condition. The Board has held that as the only limitation on OWCP's authority is reasonableness, abuse of discretion is shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken, which are contrary to both logic and probable deduction from established facts.[29] In the present case, the evidence of record does not indicate that OWCP committed any act in connection with its denial of appellant's request for a review of the written record, which could be found to be an abuse of discretion.[30]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a recurrence of the need for medical treatment, commencing July 2, 2023, causally related to his accepted November 6, 2006 employment injury. The Board further finds that OWCP properly denied his request for a review of the written record pursuant to 5 U.S.C. § 8124(b).

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[25] *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

[26] *R.H.,* Docket No. 07-1658 (issued December 17, 2007); *S.J.*, Docket No. 07-1037 (issued September 12, 2007). Section 10.616(a) of OWCP's regulations provides that a claimant seeking a hearing must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision. 20 C.F.R. § 10.616(a).

[27] *C.A., supra* note 23.

[28] *Johnny S. Henderson*, *supra* note 25.

[29] *Daniel J. Perea,* 42 ECAB 214, 221 (1990).

[30] *C.A., supra* note 23; *Rudolph Bermann*, *supra* note 23.

ORDER

IT IS HEREBY ORDERED THAT the July 18 and July 31, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 17, 2025
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