

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case was previously 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 December 21, 2020 appellant, then a 57-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on November 9, 2020 she sustained a sprain/fracture to her right knee when picking up military bags while in the performance of duty. She stopped work on November 10, 2020 and returned to work on November 15, 2020.

In a December 17, 2020 statement, appellant asserted that she was injured on November 9, 2020 when, while working on a machine with a coworker, she tried to pick up a military bag. She explained that she heard and felt a pop in her right knee, as well as a gushing sensation. Appellant dropped the bag and had to sit for a period of time before she was able to stand back up and go home. She indicated that when she woke up the next day, she was unable to walk for the next three days as her pain was unbearable.

In a December 22, 2020 medical report, Dr. Brian Forsythe, a Board-certified orthopedic surgeon, noted that appellant's injury occurred at work on November 9, 2020 while lifting a bag full of mail and packages when she felt a pop and experienced pain in her right knee. He reviewed a December 15, 2020 magnetic resonance imaging (MRI) scan of the right knee and diagnosed an insufficiency fracture and a medial meniscus tear of the right knee.

In a January 14, 2021 development letter, OWCP advised appellant that additional factual and medical evidence was needed in support of her claim and provided a questionnaire for her completion. It afforded her 30 days to respond.

In a December 18, 2020 letter, Dr. Suwon Nopachai, a Board-certified internist, noted that appellant first contacted her on November 11, 2020 regarding her November 9, 2020 work-related knee injury. She noted that appellant was subsequently seen in her clinic on November 12, 2020 and her MRI scan of the right knee demonstrated a fracture and other problems that needed to be addressed by an orthopedic surgeon.

In a December 22, 2020 duty status report (Form CA-17), Dr. Forsythe diagnosed a right medial tibial plateau insufficiency fracture and a right medial meniscus tear and provided work restrictions. In a January 6, 2021 note, Elizabeth Wohrley, a nurse practitioner, noted that appellant's date of injury was November 9, 2020 and diagnosed a stress fracture of tibia.

Dr. Forsythe, in January 19, 2021 treatment notes, diagnosed an insufficiency fracture of the right knee, noted that appellant's knee was improving and indicated that she could return to work with restrictions. In work release notes of even date, he repeated that she could return to work with restrictions due to right knee medial plateau insufficiency fracture. In a Form CA-17 of even date, Dr. Forsythe repeated his diagnosis and provided work restrictions.

Appellant accepted a modified job offer on January 28, 2021 performing limited duty as a mail handler.

³ Docket No. 21-0670 (issued January 27, 2022).

By decision dated February 17, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the November 9, 2020 incident occurred, as alleged. It found that the requirements had not been met to establish an injury as defined by FECA. Appellant appealed this decision to the Board.

In its January 27, 2022 decision,⁴ the Board found that appellant had met her burden of proof to establish a traumatic incident in the performance of duty on November 9, 2020, as alleged. It further remanded the case for OWCP to consider the medical evidence and issue a *de novo* decision addressing whether appellant met her burden of proof to establish an injury causally related to the accepted November 9, 2020 employment incident.

OWCP continued to receive medical evidence. In a November 27, 2020 report, Dr. Michael J. Herring, a Board-certified internist, related appellant's history of injury and diagnosed right knee pain. He found that x-ray studies of even date of her right knee were normal. A December 15, 2020 MRI scan of the right knee revealed medial tibial plateau subchondral insufficiency fracture, chondromalacia, osteoarthritis, medial meniscal intrasubstance degeneration and probable tear at the posterior horn root ligament attachment, small joint effusion with synovial thickening and partially ruptured Baker's cyst, and mild Iliotibial (IT) band and patellar tendon-lateral femoral condyle friction syndrome.

On February 16, 2021 Dr. Forsythe completed a Form CA-17 and diagnosed right knee medial tibial plateau insufficiency fracture due to the November 9, 2020 employment incident, and right medial meniscal tear. He found that appellant could return to light-duty work on December 22, 2020 and provided work restrictions. In a work release note of even date, Dr. Forsythe repeated the diagnoses of right knee medial tibial plateau insufficiency fracture and recommended physical therapy and desk duty.

By decision dated March 10, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that the diagnosed medical condition was causally related to the accepted November 9, 2020 employment incident.

On March 23, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The oral hearing took place on July 5, 2022.

OWCP continued to receive evidence. In a May 10, 2022 note, Dr. Forsythe diagnosed right knee medial tibial plateau insufficiency fracture and medial meniscus tear. He reviewed appellant's medical history relating that an injury occurred on November 9, 2020 when she felt a pop and pain in her knee. Due to increased pain, appellant sought medical treatment several days later and an MRI scan demonstrated an insufficiency fracture and medial meniscus tear. On June 7, 2022 Dr. Forsythe repeated his history and diagnosis. He reviewed a May 16, 2022 MRI scan which demonstrated tri-compartment chondromalacia of the right knee with underlying femoral condyle bone marrow edema, likely degenerative.

In a June 13, 2022 report, Dr. Forsythe related appellant's history of injury on November 9, 2020 and her diagnostic study results of insufficient fracture and medial meniscus tear of the right

⁴ *Id.*

knee. He found that she remained symptomatic. Dr. Forsythe concluded that appellant's right knee condition was causally related to her November 9, 2020 work injury.

By decision dated August 30, 2022, OWCP's hearing representative affirmed the March 10, 2022 decision.

OWCP continued to receive evidence. On November 1 and 4, 2022 Dr. Forsythe repeated his June 13, 2022 findings and conclusions.

On November 28, 2022 appellant, through counsel requested reconsideration. In support of this request, she provided a January 12, 2021 health certificate from Dr. Forsythe diagnosing right knee medial tibial plateau insufficiency fracture and medial meniscus tear. In reports dated December 22, 2020 through November 1, 2022, Dr. Forsythe continued to find that she was partially disabled. On February 16, 2021 he diagnosed insufficiency fracture of the right tibia. Dr. Forsythe also provided notes dated July 26 through November 1, 2022, repeating this diagnosis.

By decision dated May 26, 2023, OWCP denied modification.

On September 20, 2023 appellant requested reconsideration. In an August 26, 2023 report, Dr. Nopachai related that appellant's right knee symptoms began on November 9, 2020 and reviewed her diagnostic studies. She indicated that appellant's right knee injury occurred as a result of repeated stress/trauma to the knee due to the heavy lifting required at work. Dr. Nopachai further found that the "pop she felt at work may have been due to the likely tear in her meniscus."

By decision dated December 15, 2023, OWCP denied modification.

On July 1, 2024 appellant, through counsel, requested reconsideration. In a May 11, 2024 report, Dr. Nopachai related that appellant developed severe pain in her right knee following her November 9, 2022 employment incident. She opined that to a reasonable degree of medical certainty appellant's condition of right knee medial meniscus tear and aggravation of osteoarthritis with tri-compartment chondromalacia as demonstrated on the May 16, 2022 MRI scan, were more likely than not caused by the November 9, 2022 employment incident of lifting a heavy bag of mail and packages. Dr. Nopachai further explained that the meniscal tear resulting from a twisting or torque injury as the rotational force overwhelmed the loadbearing capacity of the knee joint causing the soft tissue of the medial meniscus to tear. She also determined that the tear in the tissue of the meniscus altered the mechanics of the knee and caused trauma to the knee joint damaging the articular surfaces. Dr. Nopachai related that since arthritis is unremitting and the articular surfaces are not well vascularized, the trauma caused aggravation of the arthritis. She then addressed the diagnosed condition of subchondral insufficiency fracture and correlated it with prolonged weight bearing or repetitive impact on the bone. Dr. Nopachai defined chondromalacia as the softening of cartilage often caused by overuse, misalignment, and or arthritis. She found that one of the major factors contributing to appellant's worsening condition was her 2.5 years of work lifting and carrying heavy bags weighing up to 50 pounds. Appellant's work activities of standing for extended periods of time, and lifting and throwing heavy bags of mail, caused acceleration of her right knee conditions due to repetitive trauma to the joints. Dr. Nopachai found that appellant's underlying arthritis became destabilized due to the structural articular cartilage loss and associated physiologic changes of deteriorative destruction of the joint. She determined that the mechanism of the stress and quantity of the loads placed on the knee joint caused wear

and tear, and was of such duration and intensity that it was beyond the body's normal capacities. Dr. Nopachai concluded that appellant's November 9, 2020 knee injury occurred as a result of repeated stress/trauma to her knee due to the heavy lifting she was required to do at her work.

By decision dated July 9, 2024, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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, that the claim was filed with the applicable time limitation, that an injury was sustained while in the performance of duty, as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.⁸ 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 time and place, and in the manner alleged.⁹ Second, the employee must submit evidence, in the form of probative medical evidence, to establish that the employment incident caused an injury.¹⁰

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹¹ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment incident must be based on a complete factual and medical background.¹² 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 accepted employment incident.¹³

⁵ *Supra* note 2.

⁶ *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁷ *E.S.*, *id.*; *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, *id.*

⁹ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, *supra* note 6.

¹⁰ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹² *S.V.*, Docket No. 22-1010 (issued February 21, 2023); *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹³ *Id.*

ANALYSIS

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

Appellant provided a May 11, 2024 report wherein Dr. Nopachai related that the November 9, 2022 employment incident of lifting a heavy bag of mail and packages caused or contributed to the diagnosed conditions of right knee medial meniscus tear, aggravation of osteoarthritis with tri-compartment chondromalacia, and subchondral insufficiency fracture. Dr. Nopachai explained that the meniscal tear resulted from a twisting or torque injury as the rotational force overwhelmed the loadbearing capacity of the knee joint causing the soft tissue of the medial meniscus to tear. She also determined that the tear in the tissue of the meniscus altered the mechanics of the knee, and caused trauma to the knee joint damaging the articular surfaces. Dr. Nopachai related that since arthritis is unremitting, and the articular surfaces are not well vascularized, the trauma caused aggravation of knee arthritis. She then addressed the diagnosed condition of subchondral insufficiency fracture, and correlated it with prolonged weight bearing or repetitive impact on the bone. Dr. Nopachai found that one of the major factors that contributed to appellant's worsening condition was her 2.5 years of work lifting and carrying heavy bags weighing up to 50 pounds. This orthopedic stress caused appellant's underlying arthritis to become destabilized due to the structural articular cartilage loss and associated physiologic changes of deteriorative destruction of the joint. Dr. Nopachai concluded that appellant's November 9, 2020 knee injury occurred as a result of repeated stress/trauma to her knee due to the heavy lifting she was required to do at her work. The Board finds that while her opinion is insufficient to establish causal relationship, it is sufficient to require further development of the medical evidence.¹⁴

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.¹⁵ It has an obligation to see that justice is done.¹⁶

The case must therefore be remanded 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 November 9, 2020 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. Nopachai. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹⁴ *M.J.*, Docket No. 24-0800 (issued November 7, 2024); *J.M.*, Docket No. 22-0916 (issued September 30, 2024); *D.V.*, Docket No. 21-0383 (issued October 4, 2021); *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, *supra* note 10.

¹⁵ *Id.*

¹⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2024 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.¹⁷

Issued: January 31, 2025
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁷ James D. McGinley, Alternate Judge, participated in the preparation of this decision, but was no longer a member of the Board effective January 12, 2025.