

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

**T.N., Appellant**

**and**

**DEPARTMENT OF DEFENSE, DEFENSE  
LOGISTICS AGENCY, Cumberland, PA,  
Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 12-214  
Issued: May 25, 2012**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 9, 2011 appellant filed a timely appeal from an August 23, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant established that he sustained a traumatic injury in the performance of duty on June 22, 2011.

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the August 23, 2011 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. §§ 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

## **FACTUAL HISTORY**

On July 5, 2011 appellant, then a 43-year-old distribution process worker, filed a traumatic injury claim alleging that on June 22, 2011 he sustained left knee pain with some swelling due to pulling orders and getting up on the forklift. On the back of the form, the employing establishment noted that it was unknown whether an injury was sustained in the performance of duty as he did not report the incident until 12 days after it allegedly occurred.

By correspondence dated July 18, 2011, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised as to the medical and factual evidence required and given 30 days to submit this information.

In response to OWCP's request for additional evidence, appellant submitted office medical notes, work restrictions, objective testing and factual evidence. He noted that he was pulling orders in Building 59 when he felt his left knee start to get tight. Appellant tried stretching it, but it did not help. When he went to get up on the forklift he felt a pop behind his left knee. As to why he waited 12 days to report the incident, appellant stated that when he saw his physician on June 27, 2011 he was told that he had patellofemoral syndrome for which there was no known cause.

In OWCP's medical treatment notes dated July 1 to August 3, 2011, Dr. Daniel P. Hely, a treating Board-certified orthopedic surgeon, provided physical findings and a medical history. On July 7, 2011 he noted no effusion and a stable ligament on examination and diagnosed resolving knee sprain. Dr. Hely reported a diagnosis of patellar tendinitis symptoms on August 1, 2011. Cori M. Davis, a certified physician's assistant completed the notes dated July 21, 2011<sup>3</sup> which provided physical findings, noted normal objective testing and diagnosed left knee pain.

A July 5, 2011 magnetic resonance imaging (MRI) scan of the left knee noted a clinical history of knee pain, but found no evidence internal derangement of the knee.

In a July 13, 2011 attending physician's report (Form CA-20), Dr. Hely listed an injury date of June 22, 2011 and history of left knee pain, which was resolving. He checked "yes" to the question of whether the diagnosed condition was employment related. Under the explanation section of the form, Dr. Hely stated that appellant indicated that he had sustained a twisting injury. He reported that an MRI scan revealed no abnormality.

On August 15, 2011 OWCP received a June 30, 2011 triage note advising that appellant had called to say that the swelling in his knee had gone down. In a July 12, 2011 duty status report (Form CA-17), Dr. Don Potter, a treating physician, noted a June 22, 2011 injury, diagnosed left knee effusion and provided work restrictions.

By decision dated August 23, 2011, OWCP denied appellant's claim on the grounds that he did not establish injury as alleged. It found that the evidence was insufficient to establish that the June 20, 2011 incident occurred as alleged because appellant did not provide a detailed

---

<sup>3</sup> This report was countersigned by a physician, but the signature is illegible.

factual statement explaining what took place. Additionally, it found the medical evidence insufficient to establish that he sustained an injury in the performance of duty.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of establishing the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.<sup>7</sup> First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>8</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>9</sup>

### **ANALYSIS**

Appellant filed a claim alleging that he sustained a left knee injury on June 22, 2011 in the performance of duty. He sought medical treatment subsequent to the injury based on a June 30, 2011 triage note indicating that his knee swelling had gone down. The record also contains medical notes and a work restriction form dated July 1 to August 3, 2011 which listed an injury date of June 22, 2011. Appellant completed the form indicating that his injury occurred on June 22, 2011. He also provided a statement in response to OWCP's July 18, 2011 letter providing more detail on how the injury occurred. The employing establishment stated that it was unknown as to whether the injury was employment related as appellant had waited 12 days before informing it of the incident. OWCP denied his claim for a traumatic injury on the basis that he had provided no supporting evidence that the incident occurred as alleged.

The Board finds that appellant has submitted sufficient evidence to establish the June 22, 2011 employment incident. Appellant provided a consistent history of injury on his claim form and in his statement. He was engaged in pulling orders and getting on a forklift. Appellant also

---

<sup>4</sup> 5 U.S.C. § 8101 *et seq.*

<sup>5</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>6</sup> S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> B.F., Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 5.

<sup>8</sup> D.B., 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>9</sup> C.B., Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 5.

sought medical treatment contemporaneous with the alleged injury. The employing establishment does not dispute the employment activity in which he was engaged at the time of the alleged injury. It only noted the delay in reporting the incident. The Board finds that there are no inconsistencies so as to cast serious doubt on the occurrence of the June 22, 2011 employment incident.

The Board finds, however, that the medical evidence of record is not sufficient to establish that a left knee condition resulted from the June 22, 2011 employment incident. The only medical evidence of record is Dr. Hely's July 13, 2011 form report. This report provided a diagnosis of left knee pain which was resolving and checked "yes" to the question of whether it was employment related. It is well established that a physician's opinion on causal relationship that consists of checking "yes" to a form question is of diminished probative value.<sup>10</sup> Dr. Hely did not describe the employment incident other than noting it was a twisting incident. The remaining medical notes from him, the MRI scan report and duty status report from Dr. Potter fail to provide a history of the employment injury or a physician's opinion explaining how appellant sustained an injury to his left knee as a result of the accepted June 22, 2011 incident. None of the reports contain any rationale or explanation of the mechanism of injury arising from the employment incident on June 22, 2011.<sup>11</sup>

The notes from Mr. Davis, the physician's assistant, are of no probative value as he is not a physician under FECA.<sup>12</sup>

Thus, appellant has failed to establish that he sustained a left knee injury due to the June 22, 2011 employment incident

OWCP advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. As appellant has failed to submit any probative medical evidence establishing that he sustained an injury in the performance of duty on June 22, 2010 he has failed to meet 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.

### **CONCLUSION**

The Board finds that appellant has established that the employment incident occurred at the time, place and in the manner alleged. The Board further finds that he failed to submit sufficient medical opinion evidence to establish a left knee condition.

---

<sup>10</sup> See *Cecelia M. Corley*, 56 ECAB 662 (2005).

<sup>11</sup> See *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *S.D.*, 58 ECAB 713 (2007); *Cecelia M. Corley*, *id.* (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>12</sup> 5 U.S.C. § 8101(2); see also *A.C.*, Docket No. 11-1800 (issued March 21, 2012).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 23, 2011 is affirmed, as modified.

Issued: May 25, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board