

On appeal appellant's attorney contends that the July 27, 2010 OWCP decision is contrary to fact and law.

FACTUAL HISTORY

On December 21, 2009 appellant, then a 46-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 15, 2009 he sustained a left knee injury after one of the straps on his leg brace came apart while in the performance of duty. In a December 22, 2009 attending physician's report, Lucia Brown, the physician's assistant of Dr. Judith Cadore, a family medicine physician, initially examined appellant and diagnosed bilateral knee and right hip pain and released appellant to light-duty work that same day with restrictions. She marked the box "yes" that the conditions resulted from the leg brace falling apart. In a second report dated December 22, 2009, Dr. Cadore followed up and diagnosed bilateral internal derangement of knee and enthesopathy of right hip region. She indicated that appellant was walking when the left knee brace gave way which caused him to hyperextend his left knee and twist his right knee and right hip as he tried to prevent himself from falling. Dr. Cadore released appellant to light duty that same day.

By letter dated January 6, 2010, OWCP requested additional factual and medical information from appellant. It allotted appellant 30 days to submit additional evidence and respond to its inquiries.

By letter dated January 11, 2010, the employing establishment controverted appellant's claim.

Appellant submitted December 15, 2009 and February 4, 2010 narrative statements and a witness statement describing the employment incident.

On December 24, 2009 the employing establishment offered a limited-duty assignment as a modified mail processing clerk to appellant with the following restrictions: intermittently lift/carry 25 pounds, 10 pounds continuous for eight hours; bend and stoop for half an hour; climb, stand, walk, bend stoop, twist, pull and push for one hour.

By decision dated February 11, 2010, OWCP denied appellant's claim on the basis that the factual and medical evidence submitted was insufficient to establish fact of injury. It found that evidence appellant submitted was not sufficient to establish that the described employment activities occurred as alleged.

On March 3, 2010 appellant, through his attorney, requested an oral hearing and submitted additional evidence. In a May 24, 2010 medical report, Dr. Rezik A. Saqer, a pain medicine physician, indicated that appellant was initially seen on March 25, 2010 for low back pain and bilateral knee pain. He diagnosed right sacroiliac arthropathy, bilateral knee pain and bilateral knee arthropathy. Faber and Yeoman's tests were positive on the right side. Dr. Saqer noted that appellant claimed that his pain was caused by a work-related injury on December 15, 2009. In a June 1, 2010 medical report, Dr. Saqer prescribed a hinged knee brace and knee wedge.

A telephonic hearing was held before an OWCP hearing representative on June 9, 2010. Appellant testified that he sustained an employment-related knee injury and resulting surgery in

1995 requiring him to wear a knee brace. He reported a series of modified job offers, and on December 15, 2009 he was a gate monitor when he felt his knee brace give way and hyperextended his knee and fell on his right knee and hip.

By decision dated July 27, 2010, an OWCP hearing representative affirmed, as modified, the February 11, 2010 decision on the grounds that the medical evidence submitted was insufficient to establish fact of injury. The hearing representative found that although the described employment activities occurred as alleged³ and a firm diagnosis was provided, the medical evidence did not establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of establishing 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 timely filed within the applicable time limitation period of FECA, that an injury⁵ 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.⁶

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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on whether there is a causal relationship between the employee’s diagnosed condition and the compensable employment factors. 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

³ OWCP’s hearing representative reviewed OWCP File No. xxxxxx589 and found that appellant sustained left knee injuries and OWCP had authorized use of a left knee brace as a result of those injuries.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ OWCP’s regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁶ *T.H.*, 59 ECAB 388 (2008). See *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Id.* See *John J. Carlone*, 41 ECAB 354 (1989); *Shirley A. Temple*, 48 ECAB 404 (1997).

and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁸

ANALYSIS

OWCP has accepted that the employment incident of December 15, 2009 occurred at the time, place and in the manner alleged. The issue is whether appellant's bilateral knee, right hip and back conditions resulted from the December 15, 2009 employment incident. The Board finds that appellant did not meet his burden of proof to establish a causal relationship between the conditions for which compensation is claimed and the December 15, 2009 employment incident.

On December 22, 2009 Dr. Cadore diagnosed bilateral internal derangement of the knee and enthesopathy of the right hip region. She reported that appellant was walking when the left knee brace gave way which caused him to hyperextend his left knee and twist his right knee and right hip as he tried to prevent himself from falling and released him to light duty that same day. In a May 24, 2010 medical report, Dr. Saqer indicated that appellant was seen on March 25, 2010 for low back pain and bilateral knee pain. He diagnosed right sacroiliac arthropathy, bilateral knee pain and bilateral knee arthropathy and reported positive Faber and Yeoman's tests on the right side. Dr. Saqer noted that appellant claimed that his pain was caused by a work-related injury on December 15, 2009. On June 1, 2010 Dr. Saqer prescribed a hinged knee brace and knee wedge. Although the Board finds that Drs. Cadore and Saqer did provide firm diagnoses, they failed to directly address the issue of causal relationship as they did not explain how the mechanism of the December 15, 2009 employment incident caused or aggravated appellant's conditions. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹ The medical reports of Drs. Cadore and Saqer do not provide medical rationale explaining how appellant's bilateral knee, right hip and back conditions were caused or aggravated by the December 15, 2009 employment incident. Lacking thorough medical rationale on the issue of causal relationship, the reports are of limited probative value and not sufficient to establish that appellant sustained an employment-related injury in the performance of duty on December 15, 2009.

Similarly, Dr. Cadore's December 22, 2009 attending physician's report, wherein the box was marked "yes" for an employment-related injury, was of limited probative value. The Board has held that a check mark without more, by way of rationale, is insufficient to establish a claim for compensation.¹⁰ As such, the Board finds that appellant did not meet his burden of proof with this submission.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to the December 15, 2009 employment incident, he has failed to meet his burden of proof.

⁸ *Id.* See Gary J. Watling, 52 ECAB 278 (2001).

⁹ See C.B., Docket No. 09-2027 (issued May 12, 2010); S.E., Docket No. 08-2214 (issued May 6, 2009).

¹⁰ See Frederick H. Coward, Jr., 41 ECAB 843 (1990); Lillian M. Jones, 34 ECAB 379 (1982).

On appeal appellant's attorney contends that the July 27, 2010 OWCP decision is contrary to fact and law. For the reasons stated above, the Board finds the attorney's argument is not substantiated.

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 submitted sufficient rationalized medical opinion evidence to establish that the December 15, 2009 employment incident was causally related to the bilateral knee, right hip and back conditions. Therefore, appellant failed to meet his burden of proof to establish a claim for compensation.

ORDER

IT IS HEREBY ORDERED THAT the July 27, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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