



## **FACTUAL HISTORY**

On August 6, 2013 appellant, then a 61-year-old police officer, filed a traumatic injury claim alleging that on that date, while apprehending a suspect, he sprained his right knee. The employing establishment controverted the claim.

By letter to appellant dated August 16, 2013, OWCP asked for further information, including evidence establishing that the employment incident occurred as alleged, a medical diagnosis and a physician's opinion as to how the injury resulted in the condition diagnosed.

In an August 20, 2013 initial orthopedic evaluation, Dr. Moshe H. Wilker, a Board-certified orthopedic surgeon, described an employment incident wherein appellant injured himself while capturing a suspect. He noted that appellant complained of right knee pain, right leg pain and right heel pain, which appellant alleged started two weeks ago after he captured a suspect. Dr. Wilker assessed appellant with right knee internal derangement, right ankle sprain, right leg swelling and ruled out an Achilles tear. He opined that appellant may return to work with restrictions. In a September 17, 2013 report, Dr. Wilker reviewed diagnostic studies, and noted that the right knee magnetic resonance imaging (MRI) scan showed tricompartmental arthritis; the right ankle MRI scan showed Achilles sprain, and that x-rays of the right tibia showed calcification in the Achilles tendon, but no fractures or dislocations. He also noted spurs of the calcaneus. Dr. Wilker assessed appellant with right knee arthritis and Achilles sprain that has significantly improved with conservative treatment. He recommended physical therapy for no more than eight sessions to improve flexibility, but noted that appellant had reached maximum medical improvement and may return to work without restrictions. With regard to causation, Dr. Wilker stated, "the injury arose out of employment and during the course of employment." He further indicated that the injury was 100 percent industrial. Dr. Wilker concluded that appellant shall have access to anti-inflammatories as needed, and that a total knee replacement in the future cannot be ruled out at this time.

Appellant also submitted the results of a right tibial/fibula radiography conducted on August 22, 2013, which Dr. Reza Habibi, a Board-certified radiologist, interpreted as showing no evidence of acute fracture or dislocation involving the right tibia/fibula.

By decision dated September 19, 2013, OWCP denied appellant's claim. It noted that he had not explained what happened when "he apprehended a suspect" and did not respond to queries by OWCP to describe the mechanism of the alleged employment incident. OWCP further determined that appellant had failed to submit any medical evidence that established that the diagnosed medical conditions, *i.e.*, internal derangement of the right knee and right ankle strain, were causally related to the alleged employment injury or event.

On October 15, 2013 appellant requested a review of the written record by an OWCP hearing representative.

In a statement dated January 19, 2014, appellant explained that, while attempting to handcuff a veteran to take him to see a psychiatrist, the veteran initiated defensive physical resistance and appellant decided to take him to the ground. The veteran was overlapped face down on the back of a parked vehicle, whereby he sledded to the right of the parked vehicle to

the ground. As the suspect was sliding off the car, appellant continued to conduct a straight arm-bar take over, and it was at that moment when appellant's right foot curved and he fell to the ground knee first. Appellant's supervisor noted that appellant complained of pain to his right knee and had visible swelling.

Appellant also submitted results of diagnostic tests. In an August 6, 2013 report, Dr. Kira Chow, a Board-certified diagnostic radiologist, found extensive soft tissue prominence in the right prepatellar space likely a combination of fluid/blood in the prepatellar bursa and soft tissue swelling. No fracture appreciated. In an August 27, 2013 MRI scan report of appellant's right knee, Dr. Sean L. Johnston, a Board-certified diagnostic radiologist, listed impressions of: (1) prepatellar bursitis versus contusion and probable focal hematoma formation; (2) thinning of the posterior horn of the medial meniscus; (3) tricompartmental osteoarthritis most significant with medial compartment; and (4) ossification at the insertion site of the quadriceps tendon on the patella. In an MRI scan report of the same date with regard to appellant's ankle, Dr. Johnston noted findings consistent with Achilles tendon strain versus intrasubstance tear with abnormal signal intensity present within the tendon itself and plantar calcaneal spurring.

By decision dated March 18, 2014, OWCP's hearing representative found that appellant had now established that the incident occurred in the performance of duty and that a medical diagnosis had been established. However, she denied appellant's claim as appellant had not provided any rationalized opinion that is based on a complete factual and medical background to explain the relationship between his diagnoses and the employment injury. Therefore, the hearing representative affirmed the September 26, 2013 decision, as modified.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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 injury was sustained 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. 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.<sup>2</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>3</sup> In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or

---

<sup>2</sup> *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

<sup>3</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

she actually experienced the employment injury or exposure at the time, place and in the manner alleged.<sup>4</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>5</sup> The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty 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 claimant.<sup>6</sup>

### ANALYSIS

OWCP accepted that an incident occurred during the course of appellant's federal employment on August 6, 2013. It also accepted that he provided medical diagnoses. However, OWCP denied appellant's claim as he failed to establish that these medical diagnoses were causally related to the accepted employment incident.

Dr. Wilker stated that appellant sustained right knee arthritis and Achilles sprain and he indicated that the injury arose out of appellant's employment. However, he did not explain how the employment incident caused appellant's injury. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.<sup>7</sup> The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.<sup>8</sup> The reports of Dr. Wilker do not adequately explain his conclusion on causal relationship and are therefore insufficient to establish appellant's claim.

The remaining medical evidence of record consists of diagnostic tests interpreted by Drs. Habibi, Chow and Johnston. None of these physicians address the issue of causal relationship and accordingly their reports are insufficient to establish appellant's claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that the condition was caused by his employment is sufficient to

---

<sup>4</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>6</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

<sup>7</sup> *M.R.*, Docket No. 14-11 (issued August 27, 2014).

<sup>8</sup> *See Lee R. Haywood*, 48 ECAB 145 (1996).

establish causal relationship.<sup>9</sup> As appellant did not establish that his medical condition was causally related to the accepted factor of his employment, 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.

**CONCLUSION**

The Board finds that appellant had not met his burden of proof to establish an injury in the performance of duty on September 19, 2012, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 18, 2014 is affirmed.

Issued: November 3, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>9</sup> *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).