

On appeal, appellant contends that his nurses were very professional and their reports were countersigned by a doctor who reviewed the case. He argues that the evidence he submitted was sufficient to establish that he sustained a right knee injury in the performance of duty.

FACTUAL HISTORY

On January 8, 2015 appellant, a 64-year-old ecologist, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right knee injury on January 2, 2015 in the performance of duty. He stated that he was working as part of a biological cave stream monitoring team. This required a lot of kneeling, getting up, and kneeling back down, and, when appellant got up to move to a new location, he felt a sharp pain in his right knee. He advised that he was able to continue working but switched to duties that only required standing. However, appellant advised that his knee still hurt when he walked.

In a January 14, 2015 report, Karen Agee, an advanced practice registered nurse (APRN), diagnosed right knee pain. She reported that appellant was working on a biological monitoring task moving from pool to pool as usual and wearing knee padding as usual. As the day progressed with repetitive kneeling and standing there was a point in time that, with arising from a kneeling position, appellant felt a sudden sharp pain in his right knee.

On January 14, 2015 Dr. Robert S. Amonette, a Board-certified radiologist, reported that the x-ray of the right knee revealed bony structures that appeared unremarkable without fracture or dislocation, normal soft tissues, and no evidence of joint effusion. He noted a clinical history of right knee pain after getting up and down at work.

On February 6, 2015 Demara Goodwich, an APRN, diagnosed right knee pain and advised appellant to rest, ice, and continue to wear a brace.

Appellant submitted physical therapy notes dated February 9 through April 3, 2015 diagnosing prepatellar bursitis, chondromalacia patellae, and abnormality of gait.

In reports dated March 10 and April 14, 2015, Ms. Agee reiterated her diagnosis.

In an April 24, 2015 letter, OWCP indicated that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment had not controverted the claim, payment of a limited amount of medical expenses was administratively approved. It stated that it had reopened the claim for consideration because the medical bills had exceeded \$1,500.00. OWCP requested additional medical evidence and afforded appellant 30 days to respond to its inquiries. It particularly advised that medical evidence must be from a qualified physician and advised that nurse practitioners were not considered to be physicians under FECA.

Appellant submitted a May 19, 2015 narrative statement reiterating the factual history of his claim and stated that he was working on obtaining certifications by a doctor for the medical evidence of record. He also resubmitted the January 14, 2015 x-ray report.

By decision dated June 1, 2015, OWCP denied appellant's claim as fact of injury was not established. It explained that the medical evidence submitted failed to establish a diagnosis causally related to the employment incident.

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 injury³ 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.⁴

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 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.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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, 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.⁶

ANALYSIS

OWCP accepted that on January 2, 2015 appellant engaged in kneeling, standing up, and kneeling back down as alleged. However, the Board finds that appellant did not establish his traumatic injury claim because there is no medical evidence of record which shows that his kneeling, standing up, and kneeling back down at work on January 2, 2015 caused or aggravated a diagnosed condition.

³ OWCP 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).

⁴ See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* See *Gary J. Watling*, 52 ECAB 278 (2001).

A medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician.⁷ The only medical evidence from a qualified physician is the January 14, 2015 x-ray report from Dr. Amonette who advised that a right knee x-ray was normal. While he noted a clinical history of right knee pain after getting up and down at work, he did not indicate that this work activity caused or aggravated a diagnosed medical condition.⁸ Thus, this report is insufficient to establish that appellant has a right knee condition causally related to his work activity on January 2, 2015.

Appellant also provided evidence from Ms. Agee and Ms. Goodwich, APRNs, as well as physical therapy reports. Because nurses and physical therapists are not considered physicians as defined under FECA, these documents cannot constitute competent medical evidence.⁹ In the absence of a rationalized medical opinion from a physician explaining how the January 2, 2015 work factors caused or aggravated a diagnosed medical condition, appellant has not met his burden of proof to establish his claim.

On appeal, appellant contends that his nurses were very professional and their reports were countersigned by a doctor who reviewed the case. He also contends that the evidence he submitted was sufficient to establish that he sustained a right knee injury in the performance of duty. The evidence of record at the time of OWCP's June 1, 2015 decision does not contain any reports from Ms. Agee or Ms. Goodwich that have been countersigned by a physician as defined by FECA.¹⁰ Therefore, as found, these documents do not constitute competent medical evidence and are not a basis for accepting the claim.

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 met his burden of proof to establish an injury causally related to a January 2, 2015 employment incident.

⁷ *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

⁸ *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

⁹ *See* 5 U.S.C. § 8101(2). This subsection defines the term "physician." *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (nurses not physicians); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists not physicians). *See generally Charley V.B. Harley*, *supra* note 7 (where the Board held that medical opinion, in general, can only be given by a qualified physician).

¹⁰ The Board has held that medical documents from a nonphysician may be considered probative if cosigned by a physician. *See S.C.*, Docket No. 12-1898 (issued March 1, 2013); *Rosita F. Brown*, Docket No. 03-1076 (issued July 1, 2003).

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 21, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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