

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

R.O., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 15-0228
Issued: March 4, 2016**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 11, 2014 appellant, through counsel, filed a timely appeal from a June 17, 2014 merit decision of the Office of Workers' Compensation Programs' (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant met his burden of proof to establish that his right knee condition is causally related to an April 16, 2014 employment incident, as alleged.

On appeal, counsel contends that OWCP's decision is contrary to fact and law.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the June 17, 2014 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On April 17, 2014 appellant, then a 66-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that he injured his right knee on April 16, 2014 as a result of a fall in a parking lot. In a narrative statement, he indicated that he went into work to let his supervisor know that he needed to take annual leave for the day and left at 3:00 p.m. on April 16, 2014. As appellant was leaving the building, he fell in the parking lot.

In an April 16, 2014 report, Dr. Robert Smarsch, an attending physician Board-certified in osteopathic manipulative medicine, diagnosed right knee sprain and leg pain.

On April 17, 2014 Dr. Michael Lopresti, a Board-certified orthopedic surgeon, diagnosed “arthralgia right knee likely related to aggravation of underlying arthritis and potential degenerative medial meniscus tear.” He indicated that appellant sustained an injury to his right knee on April 16, 2014 when he stopped suddenly in a parking lot as a car was approaching and sustained a hyperflexion injury to his right knee. Dr. Lopresti reviewed x-rays and found “evidence of a previous trauma to the right knee with a likely healed right distal femur fracture.” He also identified some mild arthritic changes and chondrocalcinosis. Dr. Lopresti opined that appellant was unable to return to work due to an aggravation of underlying arthritis and medial meniscus tear of the right knee and released him to work on May 5, 2014.

In a May 13, 2014 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 did not controvert continuation of pay (COP) or challenge the case, payment of a limited amount of medical expenses was administratively approved. It indicated that it had reopened the claim for consideration because the medical bills had exceeded \$1,500.00. OWCP requested additional evidence and afforded appellant 30 days to respond to its inquiries.

Appellant submitted a “Request for or Notification of Absence” dated May 14, 2014 and documentation regarding pes anserine bursitis.

In a report dated April 24, 2014, Dr. Baran Onder, a Board-certified family practitioner, reported that appellant was complaining of right knee pain status post a fall that he sustained at work in the parking lot when he was leaving work after he tried to avoid a pick-up truck that was driving in the parking lot. Appellant was not sure how he fell, but reported that his knee completely gave out on him when he tried to move quickly. He had significant pain and swelling in the knee and visited the emergency department where he had x-rays taken at the hip and knee, which were interpreted as negative for acute fracture dislocation and appellant was sent home. Dr. Onder diagnosed pain in joint of right knee, disturbance of skin sensation, lumbar radiculopathy, and chondrocalcinosis. On May 1, 2014 he diagnosed pain in lower leg joint, pes anserine bursitis, iliotibial band syndrome, and lumbar degenerative disc disease. On May 14, 2014 Dr. Onder reiterated his diagnoses and opined that appellant would be able to return to light duty with the following restrictions: no heavy lifting, no squatting, office work, light duties on feet with frequent breaks, and light lifting duties.

By decision dated June 17, 2014, OWCP denied appellant's claim because the medical evidence was not sufficient to establish a causal relationship between his right knee condition and the April 16, 2014 employment incident.³

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. 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.⁸

³ While OWCP incorrectly stated in its June 17, 2014 decision that appellant claimed a left knee injury, the Board finds that this is harmless error.

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ 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).

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

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

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

ANALYSIS

OWCP has accepted that the employment incident of April 16, 2014 occurred at the time, place, and in the manner alleged. The issue is whether appellant's right knee condition resulted from the April 16, 2014 employment incident. The Board finds that appellant did not meet his burden of proof to establish a causal relationship between the condition for which compensation is claimed and the employment incident.

In his reports, Dr. Onder diagnosed pes anserine bursitis, iliotibial band syndrome, lumbar radiculopathy, lumbar degenerative disc disease, and chondrocalcinosis. He indicated that appellant was complaining of right knee pain status post a fall that he sustained at work in the parking lot when he was leaving work after he tried to avoid a pick-up truck that was driving in the parking lot. Appellant was not sure how he fell, but reported that his knee completely gave out on him when he tried to move quickly. He had significant pain and swelling in the knee and visited the emergency department where he had x-rays taken at the hip and knee, which were interpreted as negative for acute fracture dislocation and appellant was sent home. On May 14, 2014 Dr. Onder opined that appellant would be able to return to light duty with the following restrictions: no heavy lifting, no squatting, office work, light duties on feet with frequent breaks, and light lifting duties. However, he failed to provide a rationalized opinion explaining how falling in a parking lot at work on April 16, 2014 caused or aggravated appellant's conditions. Dr. Onder noted that appellant's conditions occurred while he was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the diagnosed conditions.⁹ Thus, the Board finds that the reports from Dr. Onder are insufficient to establish that appellant sustained an employment-related injury.

In his April 17, 2014 report, Dr. Lopresti indicated that appellant sustained a hyperflexion injury to his right knee on April 16, 2014 when he stopped suddenly in a parking lot as a car was approaching. He reviewed x-rays and found "evidence of a previous trauma to the right knee with a likely healed right distal femur fracture" and identified some mild arthritic changes and chondrocalcinosis. Dr. Lopresti diagnosed "arthralgia right knee likely related to aggravation of underlying arthritis and potential degenerative medial meniscus tear" and opined that appellant was unable to return to work until May 5, 2014. Medical opinions that are speculative or equivocal in character are of diminished probative value and a medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.¹⁰ The Board finds that Dr. Lopresti's opinion is of diminished probative value on the issue of causal relationship and insufficient to establish that appellant sustained an employment-related injury on April 16, 2014.

On April 16, 2014 Dr. Smarsch diagnosed right knee sprain and leg pain. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's

⁹ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

¹⁰ See *E.O.*, Docket No. 13-1401 (issued December 16, 2013).

condition is of limited probative value on the issue of causal relationship.¹¹ Thus, appellant has not met his burden of proof with this submission.

In further support of his claim, appellant submitted a “Request for or Notification of Absence” dated May 14, 2014 and documentation regarding pes anserine bursitis. These documents do not constitute competent medical evidence as they do not contain rationale by a physician relating appellant’s disability to his employment. As such, the Board finds that appellant did not meet his burden of proof with these submissions.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to an April 16, 2014 employment incident, he has failed to meet his burden of proof to establish a claim for compensation.

On appeal, counsel contends that OWCP’s decision is contrary to fact and law. Based on the findings and reasons stated above, the Board finds counsel’s arguments are 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 met his burden of proof to establish that his right knee condition is causally related to an April 16, 2014 employment incident, as alleged.

¹¹ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.¹²

Issued: March 4, 2016
Washington, DC

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

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

¹² James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.