

primary osteoarthritis of the left knee in the performance of duty. On December 4, 2008 appellant underwent arthroscopic repair of the medial meniscus, lateral meniscus tear debridement and anterior cruciate ligament reconstruction, authorized by the Office. He returned to light duty on March 11, 2009.

Dr. John A. Gillen II, an attending Board-certified orthopedic surgeon, prescribed physical therapy to rehabilitate appellant's left knee. Appellant participated in physical therapy beginning on December 5, 2008, authorized by the Office. On March 13, 2009 a physical therapy assistant noted that appellant "continue[d] to report stiffness and soreness in the right knee." In April 28 and May 1, 2009 progress notes, the physical therapy assistant related appellant's complaints of mild bilateral knee pain with closed chain activities.¹

On June 12, 2009 appellant asserted that on or about March 13, 2009 he injured his right knee below the patella during physical therapy for his left knee. In a July 15, 2009 letter, the Office advised appellant of the additional evidence needed to establish his claim for a consequential right knee condition, including a rationalized report from his physician explaining how and why the approved physical therapy program caused a right knee injury. It afforded appellant 30 days in which to submit such evidence.

By decision dated August 21, 2009, the Office denied appellant's claim for a right knee condition on the grounds that causal relationship was not established. It found that appellant did not submit sufficient medical evidence diagnosing a right knee condition.

In a September 18, 2009 letter, appellant requested a review of the written record. He submitted additional evidence.

In a September 14, 2009 report, Dr. Vincent H. Key, an attending Board-certified orthopedic surgeon, noted appellant's complaints of bilateral knee pain, with a history of left knee surgery. Appellant related that his right knee pain "over the tibial tuberosity" began on March 13, 2009 "in a work-related incident." On examination of the right knee, Dr. Key noted retropatellar crepitus and tenderness along the tibial tubercle. Lachman's examination was negative, varus and valgus stress was stable and there was a full range of right knee motion. Dr. Key obtained x-rays of the right knee showing mild degenerative changes of the patellofemoral articulation. He diagnosed patellar tendinitis of the right knee. In an October 12, 2009 report, Dr. Key recommended a repeat left knee surgery. He did not address the right knee.

By decision dated and finalized December 15, 2009, an Office hearing representative affirmed the August 21, 2009 decision, finding that appellant submitted insufficient medical evidence to establish the claimed consequential right knee condition. She found that Dr. Key did not provide opinion on whether the diagnosed right patellar tendinitis was related to physical therapy for the left knee.

¹ Dr. Gillen examined appellant on April 10 and June 3, 2009 but did not mention the right knee.

LEGAL PRECEDENT

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.²

ANALYSIS

The Office accepted that appellant sustained a torn left medial meniscus, anterior cruciate ligament sprain and localized osteoarthritis of the left knee, requiring surgery in December 2008. It authorized physical therapy. Appellant claimed that on or about March 13, 2009 he sustained a right knee injury as a consequence of physical therapy for his left knee.

Appellant submitted several reports addressing his right knee. In notes dated March 13, April 28 and May 1, 2009, a physical therapy assistant described right knee pain. As a physical therapy assistant is not a physician as defined by the Act,³ these notes are of no probative medical value.⁴ Dr. Key, an attending Board-certified orthopedic surgeon, provided a September 14, 2009 report noting appellant's complaint of right knee pain beginning with a March 13, 2009 "work-related incident." He diagnosed patellar tendinitis of the right knee. Dr. Key did not describe the nature of the March 13, 2009 work incident or offer an etiology for appellant's patellar tendinitis. He did not address the physical therapy received or offer any opinion explaining how therapy would contribute to appellant's right knee condition. As Dr. Key did not provide medical rationale explaining how or why the diagnosed tendinitis was causally related to specific work factors, Dr. Key's opinion is insufficient to meet appellant's burden of proof.⁵

The Office advised appellant of the need to submit a physician's opinion explaining how physical therapy for the accepted left knee conditions would cause a right knee injury. Appellant did not submit such evidence. Therefore, the Office properly denied his claim for a right knee injury.

² *C.O.*, 61 ECAB ___ (Docket No. 10-189, issued July 15, 2010); *Charles W. Downey*, 54 ECAB 421 (2003).

³ A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as physician as defined in 5 U.S.C. § 8101(2). Section 8101(2) of the Act provides as follows: (2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

⁴ *A.C.*, 60 ECAB ___ (Docket No. 08-1453, issued November 18, 2008).

⁵ *Charles W. Downey*, *supra* note 2.

On appeal, appellant contends that he injured his right knee during authorized physical therapy sessions to treat the accepted left knee conditions. As noted, he did not submit sufficient medical evidence to establish the causal relationship asserted.

CONCLUSION

The Board finds that appellant has not established that he sustained a right knee injury as a consequence of physical therapy for accepted left knee conditions.

ORDER

IT IS HEREBY ORDERED THAT the December 15 and August 21, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 1, 2010
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