

On appeal, appellant argued the merits of his case and stated that he injured his right knee twice since the date of injury, in December 2010 and on August 16, 2011 and has a limp almost all the time.

FACTUAL HISTORY

On December 16, 2009 appellant, then a 50-year-old building equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right ankle and knee injury while descending a ladder and stepping on a broken broom head while in the performance of duty that day.

In December 16 and 21, 2009 reports, Dr. Ahmet K Percinel, a Board-certified orthopedic surgeon, diagnosed internal derangement of the right knee. He indicated that appellant stepped on a broom at work and twisted his right knee. Dr. Percinel reported that an x-ray of the right knee did not reveal any significant pathology.

Appellant submitted a December 21, 2009 magnetic resonance imaging (MRI) scan of the right knee, which was normal and negative for post-traumatic abnormality or internal derangement.

On December 23, 2009 Dr. Percinel reviewed the MRI scan and diagnosed a contusion of the right knee. He indicated that there was some degenerative change in the posterior medial meniscus but no tear. Dr. Percinel stated that appellant's medial joint line pain was pretty much gone and he reported mostly distal patellar pain and that it had locked up on him once. In a January 7, 2010 progress report, he reiterated his diagnosis of right knee contusion. On examination, Dr. Percinel found no joint effusion, full extension, full flexion, no tenderness in the mediolateral joint line and no instability. Appellant also submitted physical therapy notes dated January 7 to 20, 2010.

By letter dated February 19, 2010, OWCP informed appellant that his claim was originally received as a simple, uncontroverted case administratively handled to allow medical payments up to \$1,500.00. However, since his medical bills exceeded \$1,500.00, it would formally adjudicate the merits of the claim. After review, OWCP advised appellant that the evidence of record failed to establish causal relationship between appellant's knee condition and the employment incident. It allotted 30 days for him to submit additional evidence and respond to its inquiries.

Appellant submitted reports by Dr. Percinel dated January 7 and March 4, 2010. Dr. Percinel reiterated the diagnoses and indicated that appellant had no tenderness in the patella and was working his regular activities.

By decision dated March 31, 2010, OWCP denied appellant's claim finding that the medical evidence submitted was insufficient to establish causal relationship between the diagnosed conditions and the December 16, 2009 employment incident.

On April 29, 2010 appellant requested reconsideration. He submitted additional evidence, including a narrative statement explaining that he was climbing down steps that were

only made for one foot on each rung when he stepped down with his right foot onto a small wooden broom head and twisted his right ankle and knee.

In two reports dated April 15, 2010, Dr. Percinel reiterated the right knee contusion diagnosis. He reported tenderness in the posteromedial joint line right over the meniscus and a positive McMurray test for torn medial meniscus. Dr. Percinel provided a similar report on April 29, 2010 adding that appellant was not able to squat. On May 27, 2010 he advised that right knee surgery was required.

By decision dated August 4, 2010, OWCP denied modification of its March 31, 2010 decision.

By letter received by OWCP on December 20, 2010 appellant requested reconsideration. Appellant submitted a November 16, 2010 report by Dr. Percinel, who indicated that appellant stepped on a broom at work and twisted his right knee. Dr. Percinel stated that appellant underwent a right knee arthroscopy on May 21, 2010 and was found to have Grade 3 chondromalacia or early arthritis, of the right knee. He reported that appellant had no joint effusion of the right knee, full flexion and full extension but still medial joint line and medial patellofemoral facet pain. Dr. Percinel opined that appellant had reached maximum medical improvement and had approximately eight percent permanent physical impairment of his right lower extremity. Appellant also submitted a December 28, 2010 report by Dr. Percinel, who advised that appellant was still symptomatic and had discomfort with his knee on an off-and-on basis. Dr. Percinel opined that appellant's right knee problem was definitely related to his work-related injury as he stepped on a broom at work and twisted his right knee.

In a January 28, 2011 letter, OWCP requested additional medical opinion from Dr. Percinel.

Subsequently, appellant submitted a May 21, 2010 operative report and two reports by Dr. Percinel dated September 2, 2010 and February 22, 2011. Dr. Percinel noted that appellant's job as a mechanic required walking, standing and checking computers and did not require much lifting, pushing or pulling-type activities. Appellant was released to work as of June 21, 2010. Dr. Percinel stated that he was unable to make a comment regarding permanency of the injury since appellant did not keep a follow-up appointment. On February 22, 2011 he opined that appellant's knee symptoms were related to the work-related incident because appellant indicated that he had no problems until he stepped on a broom at work and twisted his right knee. Dr. Percinel noted that appellant was seen by another physician on January 21, 2011 after he slipped and hit his right knee on a flat bed while carrying a 50-pound bag of salt.

By decision dated March 16, 2011, OWCP denied modification of its August 4, 2010 decision finding that the evidence submitted failed to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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

³ 5 U.S.C. §§ 8101-8193.

States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury⁴ 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.⁵

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.⁶

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 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.⁷

ANALYSIS

OWCP accepted that the employment incident of December 16, 2009 occurred at the time, place and in the manner alleged. The issue is whether appellant sustained a right knee injury on that day. In contemporaneous reports, Dr. Percinel diagnosed a right knee contusion and opined that appellant’s injury was causally related to his stepping on a broom at work. The Board finds that the medical evidence is sufficient to sustain a right knee contusion on December 16, 2009 as a result of descending a ladder and stepping on a broom. The medical evidence submitted by appellant is not sufficient, however, to establish a causal relationship between the Grade 3 chondromalacia or internal derangement related to the December 16, 2009 employment injury.

⁴ 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).

⁵ *T.H.*, 59 ECAB 388 (2008). See *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Id.* See *Gary J. Watling*, 52 ECAB 278 (2001).

Appellant was treated on December 16, 2009 the date of the employment injury, by Dr. Percinel who diagnosed internal derangement and meniscus tear but noted that an x-ray of the right knee did not reveal any significant pathology. Based on an MRI scan of December 21, 2009 taken in close proximity to the December 16, 2009 employment injury, the physician diagnosed contusion of the right knee. Although there were some degenerative changes in the posterior medial meniscus, there was no actual meniscus tear. On November 16, 2010 Dr. Percinel indicated that appellant underwent right knee surgery on May 21, 2010 and was found to have Grade 3 chondromalacia of the right knee. He did not provide adequate medical rationale explaining how appellant's chondromalacia was caused or aggravated by the December 16, 2009 incident. 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.⁸ Furthermore, Dr. Percinel did not provide sufficient medical opinion to establish that the injury aggravated or accelerated the Grade 3 chondromalacia which was found on May 21, 2010, six months following the December 16, 2009 employment injury. Lacking thorough medical rationale on the issue of causal relationship, Dr. Percinel's reports are of limited probative value and insufficient to establish that appellant sustained an employment-related injury in the performance of duty on December 16, 2009. The Board finds that appellant did not meet his burden of proof to establish a causal relationship between the diagnosed conditions of Grade 3 chondromalacia internal derangement and the December 16, 2009 employment injury.

The December 21, 2009 MRI scan is diagnostic in nature and therefore does not address causal relationship. Moreover, the MRI scan was normal and negative for post-traumatic abnormality or internal derangement. As such, the Board finds that it is insufficient to establish appellant's claim.

The physical therapy notes dated January 7 to 20, 2010 do not constitute medical evidence as they were not prepared by a physician.⁹ 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 a December 16, 2009 employment incident, he has failed to meet his burden of proof.

On appeal, appellant argues the merits of his case and indicates that he injured his right knee twice since the date of injury, in December 2010 and on August 16, 2011 and has a limp almost all the time. The issue in this case is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on December 16, 2009, which the Board has found resulted in a right knee contusion. The December 2010 and August 16, 2011 incidents are irrelevant to the issue at hand. For the reasons stated above, the Board finds that appellant's arguments are not substantiated.

⁸ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

⁹ Physical therapists are not physicians under FECA. See 5 U.S.C. § 8101(2).

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 established that he sustained a right knee contusion in the performance of duty on December 16, 2009. He did not establish that the Grade 3 chondromalacia or internal derangement resulted from the December 16, 2009 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2011 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: August 9, 2012
Washington, DC

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

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board