

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

D.S., Appellant

and

**U.S. POSTAL SERVICE, DOMINICK V.
DANIELS PROCESSING & DISTRIBUTION
CENTER, Kearney, NJ, Employer**

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**Docket No. 11-1577
Issued: January 23, 2012**

Appearances:
Robert D. Campbell, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 23, 2011 appellant, through his attorney, filed a timely appeal of the April 12, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. 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.

ISSUE

The issue is whether appellant established that he sustained a left knee injury in the performance of duty on July 31, 2010, as alleged.

On appeal, counsel contends that the medical reports of an attending physician are sufficient to establish that appellant sustained a left knee injury on July 31, 2010. He further contends that an OWCP hearing representative failed to apply the correct standard for causal relationship and burden of proof to the facts of the instant case, as set forth in Board precedent.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 3, 2010 appellant, then a 53-year-old expediter, filed a traumatic injury claim under OWCP File No. xxxxxx563 alleging that on July 31, 2010 he experienced left knee pain when a coworker, Ralph Petrella, struck appellant's knee with the door of a registry mail cage.²

In an August 4, 2010 letter, Mr. Petrella denied hitting appellant with the registry cage door. He stated that appellant did not mention to him that he was hit by the door.

In an August 5, 2010 letter, the employing establishment controverted appellant's claim based on Mr. Petrella's statement. It also contended that appellant failed to report the alleged injury to a supervisor or seek authorization for medical treatment of his left knee pain.

By letter dated August 8, 2010, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit factual and medical evidence, including a rationalized medical opinion from an attending physician which described a history of injury and provided dates of examination and treatment, findings, test results, a diagnosis together with medical reasons on how the diagnosed condition was caused or aggravated by the July 31, 2010 incident.

In an August 10, 2010 report, Dr. Morton Farber, an attending Board-certified orthopedic surgeon, obtained a history that on July 31, 2010 appellant was hit on the left knee by a mail cage door. He listed his findings on physical examination and diagnosed internal derangement of the left knee and possible torn medial meniscus of the left knee. In an August 10, 2010 disability form, Dr. Farber reiterated his prior diagnosis of left knee internal derangement. He advised that appellant could not work. In a September 1, 2010 report, Dr. Farber stated that a left knee magnetic resonance imaging (MRI) scan revealed some posterior horn tears on the medial and lateral meniscus of the left knee. In a September 9, 2010 disability form, he advised that appellant could not work through September 29, 2010.

An August 10, 2010 prescription and report with an illegible signature noted that appellant had left knee internal derangement and that he could not return to work. A September 1, 2010 patient evaluation form and September 9, 2010 prescription bearing the same previously noted illegible signature advised that he had a torn medial and lateral meniscus of the left knee for which physical therapy was ordered.

In an undated statement, a coworker, whose surname is illegible, related that she did not see anything happen to appellant at the registry cage on July 31, 2010.

² This case has previously been before the Board on two occasions. In a July 14, 2009 decision, the Board set aside a July 28, 2008 OWCP decision, finding that appellant filed a timely request for reconsideration of the denial of his emotional condition claim under OWCP File No. xxxxxx798. The Board remanded the case to OWCP for review under the proper standard for a timely reconsideration request. Docket No. 09-184 (issued July 14, 2009) In a February 22, 2011 decision, the Board affirmed a September 25, 2009 OWCP decision which denied appellant's emotional condition claim under OWCP File No. xxxxxx798. Docket No. 10-1189 (issued February 22, 2011).

In a prior claim filed under OWCP File No. xxxxxx264, OWCP accepted that on June 15, 2006 appellant sustained a tear of the medial meniscus of the left knee while in the performance of duty.

By letter dated August 27, 2010, the employing establishment controverted appellant's claim based on the statements of a supervisor and employee who stated that the alleged injury did not occur and the vagueness of Dr. Farber's August 10, 2010 report.

In a September 8, 2010 report, Lawrence Umali, a physical therapist, obtained a history that on July 31, 2010 a door sign hit appellant's left knee. He addressed his medical treatment.

By decision dated September 16, 2010, OWCP denied appellant's claim, finding that the medical evidence was insufficient to establish an injury causally related to the accepted July 31, 2010 employment incident.

On October 12, 2010 appellant, through his attorney, requested a telephone hearing by an OWCP hearing representative.

In a September 29, 2010 report, Dr. Farber noted appellant's ongoing knee pain and medical treatment and reiterated that he had medial and lateral meniscus tears of the left knee. In a prescription dated October 21, 2010, he placed appellant off work for three weeks. In reports dated October 27, 2010 and January 5, 2011, Dr. Farber advised that appellant had limited range of motion of the left knee and reiterated his prior diagnosis of internal derangement. He noted appellant's refusal to undergo arthroscopic surgery. On December 8, 2010 Dr. Farber reported that an MRI scan of the right knee revealed a tear of the medial meniscus. An MRI scan of the back showed annular bulges at L4-5 with hypertrophic disease at L5-S1 which was probably age related. In a January 5, 2011 report, Dr. Farber noted that he first evaluated appellant on July 31, 2010 after he sustained an injury at work on that date. He had continuing problems since the date of injury. Dr. Farber advised that appellant's recent and past complaints were due to the accepted employment incident. In a March 24, 2011 report, he indicated that appellant had been treated for internal derangement and tears of the menisci of the left knee. Appellant still had a disability which involved his left knee giving out on occasion and a lack of full extension of the knee.

Prescriptions dated September 29, 2010 contained the previously noted illegible signature and stated that appellant could not work until October 27, 2010. Physical therapy was ordered to treat his left knee medial and lateral meniscus tears. An October 27, 2010 patient evaluation form which contained the same illegible signature reiterated the diagnosis of left knee internal derangement and noted that arthroscopic surgery may be required.

A June 26, 2006 left knee MRI scan report from Dr. Saqba Farooq, a Board-certified radiologist, advised that appellant had a probable tear of the anterior and posterior horns of the medial meniscus, moderate size joint effusion and a complex septated Baker's cyst. An August 20, 2010 left knee MRI scan report from Dr. Michael A. Kessler, a Board-certified radiologist, stated that appellant had tears of the posterior horn of the lateral and medial meniscus.

In an April 12, 2011 decision, an OWCP hearing representative affirmed the September 16, 2010 decision. The hearing representative found that the evidence was sufficient to establish that the July 31, 2010 incident occurred as alleged, but the medical evidence was

insufficient to establish that appellant sustained an injury causally related to the accepted employment incident.

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 States within the meaning of FECA; that the claim was filed within applicable time limitation; that an injury was sustained while 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.⁵

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.⁶ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁷

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁸ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁹ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹⁰

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 4.

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁷ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁸ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

⁹ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

¹⁰ *Charles E. Evans*, 48 ECAB 692 (1997).

ANALYSIS -- ISSUE

OWCP accepted that appellant was hit in the left knee by a registry mail cage door on July 31, 2010 while working as an expeditor. The Board finds that the medical evidence of record is insufficient to establish that his left knee condition was caused or aggravated by the July 31, 2010 employment incident.

Dr. Farber's January 5, 2011 report found that appellant's continuing left knee problems were due to the accepted employment incident. The Board finds that his report is of diminished probative value because he failed to provide medical rationale explaining how being hit by a registry mail cage door caused the diagnosed conditions of internal derangement and tears of the medial and lateral menisci of the left knee.¹¹ None of Dr. Farber's other reports provided a medical opinion addressing the causal relationship between appellant's left knee condition and the accepted employment incident. He merely listed his diagnoses of internal derangement and tears of the medial and lateral meniscus of the left knee and addressed appellant's total disability. Dr. Farber also failed to provide a medical opinion addressing the causal relationship between appellant's diagnosed tear of the medial meniscus of the right knee, probable age-related annular bulges at L4-5 with hypertrophic disease at L5-S1 and the accepted incident. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹² For the stated reasons, the Board finds that Dr. Farber's reports are insufficient to establish appellant's claim.

The diagnostic test results of Dr. Kessler and Dr. Farooq did not provide a medical opinion addressing whether the diagnosed left knee conditions were causally related to the July 31, 2010 employment incident.

The prescriptions and reports which contained an illegible signature have no probative value, as it is not established that the author is a physician.¹³

¹¹ See *Gloria J. McPherson*, 51 ECAB 441 (2000) (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).

¹² *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹³ See *D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

The September 8, 2010 report signed by Mr. Umali, a physical therapist, cannot constitute competent medical evidence as a physical therapist is not a “physician” as defined under FECA.¹⁴

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a left knee injury causally related to the accepted July 31, 2010 employment incident. Appellant did not meet his burden of proof.

On appeal, appellant’s attorney contended that Dr. Farber’s reports established that appellant sustained a left knee injury on July 31, 2010 while in the performance of duty. As stated, this evidence does not provide a rationalized medical opinion addressing the causal relationship between appellant’s diagnosed left knee conditions and the accepted July 31, 2010 employment incident.

Counsel further contended that an OWCP hearing representative did not properly apply Board precedent regarding causal relationship and appellant’s burden of proof to the facts of the present case. Appellant has not submitted any evidence establishing his allegation. OWCP, in accordance, with Board precedent, made detailed findings and stated the reasons for finding that he failed to establish an injury causally related to the accepted incident and properly denied his claim.¹⁵

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 failed to establish that he sustained a left knee injury in the performance of duty on July 31, 2010, as alleged.

¹⁴ See 5 U.S.C. § 8101(2); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

¹⁵ 20 C.F.R. § 10.126; *Beverly Dukes*, 46 ECAB 1014 (1995).

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board