

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

P.V., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Grand Rapids, MI, Employer**

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**Docket No. 14-29
Issued: April 8, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 8, 2013 appellant filed a timely appeal from an August 26, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his 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 met his burden of proof to establish that his right knee condition is causally related to a January 3, 2013 employment incident, as alleged.

On appeal, appellant contends that he tore the meniscus in his right knee on January 3, 2013 at work and requested a magnetic resonance imaging (MRI) scan but was advised to ice and rest it. His right knee condition worsened due to daily activities and a subsequent fall and the evidence of record is sufficient to establish his claim.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 7, 2013 appellant, then a 46-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging a right knee injury as a result of carrying his route in the performance of duty.

In reports dated January 7, 2013, Dr. Dana Fontaine, an osteopath Board-certified in occupational medicine, diagnosed right knee pain and effusion. She stated that appellant stepped down off a curb to cross the street while carrying his route on January 3, 2013. Once appellant started to walk across, his right knee began to hurt and feel funny. Dr. Fontaine released him to limited duty with restrictions on prolonged walking, limited climbing and no squatting.

By letter dated January 16, 2013, OWCP requested additional factual and medical information from appellant. It allotted him 30 days to submit additional evidence and respond to its inquiries. Subsequently, appellant submitted an MRI scan dated January 30, 2013 showing a moderate-size joint effusion of the right knee.

In a January 14, 2013 report, Dr. Fontaine reiterated the diagnoses and work restrictions. On January 24, 2013 she stated that appellant was doing better but slipped and fell on January 23, 2013 and hurt his right knee again. Dr. Fontaine stated that his last day at work was January 12, 2013. Appellant was scheduled to return to work on January 28, 2013 as he had "been on vacation the last two weeks hoping to rest his knee." On February 1, 2013 Dr. Fontaine diagnosed a right knee medial meniscus tear based upon her review of the MRI scan dated January 30, 2013. She released appellant to restricted duty.

On February 19 and 26, 2013 Dr. John Murphy, an osteopath specializing in orthopedic surgery, diagnosed joint pain localized in the knee and acute medial meniscus tear. He listed a history that appellant's right knee problems began on January 3, 2013 as a result of an injury that occurred at work when stepping off a sidewalk curb.

By decision dated March 12, 2013, OWCP accepted that the January 3, 2013 employment incident occurred as alleged. It denied the claim finding that the medical evidence failed to establish the causal relationship between the employment incident and the diagnosed torn meniscus. OWCP noted that the evidence of record indicated that appellant twisted his knee on January 23, 2013 but was not in the performance of duty at that time as he was on vacation for the period January 12 to 28, 2013.

On June 21, 2013 appellant requested reconsideration. He submitted a narrative statement dated April 25, 2013 indicating that he requested an MRI scan on his first visit to Dr. Fontaine but she wanted to give it time to see if his knee got better. It was not until appellant had a subsequent fall caused by his right knee condition that she scheduled an MRI scan, which confirmed a torn meniscus. He underwent surgery on March 6, 2013. Appellant argued that "it was Dr. Fontaine's delaying of the MRI until after my fall that caused the denial of my claim."

Appellant submitted a May 13, 2013 statement from his supervisor, Sandy Carey. On January 4, 2013 he told her that an urgent care physician advised him that he had torn his meniscus.

In a January 4, 2013 report, Dr. Terry Ball, an osteopath specializing in family medicine, diagnosed joint pain localized in the knee.

Appellant underwent an arthroscopy of the right knee performed by Dr. Murphy on March 6, 2013. On March 14, 2013 Dr. Murphy advised that appellant was off work due to surgery, which was healing well. He opined that, given appellant's history of stepping off a curb and experiencing medial knee pain with associated swelling and progressive pain thereafter, his injury initially occurred at work on January 3, 2013.

By decision dated August 26, 2013, OWCP denied modification of the March 12, 2013 decision finding that the evidence submitted was not sufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 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.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

² *Id.*

³ 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).

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).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁶

ANALYSIS

OWCP accepted that the employment incident of January 3, 2013 occurred at the time, place and in the manner alleged. The issue is whether appellant's right knee condition resulted from the January 3, 2013 employment incident. On appeal, appellant contends that he tore the meniscus in his right knee on January 3, 2013 while at work and requested an MRI scan but was advised to ice and rest it. He argued that his right knee condition worsened due to daily activities and a subsequent fall. The Board finds that appellant did not meet his burden of proof to establish the causal relationship between his right knee condition and the employment incident.

Dr. Murphy diagnosed joint pain localized in the knee and acute medial meniscus tear. He indicated that appellant's right knee problems began on January 3, 2013 as a result of an injury that occurred at work when stepping off a sidewalk curb. On March 6, 2013 Dr. Murphy performed an arthroscopy of the right knee. On March 14, 2013 he opined that, given appellant's history of stepping off a curb and experiencing medial knee pain with associated swelling and progressive pain thereafter, his injury initially occurred at work on January 3, 2013. Dr. Murphy did not provide adequate medical rationale explaining the mechanism of how appellant's right knee condition was caused or aggravated by stepping off a curb. He noted appellant's history of stepping off a curb and experiencing knee pain thereafter. However, such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how this physical activity actually caused the diagnosed conditions.⁷ Lacking thorough medical rationale on the issue of causal relationship, Dr. Murphy's reports are of limited probative value and insufficient to establish that appellant sustained an employment-related injury in the performance of duty on January 3, 2013.

Dr. Fontaine diagnosed right knee pain and effusion. She stated that appellant stepped down off a curb to cross the street while carrying his route on January 3, 2013 and once he started to walk across he noticed that his right knee began hurting and feeling funny. Dr. Fontaine did not provide sufficient medical rationale explaining how his conditions were caused or aggravated by stepping off a curb on January 3, 2013. The Board finds that appellant did not meet his burden of proof to establish a causal relationship between his right knee conditions and the January 3, 2013 employment incident.

On January 24, 2013 Dr. Fontaine indicated that appellant slipped and fell on January 23, 2013 and hurt his right knee again while on vacation from work. On February 1, 2013 she diagnosed right knee medial meniscus tear based upon her review of the MRI scan dated January 30, 2013. The Board notes, however, that there is no basis for a consequential injury until the underlying condition has been accepted as employment related. The evidence of record is insufficient to establish the causal relationship between appellant's right knee medial meniscus

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

⁷ See K.W., Docket No. 10-98 (issued September 10, 2010).

tear and his employment. In light of the Board's finding that appellant failed to establish that his right knee condition is employment related, there is no basis for a consequential claim.

On January 4, 2013 Dr. Ball diagnosed joint pain localized in the knee. 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

The May 13, 2013 statement from appellant's supervisor does not constitute medical evidence as it was not prepared by a physician.⁹

Similarly, the January 30, 2013 MRI scan is diagnostic in nature and therefore does not address causal relationship.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to a January 3, 2013 employment incident, he failed to meet his burden of proof to establish a 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 that his right knee condition is causally related to a January 3, 2013 employment incident, as alleged.

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

⁹ See 5 U.S.C. § 8101(2).

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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