

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

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C.S., Appellant )

and )

**DEPARTMENT OF HOMELAND SECURITY,  
FEDERAL LAW ENFORCEMENT TRAINING  
CENTER, Glynco, GA, Employer** )

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**Docket No. 14-934  
Issued: August 4, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 12, 2014 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs (OWCP) dated September 18 and November 27, 2013.<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant sustained a left knee injury in the performance of duty on June 13, 2013; and (2) whether OWCP properly denied his request for an oral hearing as untimely under 5 U.S.C. § 8124.

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<sup>1</sup> The Board notes that this appeal was received by the Board on March 18, 2014. One hundred and eighty days from September 18, 2013, the date of OWCP's decision, was March 17, 2014. Since using March 17, 2013, the date the appeal was received by the Clerk of the Board would result in the loss of appeal rights, the date of the postmark, March 12, 2014, is considered the date of filing. *See* 20 C.F.R. § 501.3(f)(1).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On June 19, 2013 appellant, then a 34-year-old law enforcement officer/instructor, filed a claim for benefits alleging that he injured his left knee while engaged in training exercises on June 13, 2013. After performing several drills, he felt pain in his left knee.

In a June 20, 2013 report, Dr. J. Kevin Brooks, a specialist in orthopedic surgery, stated that appellant had been experiencing left knee pain since June 13, 2013 after teaching a training class on that date. He related that active flexion and extension caused the most pain. Dr. Brooks advised that appellant had intermittent left knee swelling with occasional locking and catching. On examination, the left knee revealed no effusion or erythema, no specific tenderness on palpation, with normal alignment and full flexion and extension. All of the ligaments appeared to be stable. Appellant underwent x-ray testing of the knee which showed well-maintained joint space and essentially normal findings.

Dr. Brooks diagnosed left knee joint effusion, derangement and contusion. He referred appellant for a magnetic resonance imaging (MRI) scan of the left knee to determine whether he had sustained a meniscal/cartilage tear.

In a report dated June 24, 2013, Dr. Brooks stated that appellant's symptoms remained unchanged. The results of the June 21, 2013 MRI scan showed an approximately one centimeter long, thin cleavage tear at the body segment of the medial meniscus, a few small, shallow erosions and chondral fissures at the medial compartment, chondral fissures and blistering at the patellofemoral articulation and small effusion. Dr. Brooks diagnosed a medial meniscal tear of the left knee, left knee joint effusion, derangement and contusion and prescribed a course of physical/occupational therapy.

In a June 26, 2013 CA-20 duty status form report, Dr. Brooks advised that he had examined appellant for a left knee injury on June 14, 2013. He checked a box indicating that appellant's injury corresponded with his description of how the work incident occurred.

By letter dated August 14, 2013, OWCP informed appellant that it had initially handled his claim administratively and authorized payment of a limited amount of medical expenses. Because his medical bills had exceeded \$1,500.00, it would adjudicate the merits of his claim. OWCP requested additional factual and medical evidence to determine whether appellant was eligible for compensation benefits. It asked him to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for how his claimed knee condition was causally related to his federal employment. OWCP requested that he submit the additional evidence within 30 days.

In a July 30, 2013 report, Dr. Brooks reiterated his previous findings and conclusions. Appellant also submitted several reports from a physical therapist for treatment of his left knee condition.

On September 9, 2013 appellant explained that on June 13, 2013 he was assisting with instruction as to how to prevent a low tackle. The student he was instructing was required to

kick his feet back and place all of his weight on appellant's back, as appellant attempted to grab the student's leg. Appellant stated that this activity caused stress to his back and legs.

By decision dated September 18, 2013, OWCP denied appellant's claim, finding that he failed to submit sufficient medical evidence to support a left knee injury in the performance of duty on June 13, 2013.

On October 23, 2013 appellant requested an oral hearing.

By decision dated November 27, 2013, OWCP denied appellant's request for an oral hearing.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>3</sup> has the burden of establishing that 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 injury was sustained 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.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

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. 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.<sup>6</sup> 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.<sup>7</sup>

The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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

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<sup>3</sup> *Id.* at § 8101-8193.

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

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup>

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>9</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his or her condition was caused precipitated or aggravated by his or her employment is sufficient to establish causal relationship.<sup>10</sup>

### ANALYSIS -- ISSUE 1

OWCP accepted that appellant experienced left knee pain while engaged in training exercises on June 13, 2013. The question of whether this employment incident caused a personal injury can only be established by probative medical evidence.<sup>11</sup> The Board finds that appellant has not submitted sufficient medical evidence to establish that the June 13, 2013 employment incident caused his left knee condition.

Dr. Brooks submitted several form reports in which he noted appellant's complaints of left knee pain on examination. He diagnosed a torn left medial meniscus in addition to left knee effusion, derangement and contusion. These reports, however, do not address how the diagnoses relate to the June 13, 2013 incident at work. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>12</sup> On June 20, 2013 Dr. Brooks indicated that appellant began noticing left knee pain on June 13, 2013 after teaching a training class on that date. He related that appellant was experiencing intermittent left knee swelling, locking and catching. Dr. Brooks referred him for an MRI scan which showed a torn left meniscus. He was provided physical therapy.

Dr. Brooks did not adequately address how appellant's left knee condition was causally related to the June 13, 2013 work incident. He did not describe the training incident involved, which appellant stated consisted of a student placing weight on his back during a tackle exercise. Dr. Brooks did not provide a rationalized medical explanation as to how this maneuver caused or contributed to the torn left meniscus injury. The medical record does not explain how appellant sustained a left knee injury because he was engaged in training exercises on June 13, 2013. The June 26, 2013 form report from Dr. Brooks supported causal relationship with a check mark.

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<sup>8</sup> *Id.*

<sup>9</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>10</sup> *Id.*

<sup>11</sup> *Supra* note 6.

<sup>12</sup> *See Anna C. Leanza*, 48 ECAB 115 (1996).

This is insufficient to establish the claim. The Board has held that without further explanation or rationale, a checked box on a form report is not sufficient to establish causation.<sup>13</sup> Appellant failed to provide a medical report from a physician that explains how the work incident of June 13, 2013 caused or contributed to the claimed left knee injury.

Appellant submitted several reports from a physical therapist, but these reports do not constitute medical evidence under Section 8101(2). A healthcare provider such as a nurse, acupuncturist, physician's assistant or physical therapist is not a physician as defined under FECA. Their reports do not constitute competent medical evidence to establish a medical condition.<sup>14</sup> OWCP properly denied appellant's claim for compensation.

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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b)(1) of FECA provides that a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.<sup>15</sup> Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.<sup>16</sup> The request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.<sup>17</sup> A hearing is a review of an adverse decision by an OWCP hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record. In addition to the evidence of record, the claimant may submit new evidence to the hearing representative.<sup>18</sup> A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which the hearing is sought.<sup>19</sup> A claimant is not entitled to a hearing if the request is not made within 30 days of the date of the decision.<sup>20</sup> OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>21</sup> In such a case, it will

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<sup>13</sup> *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

<sup>14</sup> 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

<sup>15</sup> *Id.* at § 8124(b)(1).

<sup>16</sup> 20 C.F.R. § 10.615.

<sup>17</sup> *Id.* at § 10.616(a).

<sup>18</sup> *Supra* note 16.

<sup>19</sup> *Supra* note 17.

<sup>20</sup> *James Smith*, 53 ECAB 188 (2001).

<sup>21</sup> 20 C.F.R. § 10.616(b).

determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.<sup>22</sup>

While a claimant may not be entitled to a hearing as a matter of right if the request is untimely, OWCP has the discretionary authority to grant the request and must properly exercise such discretion.<sup>23</sup>

### **ANALYSIS -- ISSUE 2**

On October 23, 2013 appellant requested an oral hearing. Because he did not request a hearing within 30 days of the September 18, 2013 decision, he was not entitled to a hearing as a matter of right under section 8124(b)(1). OWCP exercised its discretion and determined that the issue could be resolved equally well through a request for reconsideration and the submission of additional evidence. The Board finds that it did not abuse its discretion in denying appellant's request for an oral hearing in its November 27, 2013 decision.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a left knee injury in the performance of duty on June 13, 2013. The Board finds that OWCP did not abuse its discretion in denying appellant's request for an oral hearing.

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<sup>22</sup> *Supra* note 20.

<sup>23</sup> *See id.*; *Cora L. Falcon*, 43 ECAB 915 (1992); *Mary B. Moss*; 40 ECAB 640 (1989); *Rudolph Bermann*, 26 ECAB 354 (1975).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 27 and September 18, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 4, 2014  
Washington, DC

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

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

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