



## **FACTUAL HISTORY**

On May 15, 2014 appellant, then a 58-year-old pipefitter, filed a traumatic injury claim (Form CA-1) alleging that on May 6, 2014, he injured his right knee while walking up stairs. He did not indicate that he stopped work.

By letter dated May 20, 2014, OWCP advised appellant that he needed to submit additional evidence to establish his claim.

With respect to the factual background, appellant submitted a May 30, 2014 statement relating that he was walking up stairs on May 6, 2014 at work and had reached the top when he felt a sharp pain in his right knee. He noted that he had prior right knee surgery on October 23, 2012.<sup>2</sup>

Appellant submitted a May 7, 2014 report from Dr. Jeffrey Spina, a Board-certified internist, providing a history that appellant was walking up stairs at work on May 6, 2014 and felt a popping sensation in the back of his right knee. Dr. Spina diagnosed right knee sprain and recommended modified duty. He noted that appellant had right knee meniscal surgery in October 2012, and reported that this prior injury was a workers' compensation injury. On May 21, 2014 OWCP received a (Form CA-16) authorization for examination and/or treatment. The physician's portion of the form was dated May 15, 2014 and completed by Dr. Anthony Fenison, a Board-certified orthopedic surgeon. Dr. Fenison indicated that appellant was walking up stairs and heard a pop in his right knee. He noted tenderness in both knees and low back, the diagnosis was chondromalacia, low back sprain, and left knee strain.

In a narrative report dated May 15, 2015, Dr. Fenison provided a history that appellant was walking up stairs and felt a sharp pain in his right knee. He indicated that appellant also complained of left knee and low back pain. Dr. Fenison provided results on examination and indicated that x-rays of the right knee showed decrease in the medial joint space, mild degenerative changes, with no significant spurring. He diagnosed status post right knee arthroscopy, bilateral knee chondromalacia, rule out left knee internal derangement, rule out retear of the meniscus and internal derangement, right knee, and lumbar spine sprain/strain due to altered gait. The period of disability was reported as four weeks.

In an attending physician's report (Form CA-20) dated June 3, 2014, Dr. Fenison diagnosed internal derangement of both knees and checked a box marked "yes" that the condition was employment related. Appellant also submitted a note dated June 9, 2014 from Dr. Fenison indicating that appellant was totally disabled, and a report dated June 9, 2014 from a physician assistant.

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<sup>2</sup> The record indicates that appellant filed a traumatic injury claim for an injury on April 14, 2012 when he bent over and felt his right knee pop. The claim was accepted for right knee medial collateral ligament sprain, and derangement of posterior horn of right knee medial meniscus. Appellant underwent right knee meniscal surgery on October 23, 2012. This claim has not been administratively combined with the current claim.

By decision dated June 24, 2014, OWCP denied the claim for compensation. It found that the medical evidence was insufficient to establish causal relationship between a diagnosed condition and the employment incident.

On July 23, 2014 appellant requested a telephonic hearing with an OWCP hearing representative and submitted a copy of the June 9, 2014 report, now signed by Dr. Fenison. The report provided results on examination and diagnosed bilateral chondromalacia patellae and bilateral internal derangement. Appellant also submitted treatment reports from Dr. Fenison dated June 30 and August 4, 2014.

A hearing was held on February 10, 2015. On March 11, 2015 appellant submitted a February 6, 2015 statement indicating that he had worked as a pipefitter for 30 years. He described his work activity as including standing, walking, carrying heavy objects, squatting, kneeling, reaching overhead, and being on his knees. Appellant reported that he had prior claims for both left knee and right knee injuries.

Appellant submitted a March 5, 2015 report from Dr. Fenison on March 17, 2015. Dr. Fenison diagnosed appellant with bilateral chondromalacia and internal derangement. He noted that he had read a statement from appellant regarding work duties. According to Dr. Fenison, “the collective work duties performed by [appellant] as indicated in his statement would have a general wearing down or degenerative effect on the knees. This would expose him to a greater chance of injury as reflected in his prior conditions to both knees.” He reported that appellant was able to continue working until May 2014, but at that point “his knees, as we are particularly discussing his right knee at this point, would have been worn down from the years of activity as a pipefitter.” According to Dr. Fenison, “the exertion on the right knee necessary to climb the stairs upon the fragile knee was sufficient to damage the knee to the point where he felt the pain and caused the derangement of the knee or diagnosed condition.” He opined that the force necessary to climb stairs was greater than a level surface, and this makes a weakened knee vulnerable to such diagnosed injury.

By decision dated April 27, 2015, the hearing representative affirmed the June 24, 2014 OWCP decision. The hearing representative found that the medical evidence was insufficient to establish the claim.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.<sup>3</sup> 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 which is

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<sup>3</sup> *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.<sup>4</sup>

OWCP procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.<sup>5</sup> In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.<sup>6</sup>

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>7</sup>

### ANALYSIS

In the present case, appellant has alleged that he sustained a knee injury in the performance of duty on May 6, 2014 when he was walking up stairs and felt right knee pain. OWCP has accepted that an employment incident occurred as alleged. The issue is whether there is sufficient medical evidence to establish a diagnosed condition causally related to the employment incident. For the reasons discussed below, the Board finds that the medical evidence is insufficient to establish the claim.

Appellant received treatment on May 7, 2014 and at that time Dr. Spina diagnosed a right knee strain. He did not specifically provide an opinion as to causal relationship with the employment injury. On May 15, 2014 appellant received treatment from Dr. Fenison, who did not refer to a knee strain. He diagnosed a bilateral knee chondromalacia, without providing an opinion on causal relationship with the employment incident. A Form CA-20 report dated June 3, 2014 from Dr. Fenison diagnosed bilateral internal derangement and he checked a box marked "yes" as to its causal relationship to appellant's employment. It is well established that the checking of a box marked "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.<sup>8</sup>

In a March 5, 2015 report, Dr. Fenison attempted to provide additional explanation on causal relationship, however, this report does not clarify the issue. He noted that he reviewed a statement from appellant regarding "collective work duties." In this regard it is not clear how the

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<sup>4</sup> See *John J. Carlone*, 41 ECAB 354, 357 (1989).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3 (January 2013).

<sup>6</sup> *Id.*

<sup>7</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

<sup>8</sup> See *Barbara J. Williams*, 40 ECAB 649, 656 (1989).

collective work duties affected appellant's condition with respect to the current claim. The claim in this case is for a traumatic injury on May 6, 2014. A claim for an injury from work duties over a period of time is not before the Board.<sup>9</sup> Dr. Fenison opined that the work duties had weakened or "worn down" the knees, but he does not provide further medical explanation in this regard. Further, complicating the issue is the question of the right knee *versus* the left knee. Dr. Fenison's diagnoses of internal derangement and chondromalacia appeared to be for both knees. But in the February 6, 2015 report he writes that "we are discussing his right knee at this point" in May 2014. It is not clear whether Dr. Fenison is opining that there was a right knee injury when climbing stairs on May 6, 2014 or injuries to both knees and his opinion as to causal relationship is that the exertion of walking up the stairs "caused the derangement of the knee or diagnosed condition." This statement is not accompanied by additional medical rationale or explanation. It is not clear how the exertion of walking up stairs "caused" an internal derangement, whether the injury was only to the right knee, or whether the "diagnosed condition" included chondromalacia.

A rationalized medical opinion would have to clarify these issues and clearly explain any causal relationship between a specific diagnosed knee condition and the employment incident. It is appellant's burden of proof, and for the reasons noted, he did not meet his burden of proof in this case.

The Board notes the record contains a Form CA-16 that was issued by the employing establishment. Where an employing establishment properly executes a CA-16 form which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim.<sup>10</sup> On return of the case record, OWCP should address the issue of entitlement to medical benefits pursuant to the CA-16 form.

On appeal, appellant's counsel notes that appellant submitted a statement regarding his work duties. As discussed above, the claim on appeal is not for an occupational disease or illness from work over more than one day, but a traumatic injury claim based on a May 6, 2014 incident. Counsel argues that Dr. Fenison's March 5, 2015 report is sufficient to establish the claim. For the reasons discussed above, the Board finds that the evidence is not sufficient to meet appellant's burden of proof.

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.

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<sup>9</sup> An occupational disease or illness is a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>10</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003).

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish a knee injury in the performance of duty on May 6, 2014.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 27, 2015 is affirmed.

Issued: December 10, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board