

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

V.P., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
White Plains, NY, Employer)

) **Docket No. 15-1301**
) **Issued: October 20, 2015**
)
)

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 26, 2015 appellant, through counsel, filed a timely appeal from a March 25, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 a right knee condition causally related to a September 18, 2012 employment incident, as alleged.

On appeal, counsel contends that OWCP's decision is contrary to fact and law.

FACTUAL HISTORY

This case was previously before the Board.² Appellant, a 50-year-old automotive lead technician, filed a traumatic injury claim (Form CA-1) alleging that he injured his right knee on

¹ 5 U.S.C. § 8101 *et seq.*

² Docket No. 14-0306 (issued July 25, 2014).

September 18, 2012 as a result of stepping out of a vehicle while in the performance of duty. He stated that his foot slipped off the front rail of the lift and he twisted his right knee. In a decision dated July 25, 2014, the Board affirmed OWCP's August 12, 2013 decision, finding that appellant did not meet his burden of proof to establish a right knee condition causally related to the September 18, 2012 employment incident, as alleged. The facts of the case, as set forth in the prior decision, are incorporated herein by reference.

On October 31, 2014 appellant, through counsel, requested reconsideration with OWCP following the Board's July 25, 2014 decision. He submitted a magnetic resonance imaging (MRI) scan of the right knee dated March 30, 2010 and resubmitted an MRI scan dated November 23, 2012.

In an August 11, 2014 report, Dr. Daniel Zelazny, a Board-certified orthopedic surgeon and appellant's attending physician, diagnosed right knee pain and symptomatic pes bursitis. He noted that appellant had a long-standing history of right knee issues and "had been managed in the past for a prior right knee injury in March 2010." Dr. Zelazny indicated that appellant had managed well without any further orthopedic intervention until he sustained a right knee injury at work on September 18, 2012. He found that a direct comparison of two MRI scan reports revealed obvious differences as a result of appellant's work-related injury on September 18, 2012. Dr. Zelazny opined that the sprain/partial tear of the anterior cruciate ligament (ACL), grade III sprain of the lateral collateral ligament (LCL), and lateral meniscal tear were not present on the initial MRI scan of 2010.

In an August 15, 2014 statement, the employing establishment indicated that on September 18, 2012 while working on a postal vehicle in bay #8, appellant was stepping out of the vehicle onto the front fork of the lift when his foot slipped off and he twisted his right knee. Appellant was sent to the White Plains emergency room for medical attention. The next three days he used personal time off due to soreness. Appellant returned to work from September 24 to October 24, 2012 and then stopped working from October 25, 2012 to January 5, 2014.

By decision dated November 13, 2014, OWCP denied appellant's request for reconsideration of the merits finding that he did not submit pertinent new and relevant evidence and did not show that it erroneously applied or interpreted a point of law not previously considered by OWCP.

On January 9, 2015 appellant, through counsel, requested reconsideration and submitted a December 15, 2014 report from Dr. Zelazny who diagnosed meniscal tears, ligament sprain/partial tears, and degenerative changes in the right knee. He reported injuring his right knee on September 18, 2012 when he was standing on the top front rail of a truck when his foot slipped and he fell approximately 1.5 to 2 feet, landing awkwardly and his right knee buckled and cracked. Dr. Zelazny's physical examination findings included pain with joint line palpation, provocative meniscal maneuvers, and compression. He reiterated his opinion that appellant's right knee condition was causally related to the September 18, 2012 employment incident.

By decision dated March 25, 2015, OWCP denied modification of its prior decision on the basis that the medical evidence submitted was insufficient to establish a causal relationship between appellant's right knee condition and the September 18, 2012 employment incident. It

authorized payment for appellant's medical treatment for the requisite 60 days from the issuance of the Form CA-16 on September 20, 2012.³

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 injury⁵ 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.⁶

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 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.⁷

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 nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to a September 18, 2012 employment incident, as alleged.

OWCP has accepted that the employment incident of September 18, 2012 occurred at the time, place, and in the manner alleged. The issue is whether appellant's right knee condition

³ OWCP noted that, therefore, medical treatment was not authorized after November 20, 2012.

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ OWCP 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).

⁶ *See T.H.*, 59 ECAB 388 (2008). *See also Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Id.* *See Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *Id.* *See Gary J. Watling*, 52 ECAB 278 (2001).

resulted from the September 18, 2012 employment incident. The Board finds that appellant did not meet his burden of proof to establish a causal relationship between the condition for which compensation is claimed and the employment incident.

In his reports, Dr. Zelazny diagnosed symptomatic pes bursitis, meniscal tears, ligament sprain/partial tears, and degenerative changes in the right knee. On December 15, 2014 his physical examination findings included pain with joint line palpation, provocative meniscal maneuvers, and compression. Dr. Zelazny noted that appellant had a long medical history of right knee problems and “had been managed in the past for a prior right knee injury in March 2010.” He indicated that appellant had managed well without any further orthopedic intervention until he sustained a right knee injury at work on September 18, 2012.

Appellant reported injuring his right knee on September 18, 2012 when he was standing on the top front rail of a truck. His foot slipped and he fell about 1.5 to 2 feet. Appellant landed awkwardly and stated his right knee buckled and cracked. Dr. Zelazny found that a direct comparison of two MRI scan reports revealed obvious differences because of appellant’s work-related injury. He opined that the sprain/partial tear of the ACL, grade III sprain of the LCL, and lateral meniscal tear were not present on an MRI scan performed in 2010. The Board notes that Dr. Zelazny failed to provide a rationalized opinion explaining how stepping out of a vehicle at work, caused or aggravated his right knee condition. Dr. Zelazny determined that appellant’s condition occurred while he was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant’s allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the diagnosed conditions.⁹

Dr. Zelazny indicated that appellant had a long-standing history of right knee issues, which included “a prior right knee injury in March 2010.” He compared two MRI scan reports and found that the sprain/partial tear of the ACL, grade III sprain of the LCL, and lateral meniscal tear were not present on the initial MRI scan of 2010. However, he did not provide a full and accurate history of appellant’s past and current right knee condition and failed to discuss how appellant’s history of right knee conditions, particularly the incident in March 2010, contributed to appellant’s right knee injury on September 18, 2012. The Board has held that medical opinions based on an inaccurate history have diminished probative value.¹⁰

In support of his claim, appellant submitted an August 15, 2014 statement from the employing establishment and MRI scans of the right knee dated March 30, 2010 and November 23, 2012. These documents do not constitute competent medical evidence as they do not contain rationale by a physician relating appellant’s disability to his employment.¹¹ As such, the Board finds that appellant did not meet his burden of proof with these submissions.

⁹ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

¹⁰ See *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value). See also *Douglas M. McQuaid*, 52 ECAB 382 (2001); *N.H.*, Docket No. 13-849 (issued July 17, 2013).

¹¹ See 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: “(2) ‘physician’ includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.” See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to a September 18, 2012 employment incident, he has failed to meet his burden of proof to establish a claim for compensation.

On appeal, counsel contends that OWCP's decision is contrary to fact and law. For the reasons stated above, the Board finds counsel's arguments are not substantiated.

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 a right knee condition causally related to a September 18, 2012 employment incident, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 20, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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