United States Department of Labor
Employees' Compensation Appeals Board

M.G., Appellant	)	
and	)	**Docket No. 15-1201**
	)	**Issued: September 15, 2015**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Northport, NY, Employer	)	

Appearances:
Timothy W. McLaughlin, 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 5, 2015 appellant, through his representative, filed a timely appeal from an April 13, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish a knee injury in the performance of duty on July 17, 2014.

FACTUAL HISTORY

On July 18, 2014 appellant, then a 63-year-old housekeeping aid, filed a traumatic injury claim (Form CA-1). He alleged that on July 17, 2014 he sprained his left knee while walking down a slope and turning to rake underneath bushes. Appellant stopped work on July 18, 2014.

[1] 5 U.S.C. § 8101 *et seq.*

On August 13, 2014 OWCP notified appellant that his claim was initially administratively handled to permit medical payments, as it appeared to be a minor injury resulting in minimal or no lost time from work. However, it advised appellant that his claim was reopened for consideration of the merits because he had not returned to full-time work. Appellant was instructed to submit a physician's opinion supported by a medical explanation as to how the reported work incident caused a diagnosed condition.

In a medical report dated July 17, 2014, Dr. Shenyi Peng, a Board-certified internist, noted that appellant presented with left knee pain and related that he twisted his knee at work while walking on a slope. Physical examination revealed no erythema, swelling, or reproducible tenderness. Appellant displayed full range of motion in the left knee. Dr. Peng noted that x-rays showed no acute change. He diagnosed knee pain.

In a July 17, 2014 x-ray report, Dr. Yudell Edelstein, a Board-certified diagnostic radiologist, related that appellant was seen for left knee pain. He noted that appellant reported twisting his knee. X-rays revealed mild lateral patellar tilt and minimal spurring at the lateral patellar facet. No acute fracture or sizable joint effusion was perceived. Dr. Edelstein diagnosed mild lateral patellar tilt.

Emergency room discharge documents dated July 17, 2014 indicated that appellant was sent to a physical therapy clinic for an assistive device evaluation, issued a knee brace by a prosthetist/orthotist, and then discharged. A July 17, 2014 duty status report (Form CA-17) with an illegible signature diagnosed left knee pain and advised that appellant could perform regular work as tolerated. In a July 18, 2014 duty status report (Form CA-17), Eleanor Hobbs, a nurse practitioner, diagnosed medial meniscus tenderness. She indicated that appellant could return to full duty on July 21, 2014.

In a July 28, 2014 prescription note, Dr. Joseph Said, an orthopedic surgeon, recommended that appellant not return to work until his next evaluation. A prescription note dated August 14, 2014 from Dr. Said related that appellant had suffered a meniscus injury, but could return to work on August 21, 2014.

In an August 21, 2014 statement, appellant reported that he was walking down a slope to rake some debris on July 18, 2014, and while making a left turn, he twisted his left knee.

On September 16, 2014 OWCP denied appellant's claim finding that the medical evidence was insufficient to establish a diagnosed condition in connection with the work-related incident.

On October 15, 2014 appellant requested review of the written record before the Branch of Hearings and Review.

In support of his request, appellant submitted an August 6, 2014 left knee magnetic resonance imaging (MRI) scan report from Dr. Edelstein. Findings included a grade one sprain of the medial collateral ligament, early underlying chondromalacia and subchondral edema, a small intra-articular ganglion cyst posterior to the posterior cruciate ligament, and a focally prominent intrasubstance signal within the posterior horn of the medial meniscus with fraying, and possible tearing, of the interior surface. The test showed no evidence of fracture or abnormal bone marrow signal.

Appellant also submitted September 25 and 30, 2014 physical therapy notes, signed by a physical therapist, diagnosing left knee medial meniscus tear, popliteal cyst, and medial collateral ligament sprain. The reports state that appellant reported planting and pivoting his left knee while pruning bushes at work.

In October 9, 2014 progress notes, Steven Olster, a physician assistant, related that appellant complained of left knee pain that he attributed to twisting while working. He diagnosed medial collateral ligament sprain, medial meniscus tear, and early chondromalacia medial tibial plateau. Mr. Olster advised light duty and increased physical therapy.

By decision dated April 13, 2015, an OWCP hearing representative affirmed the September 16, 2014 decision, finding that the additional medical evidence was insufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative and substantial evidence,[2] including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.[3] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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 evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[5]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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.[6]

[2] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[3] *R.C.*, 59 ECAB 427 (2008).

[4] *Id*.; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *T.H.*, 59 ECAB 388 (2008).

[6] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

There is no dispute that appellant was walking down a slope at work on July 17, 2014 as alleged. The issue is whether appellant submitted sufficient medical evidence to establish that this incident caused an injury. The Board finds the medical evidence of record does not establish a causal relationship between the July 17, 2014 incident and a diagnosed condition.

A July 17, 2014 medical report from Dr. Peng stated that appellant experienced left knee pain from twisting his knee. Dr. Peng diagnosed knee pain. The Board notes that "knee pain" is a symptom, not a medical diagnosis, and subjective complaints of pain are not sufficient, in and of themselves, to support compensation benefits under FECA.[7] Furthermore, Dr. Peng did not offer his own opinion whether work activities caused or aggravated appellant's knee condition.

In diagnostic reports dated July 17 and August 6, 2014, Dr. Edelstein noted x-ray and MRI scan findings for appellant's left knee. These included medial meniscus fraying with possible tearing and a sprain of the medial collateral ligament. However, Dr. Edelstein's reports did not offer an opinion on whether the July 17, 2014 employment incident caused or aggravated the diagnosed conditions. The Board has long held that medical evidence not offering any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[8]

Dr. Said's July 28 and August 14, 2014 prescription notes contain no opinion on the cause of appellant's condition. They are insufficient to establish appellant's claim.[9]

Appellant also submitted evidence from prosthetists, nurse practitioners, and physical therapists as well as reports with illegible signatures.[10] This evidence is insufficient to establish appellant's claim as there is no indication that the persons completing the reports qualify as a physician as defined in 5 U.S.C. § 8101(2).[11]

On appeal, appellant stated that he was providing new medical evidence signed by a physician for the Board's review. The Board is precluded from reviewing evidence that was not before OWCP at the time it issued its final decision.[12]

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[7] 20 C.F.R. § 10.501(a)(3); *G.M.*, Docket No. 15-279 (issued April 2, 2015).

[8] *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

[9] *Id*.

[10] The Board notes that the October 9, 2014 progress report indicates that Dr. Izhar Haque, an orthopedic surgeon, was expected to cosign the report. However, Dr. Haque did not sign the report. Consequently, it has no probative medical value. *See infra* note 11.

[11] The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); *L.B.*, Docket No. 13-1253 (issued September 18, 2013) (physician assistants, physical therapists, and physical therapy assistants do not qualify as physicians under FECA and, therefore, their medical reports do not qualify as probative medical evidence supportive, unless such medical reports are countersigned by a physician); *Gary Ashe*, Docket No. 94-271 (issued July 13, 1995) (a prosthetist/orthotist is not considered to be a physician under FECA).

[12] *See* 20 C.F.R. § 501.2(c)(1).

Appellant may submit new evidence or argument as part of a formal 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 left knee condition was causally related to the July 17, 2014 work incident.

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 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