

ISSUE

The issue is whether appellant sustained an injury causally related to a September 30, 2013 employment incident.

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances as set forth in the prior appeal are hereby incorporated by reference. The facts relevant to the instant appeal will be set forth.

On October 17, 2013 appellant, then a 50-year-old revenue officer, filed a traumatic injury claim (Form CA-1) alleging that on September 30, 2013 she injured her leg and knee when she “stood up from a sitting position [and] heard her knee pop....” She stopped work on September 30, 2013. The employing establishment controverted the claim as appellant was teleworking from home and it was unclear if the incident was work related.

In an emergency room report dated September 30, 2013, Dr. Ryosuke Ito, an osteopath, obtained a history of appellant experiencing knee pain walking an hour earlier. He diagnosed knee pain, a knee strain, and a possible ligament injury.

Dr. Alexander S. Finger, a Board-certified orthopedic surgeon, evaluated appellant on October 1, 2013 for right knee pain. Appellant provided a history of feeling a pop and right knee pain coming down stairs the day before. Dr. Finger diagnosed a right knee strain and possible anterior cruciate ligament injury.

A magnetic resonance imaging (MRI) scan study performed on October 3, 2013 revealed a tear of the medial meniscus posterior horn of the right knee.

In a progress report dated October 8, 2013, Dr. Finger discussed appellant’s continued complaints of pain in her right knee and reviewed MRI scan findings of arthritis and a tear of the medial meniscus. He diagnosed a knee and leg sprain/strain and a tear of the medial cartilage or meniscus of the knee.

In an attending physician’s form report (Form CA-20) dated October 29, 2013, Dr. Finger diagnosed a tear of the meniscus of the right knee and checked a box marked “yes” that the condition was caused or aggravated by employment as appellant twisted her knee while working. The history of injury on the form indicated that appellant twisted her knee going downstairs while working. Dr. Finger determined that appellant was disabled for about eight weeks beginning October 1, 2013, due to right knee meniscus tear.

Dr. Finger, in a November 19, 2013 disability certificate, opined that appellant could resume work without restrictions. In a progress report dated November 19, 2013, he noted that she had not improved with physical therapy. Dr. Finger diagnosed a knee and leg sprain/strain and a tear of the medial cartilage or meniscus of the knee.

By decision dated November 29, 2013, OWCP denied appellant's claim, finding that she had not established the occurrence of the September 30, 2013 work incident.³ It determined that her description of the September 30, 2013 incident varied from the history of injury contained in the medical evidence.⁴ OWCP further found that appellant had not shown that she was in the performance of duty directly related to her employment when the injury occurred.

Appellant, on November 29, 2013, requested an oral hearing before an OWCP hearing representative. She related that when she telephoned her manager after her injury she was in significant pain and "by no means thinking clearly." Appellant indicated that she was working at her dining room table on her laptop and had to go to a lower level to use her fax machine. She submitted evidence documenting that she was performing work duties at the time of her injury.

A telephone hearing was held on June 16, 2014.⁵ In a report dated May 23, 2014, Dr. Gregg J. Jarit, a Board-certified orthopedic surgeon, advised that appellant was status post a partial lateral meniscectomy of the right knee. He opined that she was unable to work.

In a decision dated September 5, 2014, OWCP's hearing representative affirmed the November 29, 2013 decision. She found that appellant had established that the work incident occurred as alleged. The hearing representative determined, however, that the medical evidence was insufficient to establish a right knee condition as a result of the September 30, 2013 employment incident.

On January 15, 2015 appellant, through counsel, requested reconsideration.

Dr. Jarit, in a form report dated December 12, 2014, described the injury as occurring when appellant, while working from home, "tripped when walking from her office to the den."⁶ He diagnosed a medial and lateral meniscal tear status after a partial medial and lateral meniscectomy. Dr. Jarit signed below a statement on the form that the described work activities resulted in the diagnosed condition.

³ A claims examiner signed the November 29, 2013 decision on December 2, 2013.

⁴ In a statement dated October 28, 2013, appellant indicated that she worked full-time from her residence. She advised that immediately following a conference call with the power of counsel for a taxpayer she went to fax a memorandum about the conversation. Appellant stepped down into her den and "heard a pop [and] felt horrible pain" in her right knee. On November 13, 2013 the employing establishment controverted the claim as the history of injury on the claim form of her experiencing a pop in her knee standing up differed from the history of injury contained in the medical reports of her injuring her knee walking down stairs. It also noted that appellant was working at home at the time of her injury.

⁵ At the hearing, appellant related that she worked at home in an upstairs office and at her dining room table. She also used a fax machine for work located in a sunken den that had a step leading down into it. On September 30, 2013 appellant stepped down into her den to send a fax, heard a pop, and experienced "excruciating pain." In an email dated July 2, 2014, appellant's supervisor reviewed the hearing transcript and related that appellant was "hurt while working" and reported it "as soon as she could...."

⁶ In a report dated April 25, 2014, received by OWCP on January 15, 2015, Dr. Jarit noted that appellant was scheduled for surgery on May 14, 2014 and would be off work until May 28, 2014. He found that she could currently perform light duty.

By decision dated April 9, 2015, OWCP denied modification of its September 5, 2014 decision. It found that appellant had not submitted reasoned medical evidence showing how the September 30, 2013 work incident caused or aggravated a diagnosed condition.

Appellant appealed to the Board. In a decision dated September 23, 2015, the Board affirmed the April 9, 2015 decision.⁷ The Board found that the medical evidence failed to establish a diagnosed condition as a result of the accepted employment incident.

On December 3, 2015 appellant, through counsel, requested reconsideration.

In a report dated November 20, 2015, Dr. Jarit advised that he had treated appellant beginning April 8, 2014 for a September 30, 2013 injury to her right knee. He diagnosed a medial meniscus tear by MRI scan study. Appellant underwent a partial medial and lateral meniscectomy of the right knee on May 14, 2014. Dr. Jarit related:

“[Appellant’s] description of the injury in which she stepped down into a sunken den, twisted her knee and felt a pop is completely consistent with a meniscal pathology (both medial and lateral) found at surgery on May 14[, 2014].

“Meniscal tears commonly occur with twisting injury of the knee. In addition, [appellant] reports that she did not have knee pain or prior injury before September 30, 2013. As a result, I feel within a reasonable degree of medical certainty that the incident from September 30, 2013 caused the medial and lateral meniscal tears that were subsequently treated surgically on May 14, 2014.”

By decision dated March 3, 2016, OWCP denied modification of its prior merit decision. It found that Dr. Jarit had not provided sufficient rationale for his opinion and further indicated that although he claimed that appellant had no prior knee injury, the record reflected a preexisting diagnosis of knee arthritis.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 filed within the applicable time limitation; that an injury was sustained while 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.⁸ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁹

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, an employee has the

⁷ Docket No. 15-1365 (issued September 23, 2015).

⁸ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁹ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.¹⁰ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.¹¹ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.¹²

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.¹³ The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.¹⁴

ANALYSIS

The Board finds that the case is not in posture for decision. On prior appeal, the Board found that appellant had not met her burden of proof to establish a right knee condition on September 30, 2013 causally related to the accepted incident as the medical evidence either did not address causation or did not provide sufficient rationale.

On reconsideration appellant submitted a November 20, 2015 report from Dr. Jarit. Dr. Jarit diagnosed a medial meniscal tear as confirmed by MRI scan study and indicated that on May 14, 2014 she had undergone a partial medial and lateral meniscectomy of the right knee. He reviewed the history of appellant feeling a pop in her knee and twisting her knee stepping into a sunken den. Dr. Jarit found that the mechanism of injury was consistent with medial and lateral meniscal pathology. He advised that twisting injuries were a common cause of meniscal tears and noted that appellant had not experienced knee pain before the September 30, 2013. Dr. Jarit attributed the medial and lateral meniscal tears and the May 14, 2014 surgery to the September 30, 2013 employment incident.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish her claim, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁵ Dr. Jarit's November 20, 2015 report is based on an accurate history of injury and rationale for his opinion by explaining that

¹⁰ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

¹¹ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹² *Id.*

¹³ *Jimmy A. Hammons*, 51 ECAB 219 (1999).

¹⁴ 20 C.F.R. § 10.121.

¹⁵ *See A.A.*, 59 ECAB 726 (2008); *Phillip L. Barnes*, 55 ECAB 426 (2004).

the mechanism of injury was consistent with the diagnosed condition.¹⁶ While Dr. Jarit's report is not completely rationalized, it is unequivocal, based on objective findings, and contains a firm diagnosis and sufficient rationale to require further development of the case.¹⁷ The Board will remand the case for OWCP to refer appellant to an appropriate specialist to determine whether the September 30, 2013 employment incident resulted in a medical condition. After such further development as deemed necessary, it should issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with the decision of the Board.

Issued: August 29, 2016
Washington, DC

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

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

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

¹⁶ Dr. Jarit further indicated that appellant did not experience knee pain prior to the incident. OWCP determined that diagnostic studies showed knee arthritis and thus a preexisting condition; however, the issue is whether she had a torn medial and lateral meniscus due to the injury.

¹⁷ See *M.M.*, Docket No. 15-1623 (issued April 15, 2016); *R.B.*, Docket No. 15-0971 (issued August 14, 2015).