United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 16-0878**
	)	**Issued: December 12, 2016**
SOCIAL SECURITY ADMINISTRATION, CLEVELAND ODAR OFFICE, Cleveland, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 23, 2016 appellant, through counsel, filed a timely appeal from a February 24, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant met his burden of proof to establish a left knee injury causally related to the accepted June 19, 2013 employment incident.

FACTUAL HISTORY

On June 26, 2013 appellant, then a 47-year-old Hearing Office Systems Administrator, filed a traumatic injury claim (Form CA-1) alleging that on June 19, 2013 he was pushing a cart with a personal computer tower on it when the front wheel of the cart fell off. He explained that he twisted his left knee when he attempted to prevent the computer from falling off the cart. Appellant stopped work on June 20, 2013 and returned to work on July 1, 2013.

Along with the claim, appellant submitted x-rays of his left knee dated June 24, 2013, which related an impression of left knee total arthroplasty with no sign of loosening of components or fracture, and new small left knee joint effusion.

In a June 20, 2013 report, Dr. Murray Andrew Greenwood, a Board-certified physiatrist, indicated that appellant had a prior history of hypertension and left knee injury status post total left knee arthroscopy, for which he was followed by Dr. Bernard N. Stulberg, a Board-certified orthopedic surgeon. He also noted that an Ohio state workers' compensation claim of appellant's settled in 2012. Dr. Greenwood advised that appellant reported left knee pain after an incident at work. The incident was described as "pushing a four wheeled cart with IT equipment that tipped when a wheel broke off and, as [appellant] stepped forward to block the cart from falling, he twisted the left knee. [Appellant] was sore initially, but was swollen in left knee by day's end. He was unable to weight bear on the leg this morning." Dr. Greenwood noted that appellant had been well enough in the past year with regard to the left knee and had not seen Dr. Stulberg. He indicated that clinical presentation and examination were consistent with left knee effusion, possible internal derangement status post left total knee arthroplasty, differential included hardware loosening, failure. Dr. Greenwood indicated that left knee films showed effusion, calcification at the level of the medial femoral condyle and no evidence of acute fracture or hardware failure. He indicated that appellant could return to sedentary work.

In an August 19, 2013 report, Dr. Stulberg, a Board-certified orthopedic surgeon, reported that examination showed that appellant's left knee instability was unchanged, but could be disruption of the medial cruciate ligament (MCL). He had a modest effusion in the knee joint and use of the brace had been somewhat helpful. An impression of sprain MCL; left knee eight years status post revision arthroplasty left knee. Dr. Stulberg noted that if appellant's symptoms did not settle down over the next couple of months, a revision of the tibial insert to a varus valgus constraint device and imbrication of the medial ligaments should be considered. In an October 21, 2013 report, he provided an impression of persistent instability from recent MCL sprain status post revision left total knee arthroplasty eight years ago. Dr. Stulberg indicated that a more rigorous knee brace would be fashioned for appellant. No examination findings were provided.

As the employing establishment had not challenged the claim, OWCP administratively paid limited expenses without formal review of the claim. As the medical expenses exceeded the designated amounts, OWCP decided to formally adjudicate the claim.

In an April 13, 2015 letter, OWCP advised appellant of the deficiencies in his claim and provided him the opportunity to submit additional factual and medical evidence. This included a detailed narrative medical report from his treating physician which contained a history of the injury and a medical explanation with objective evidence of how the reported work incident caused or aggravated the claimed condition. Appellant was afforded 30 days to submit such evidence.

In response, OWCP received an April 20, 2015 letter from counsel and additional medical evidence, which included a February 10, 2015 x-ray report and medical reports from Dr. Stulberg.

In a February 11, 2015 report, Dr. Stulberg noted that appellant had reinjured his left knee in June 2014 and that the knee progressively worsened. He stated that appellant had increasing instability and recurrent effusion in his left knee replacement aggravated by injury of the MCL approximately 18 months prior. Left knee surgery was recommended. In an April 13, 2015 report, Dr. Stulberg stated that appellant was experiencing increasing disability related to progressive instability of his left revision total knee arthroplasty, which was recently aggravated by an April 8, 2015 injury[3] and which had originally been aggravated by a June 6, 2013 injury. X-rays from April 8, 2015 were reviewed and documented stable positioning of revision left total knee arthroplasty with cemented tibial and femoral stems, slight medial lucency seen, since radiographs of February 10, 2015, a substantially greater knee effusion could be seen. Dr. Stulberg continued to recommend surgery. In an April 28, 2015 report, he indicated that appellant was experiencing significant and incapacitating left knee instability with pain related to progression of his MCL sprains which rendered his left knee replacement unstable. Dr. Stulberg indicated that the instability could only be addressed through revision knee arthroplasty. He took appellant off work on April 27, 2015.

By decision dated May 14, 2015, OWCP denied appellant's claim. It found that the medical evidence submitted failed to establish causal relationship between the claimed June 19, 2013 incident, the MCL sprain, and his need for surgery.

On May 21, 2015 OWCP received counsel's May 20, 2015 request for a telephonic hearing before an OWCP hearing representative. Appellant's telephonic hearing was scheduled and held on January 4, 2016.

New evidence received into record included operative reports dated June 5, November 12, and December 21, 2015. The June 5 and November 12, 2015 reports indicated that Dr. Stulberg performed a revision of appellant's total knee arthroplasty, tibial component only. The December 21, 2015 report indicated that Dr. Stulberg performed a cable stabilization of proximal femoral crack and cable stabilization of the tibial fragment and bone grafting of hole

[3] OWCP assigned claim number xxxxxx506 to the April 8, 2015 traumatic injury. It administratively accepted the claim without formal review for a limited time and medical expense.

lateral tibia and evacuation of hematoma. Postoperative diagnoses indicated stable proximal femoral crack related to stem insertion, perforation of posterolateral tibia with stability of tibial component, and femoral component.

In an April 28, 2015 statement, Dr. Stulberg stated that there was no question in his mind that appellant's knee instability was directly related to the MCL injury that occurred as a result of a work injury on June 19, 2013. He explained that, while an MCL could generally be treated without surgery, the MCL was critical to the functioning of a total knee replacement. Dr. Stulberg indicated that appellant's MCL sprain initially could be managed with bracing and strengthening exercises, but that appellant's MCL had stretched so that his instability had slowly increased. He opined that this instability was significantly aggravated by the April 8, 2015 injury and surgical revision of appellant's knee replacement was the only means to address this instability. Dr. Stulberg concluded that appellant's surgery should be covered under workers' compensation, as his prior arthroplasty was working well and not showing signs of wear, up until the June 19, 2013 injury. Appellant was kept off work.

In a December 21, 2015 report, Dr. Stulberg noted that appellant had been his patient for over a decade. When he first saw appellant, he was having difficulty with a total knee replacement used to treat his post-traumatic arthritis associated with his work-related injury. Dr. Stulberg stated that this had failed on the femoral side with loosening, and a revision of all components using cemented stemmed components was performed in 2005. After that surgery, appellant returned to work without limitation. Dr. Stulberg stated that appellant sustained another work-related injury on June 19, 2013, which initially appeared to be related to a sprain of the MCL. He indicated that, in a nonarthroplasty patient, a collateral ligament injury such as that could be treated nonoperatively. However, appellant already had two knee replacement operations and, while they were not optimistic that the sprain could be managed nonoperatively, they attempted to work with bracing and strengthening exercises to keep him functional without having to proceed surgically. Dr. Stulberg indicated that, on April 8, 2015, appellant suffered an additional twisting injury, which appeared to result in progressive medial ligament instability and progressive instability of his knee replacement with progressive pain and functional limitations. Eventually, operative intervention to restore medial stability was performed.

On June 5, 2015 appellant underwent a left knee revision procedure, during which it was discovered that the source of his progressive instability was not related to the MCL disruption, but was due to a fracture of the femoral component of his prior revision knee arthroplasty. This occurred at the base of the stem of this device, and was related to absence of bone support of the medial femoral condyle. As those stems had been placed in cemented fashion and an extended period of time was required to remove retained cement within the canals of the distal femur and proximal tibia, another reconstruction surgery was performed. An exploration of this knee was performed on June 8, 2015, where both components were found to be stable. Stabilization cables were placed to allow for healing of the bone around those defects. Appellant regained ambulatory status with crutches rapidly and regained range of motion beyond his preoperative motion within the first six weeks.

On November 12, 2015 appellant underwent revision of his tibial component and evaluation of his femoral component fixation. During that procedure, the tibial component was found to have micromotion of the stem. Revision consisted of implanting a new component with

careful repositioning of appellant's tibial component stem. Dr. Stulberg discussed appellant's progress following that recent revision and indicated that they were able to improve stability and function in his left knee joint in a manner that has restored lost bone to his knee. He opined that appellant's present need for revision arthroplasty in June 2015 was related to his preexisting condition. Dr. Stulberg stated that prior documentation of MCL sprain may have been partly incorrect in that the ultimate need for revision arthroplasty was related to mechanical failure of his previously placed device. He stated that while he believed the diagnosis of MCL sprain that was made related to the injury of June 19, 2013 was accurate, the on April 8, 2015 injury may in fact have been the "final straw" in the impending failure of appellant's mechanical device. Dr. Stulberg stated that the major issues that needed to be addressed through his surgical interventions were clearly related to mechanical device failure.

At the hearing, appellant testified about his knee injuries sustained from 1989 onward and discussed his numerous surgeries. He indicated that he last worked on April 8, 2015. Appellant described the June 19, 2013 work incident and contended, in his testimony, that this incident caused a series of progressive problems with his left knee. He also described the April 2015 work incident. Counsel argued that appellant's prior medical records did not need to be submitted as he believed that Dr. Stulberg's December 21, 2015 narrative report supported that appellant had no other incident or accident involving his left knee until the June 19, 2013 work incident and that it was a known fact that appellant had a history of total knee replacements.

Additional reports from Dr. Stulberg were received into the record along with copies of the June 5 and 8, and November 12, 2015 operative reports, work excuse statements, x-rays, and laboratory results.

Following the hearing OWCP received a June 24, 2013 report in which Dr. Stulberg noted that, since appellant's last visit, he had an injury at work on June 20, 2013, which resulted in marked medial knee pain. Appellant was seen at the emergency room, where x-rays were obtained and advised to follow up with his treating physician. Examination findings were provided and an MCL sprain with mild-to-moderate instability following the June 20, 2013 work injury was diagnosed. Other reports dated January 27, May 19, and August 2014 and February 10, April 13 and 28, July 1 and 21, August 25, September 21, October 21, and December 1, 21 and 23, 2015 from Dr. Stulberg were received and described appellant's progress.

In an August 25, 2015 duty status report (Form CA-17), Dr. Stulberg noted the date of injury as April 9, 2015.

By decision dated February 24, 2016, an OWCP hearing representative affirmed the denial of appellant's claim. The hearing representative found that appellant failed to meet his burden of proof to establish that his left knee condition was causally related to the June 19, 2013 work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his 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.[4] 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.[5]

In order to determine whether an employee sustained a traumatic 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 that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident that is alleged to have occurred.[6] An employee has not met his or her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[7] 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.[8]

The medical evidence required to establish causal relationship is generally rationalized medical opinion 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 medial 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.[9] Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[10]

ANALYSIS

On June 26, 2013 appellant filed a traumatic injury claim alleging that he sustained a left knee injury on June 19, 2013 when he tried to prevent a computer tower from falling off a cart. OWCP accepted that the incident occurred as alleged. Appellant returned to work on July 1, 2013 with restrictions and eventually stopped work on April 8, 2015, when he sustained a

[4] *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[6] *Gary J. Watling*, 52 ECAB 278 (2001).

[7] *S.N.*, Docket No. 12-1222 (issued August 23, 2013); *Tia L. Love*, 40 ECAB 586, 590 (1989).

[8] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[9] *Solomon Polen*, 51 ECAB 341 (2000).

[10] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

twisting injury to his left knee.[11] He underwent left knee surgery on June 5, November 12, and December 21, 2015. Appellant has not returned to work.

The Board finds that appellant has not met his burden of proof to establish a left knee injury causally related to the June 19, 2013 work incident.

In his June 20, 2013 report, Dr. Greenwood noted a prior history of appellant's left knee, including that he was status post total left knee arthroscopy, for which he was followed by Dr. Stulberg. He noted that there had been no problems with his left knee in the past year prior to the June 19, 2013 incident. Dr. Greenwood provided an accurate description of the June 19, 2013 work incident. He listed left knee effusion and calcification at the level of the medial femoral condyle as clinical findings and diagnosed possible internal derangement status post left total knee arthroplasty, differential including hardware loosening, failure,[12] but provided no opinion as to the cause of the condition.[13] Dr. Greenwood's opinion is thus insufficient to establish causal relationship.[14]

Numerous reports were received from Dr. Stulberg. However, his reports are of limited probative value as he failed to explain how the June 19, 2013 work incident resulted in the diagnosed MCL sprain of the left knee. In his first report of June 24, 2013, Dr. Stulberg reported that appellant had an injury at work, which resulted in marked medial knee pain. While he diagnosed an MCL sprain and had been appellant's orthopedic surgeon for his previous left knee replacement eight years ago, he failed to describe the mechanism of the June 19, 2013 work injury, which would have resulted in appellant's mild-to-moderate instability and in disruption of the MCL. In his subsequent reports of August 19 and October 21, 2013, Dr. Stulberg failed to mention the June 19, 2013 work incident. In his February 11, 2015 report, he reported that appellant had reinjured his left knee in June 2013, he simply did not provide a clear history of appellant's June 19, 2013 incident and did not explain the medical process as to how this incident could have caused his left knee condition.[15]

In his April 13, 2015 report, Dr. Stulberg reported that appellant's increasing disability related to progressive instability of his left revision total knee arthroplasty, which had been initially aggravated by the June 19, 2013 incident and was recently aggravated by an April 8, 2015 work injury. This subsequent injury would break the chain of causation from the June 19, 2013 injury.[16]

[11] *See supra* note 2.

[12] Dr. Greenwood indicated that appellant may return to work with seated job tasks and noted that he was to see his surgeon next week.

[13] *See T.P.*, Docket No. 14-1946 (issued February 13, 2015).

[14] *See D.R.*, Docket No. 16-0528 (issued August 24, 2016).

[15] *Id.*

[16] *See C.D.*, Docket No. 10-1698 (issued April 12, 2011).

In his April 28, 2014 report, Dr. Stulberg explained that in face of appellant's prior knee replacement surgery, his MCL had stretched so that his instability slowly increased and was significantly aggravated by the April 8, 2015 injury. While he opined that appellant's surgery should be covered under workers' compensation as his prior arthroplasty was working well and not showing signs of wear until the June 19, 2013 injury, he failed to provide sufficient medical rationale explaining the basis of his conclusion/opinion regarding the causal relationship between appellant's diagnosed conditions and the need for surgery. Dr. Stulberg did not provide a clear discussion as to how the June 19, 2013 incident resulted in the diagnosed MCL sprain of the left knee, and if in fact the work incident would have caused the stretching of appellant's MCL, which led to further instability. A mere conclusion without the necessary rationale explaining why the physician believes that a claimant's accepted exposure resulted in a diagnosed condition is not sufficient.[17]

In his December 21, 2015 report, Dr. Stulberg provided a detailed account of appellant's 2005 total knee replacement and indicated that appellant's June 19, 2013 alleged work injury initially appeared to be related to an MCL sprain. However, he again failed to provide a description of the June 19, 2013 work incident or any medical rationale regarding the mechanism of the alleged injury. In addition, Dr. Stulberg indicated that, during appellant's revision surgery on June 5, 2015, he discovered that the source of appellant's progressive instability was not related to MCL disruption, but it was related to a fracture of the femoral component of appellant's preexisting revision knee arthroplasty. Specifically, he stated that appellant's persistent pain was felt to be related to incomplete anchorage of his tibial component. This report negates the relationship Dr. Stulberg previously attributed to the June 19, 2013 MCL disruption.

Dr. Stulberg never described in any of his reports the mechanism of the June 19, 2013 incident nor the medical process of how that work incident would have caused the MCL diagnosis. Furthermore, he does not describe appellant's preexisting history of left knee injuries dating back to the 1980's which, according to appellant's testimony resulted in numerous left knee surgeries, a total knee replacement, and several years of disability. Dr. Stulberg only mentioned appellant's total knee replacement from 2005. The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[18] The Board finds that the medical reports of Dr. Stulberg are insufficient to meet appellant's burden of proof.

The additional medical evidence submitted, which includes x-ray reports, are of limited probative value as they fail to offer a medical opinion as to how the reported work incident

[17] *See S.S.*, 59 ECAB 315 (2008) (medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof); *Beverly A. Spencer*, 55 ECAB 501 (2004) (a mere conclusion without the necessary medical rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet the claimant's burden of proof).

[18] *See Roy L. Humphrey*, 57 ECAB 238 (2005); *Lee R. Haywood*, 48 ECAB 145 (1996).

caused or aggravated a medical condition. The Board has held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[19] A medical opinion is especially needed in this case as the record reflects appellant has preexisting knee conditions. Thus, these reports are insufficient to establish appellant's claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's conditions became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship.[20] Causal relationship must be established by rationalized medical opinion evidence and he failed to submit such evidence.

OWCP advised appellant to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment, and the physician's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to OWCP's request. As there is no probative, rationalized medical evidence addressing how his claimed left knee condition was caused, or aggravated by the June 19, 2013 employment incident, he has not met his burden of proof to establish that he sustained an injury causally related to factors of his federal employment.

On appeal, counsel contends that the February 24, 2016 decision is contrary to fact and law. As discussed above, appellant has not established a causal relationship between the June 19, 2013 work incident and his diagnosed conditions and need for surgery.

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 did not meet his burden of proof to establish a left knee injury causally related to the accepted June 19, 2013 employment incident.

[19] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[20] *See D.U.*, Docket No. 10-144 (issued July 27, 2010); *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, 55 ECAB 39 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 24, 2016 is affirmed.

Issued: December 12, 2016
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