

that he was cleaning baseboards on his knees with no kneepads. The claim form does not indicate whether appellant stopped working. The supervisor's portion of the Form CA-1 reported that appellant did not mention an injury until he filed the claim. Appellant submitted a note indicating that he received emergency treatment on May 1, 2015 at the employing establishment's health facility. In an employing establishment form report dated May 5, 2015, a nurse practitioner described physical findings as tenderness over medial aspect of left knee, with reduced range of motion. The nurse practitioner indicated that appellant should not kneel, stoop, or climb.

In an x-ray report dated May 5, 2015, Dr. Jory Philip, a radiologist, provided a history that on April 30, 2015 appellant injured his left knee while kneeling on a floor. Dr. Philip diagnosed mild tricompartmental degenerative changes of the left knee, generalized osteopenia, enthesophyte off the anterosuperior and anterior inferior patella, and bony protuberance off the lateral tibial metaphysis.

By letter dated June 1, 2015, OWCP requested appellant submit additional evidence. By letter dated June 6, 2015, appellant explained that he did not immediately notify his supervisor of an injury because "other than normal joint sounds when getting up off my knees from cleaning corners and edges and scrubbing the red brick tile with a wire scrub brush, there was no indication of an injury." Appellant reported that the next morning his left knee was painful and he did inform his supervisor of an injury. He further asserted, "My left knee was injured being on my knees cleaning corners and edges and scrubbing the red brick tile in the kitchen with a wire brush cleaning corners and edges in the bathrooms, under sinks and halls without knee pads" or other protection for his knees.

By decision dated July 2, 2015, OWCP denied appellant's claim for compensation, finding that the medical evidence of record was insufficient to establish a diagnosed injury causally related to the accepted work incident on April 30, 2015.

On November 18, 2015 appellant requested reconsideration of the claim. He had submitted additional evidence on September 8, 2015. In a report dated August 12, 2015, Dr. Robin Gehrman, a Board-certified orthopedic surgeon, indicated that a July 30, 2015 magnetic resonance imaging (MRI) scan of the left knee showed a medial meniscus tear, as well as arthritic changes. Dr. Gehrman provided results on examination and diagnosed degenerative joint disease and medial meniscus tear. The record contains a July 30, 2015 MRI scan report from Dr. Kenneth Blatt, a radiologist, diagnosing a medial meniscus tear and arthritic changes of the left knee.

With his request for reconsideration, appellant submitted an August 28, 2015 report from Dr. Bin Yang, an employing establishment specialist in occupational medicine, who indicated that appellant reported left knee pain on April 30, 2015 while kneeling on cement floors to clean baseboards. Dr. Yang indicated that appellant was treated from May 1 to June 19, 2015 for left knee pain. He opined, "The tear of meniscus, sprain of left knee and worsening knee pain could be caused and aggravated by his work-related incident on [April 30, 2015]."

In a brief report dated September 4, 2015, Dr. Gehrman wrote that appellant "sustained an injury at work" on April 30, 2015 to his left knee. Dr. Gehrman noted that the July 30, 2015

MRI scan showed a meniscal tear and “[b]ased on patient history, physical exam[ination] and the MRI [scan], which I viewed personally, this injury is consistent with the injury he sustained at work.”

By decision dated February 16, 2016, OWCP reviewed the case on its merits, but denied modification of its prior decision. It found the medical evidence of record was insufficient to establish a diagnosed left knee condition casually related to April 30, 2015 work incident.

On April 29, 2016 appellant again requested reconsideration. Appellant submitted an April 25, 2016 report from Dr. Gehrman who opined that appellant “suffered a medial meniscal tear and aggravation of his arthritis. The injury occurred when he was kneeling cleaning the floors at the VA and he twisted his knee and it buckled as he stood up.” Dr. Gehrman indicated that appellant stated that he did not have prior left knee pain or problems. He noted the results on MRI scan, opining that appellant “obviously aggravated his underlying arthritis and both the exacerbation of his arthritis and his meniscal tear appears causally related to his injury at work.” Dr. Gehrman indicated that appellant was a candidate for knee surgery if symptoms persisted.

By decision dated July 13, 2016, OWCP reviewed the merits, but denied modification of its prior decision as the medical evidence of record was insufficient to establish appellant’s claim for compensation.

LEGAL PRECEDENT

FECA provides for the payment of compensation for “the disability or death of an employee resulting from personal injury sustained while in the performance of duty.”² The phrase “sustained while in the performance of duty” in FECA is regarded as the equivalent of the commonly found requisite in workers’ compensation law of “arising out of and in the course of employment.”³ An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.⁴ 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 alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by rationalized medical evidence.⁵

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

² 5 U.S.C. § 8102(a).

³ *Valerie C. Boward*, 50 ECAB 126 (1998).

⁴ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁵ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

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.⁶

ANALYSIS

In the present case, appellant has alleged his left knee injury occurred as a result of his work activity on April 30, 2015. He indicated that he was kneeling on the floor, without knee pads while cleaning. Appellant also reported that when he stood up, there was no initial indication of any injury. It was the following day that he felt left knee pain.

OWCP accepted that the employment incident occurred as alleged on April 30, 2015. The issue is whether the medical evidence submitted established a diagnosed condition causally related to the accepted work incident.

The Board finds that the medical evidence of record is insufficient to meet appellant's burden of proof. Dr. Yang reported in an August 28, 2015 report that the "tear of meniscus, sprain of left knee and worsening knee pain could be caused and aggravated by his work-related incident on [April 30, 2015]." This opinion is of diminished probative value on the issue of causal relationship. Dr. Yang refers to conditions that "could" be casually related, which is speculative and must be accompanied by additional medical rationale. Medical opinions that are speculative and not supported by medical rationale are generally entitled to little probative value and are insufficient to meet appellant's burden of proof.⁷ Furthermore, Dr. Yang refers to "caused and aggravated" without further explanation. Direct causation and aggravation are different concepts and a medical opinion must clearly explain the relationship between a diagnosed condition and the employment activity.⁸

Dr. Gehrman provided a brief September 4, 2015 report that noted a meniscal tear on a July 30, 2015 MRI scan and opined that this condition was "consistent with the injury he sustained at work." He did not provide any additional explanation. Dr. Gehrman did submit an additional report dated April 25, 2016. In this report, he provides a history that on April 30, 2015 appellant "twisted his knee and it buckled as he stood up." As noted above, this history is not confirmed by the evidence of record. Appellant himself indicated that when he stood up there was nothing except normal joint sounds and no indication of an injury at that time. He did not report that he twisted his knee or that it buckled.⁹

Moreover, Dr. Gehrman does provide medical rationale to support his opinion on causal relationship. The conditions he diagnosed were a medical meniscus tear and arthritic changes in the left knee, as documented by a July 30, 2015 MRI scan. Dr. Gehrman asserts there was "obviously" an aggravation of underlying arthritis, but the medical record is not obvious in this

⁶ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

⁷ *Carolyn F. Allen*, 47 ECAB 240 (1995).

⁸ *See C.W.*, Docket No. 15-0881 (issued August 21, 2015).

⁹ *Supra* note 6.

regard. That appellant reported he was asymptomatic before the injury but symptomatic after is insufficient, without supporting rationale, to establish causal relationship.¹⁰ An opinion with respect to aggravation must differentiate between the effects of the work-related injury or disease and the preexisting condition.¹¹ The Board has held that the physician must clearly explain the nature and extent of any aggravation, including whether temporary or permanent.¹² Dr. Gehrman provides no detail and explanation regarding the nature and extent of an aggravation of underlying arthritis.

In addition, Dr. Gehrman opined that the medial meniscus tear was caused by appellant's work activity. However, he does not provide any medical rationale explaining how the work activity on April 30, 2015 affected the left knee and caused a meniscus tear. To establish causal relationship, the physician must describe appellant's work activity and medically explain the pathophysiological process by which this activity would have caused the condition.¹³

The Board finds that the record does not contain a medical report with a complete and accurate background, and a rationalized medical opinion on causal relationship between appellant's diagnosed left knee condition and his April 30, 2015 employment activity.¹⁴ Appellant failed to meet his burden of proof in this case.

On appeal, appellant argues that Dr. Gehrman had paraphrased his notes rather than writing verbatim what appellant had told him. He noted that Dr. Gehrman reported that the knee twisted and buckled but "did not clarify it was the next day or indicate a date and time at all." However, the deficiency in the April 25, 2016 report is not a matter of paraphrasing the factual history. Dr. Gehrman clearly wrote that appellant twisted his knee as he stood up on April 30, 2015. This is not consistent with the history provided in the case and as found above, Dr. Gehrman did not provide a rationalized medical opinion regarding causal relationship.

Appellant also asserts that Dr. Yang should have been contacted by OWCP to correct any deficiencies in his report. However, it is appellant's burden to submit the evidence necessary to establish the claim for compensation. For the reasons discussed, appellant has not met his burden of proof.¹⁵

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.

¹⁰ *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013).

¹² See *R.H.*, Docket No. 15-1785 (issued January 29, 2016).

¹³ See *J.P.*, Docket No. 14-1966 (issued January 23, 2015); *M.D.*, Docket No. 14-1498 (issued January 8, 2015); *C.T.*, Docket No. 11-625 (issued October 17, 2011).

¹⁴ *Supra* note 6.

¹⁵ *Id.*

CONCLUSION

The Board finds that appellant has not established a left knee condition causally related to the accepted April 30, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 13 and February 16, 2016 are affirmed.

Issued: December 12, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy 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