

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

S.S., Appellant	)	
	)	
and	)	<b>Docket No. 16-0096</b>
	)	<b>Issued: March 9, 2016</b>
<b>DEPARTMENT OF THE ARMY, VIRGINIA</b>	)	
<b>NATIONAL GUARD, FORT PICKETT,</b>	)	
<b>Blackstone, VA, Employer</b>	)	
	)	

*Appearances:* *Case Submitted on the Record*  
Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 19, 2015 appellant, through counsel, filed a timely appeal from an August 19, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 an injury causally related to an April 22, 2014 employment incident, as alleged.

On appeal appellant, through counsel, argues that appellant was denied due process and that OWCP's decision was contrary to law and fact.

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On April 22, 2014 appellant, then a 54-year-old information technology network specialist, filed a traumatic injury claim (Form CA-1) alleging that on that date his left knee twisted and gave out as he was climbing stairs entering an office building. The record does not indicate that appellant stopped work.

By letter dated January 29, 2015, OWCP asked that appellant submit further information in support of his claim. In response, appellant answered questions on February 24, 2015, indicating that immediately after the incident, his left knee was swollen and he was unable to walk on it. He noted that he reported the incident to his supervisor on April 22, 2014, but that his supervisor did not sign the claim form until August 22, 2014 as he was not available.

Appellant submitted a February 24, 2015 report from his treating Board-certified orthopedic surgeon, Dr. Geoffrey Higgs. Dr. Higgs noted that he evaluated appellant for left knee, right knee, right hip, and left hip pain on numerous dates from June 3 through December 22, 2014. He stated that on June 3, 2014 appellant was evaluated and that his workup was consistent with a left knee medial and lateral meniscus tear as well as chondromalacia. Dr. Higgs indicated that appellant reported that on April 14, 2014 he was ascending stairs when he had instant pain. On July 9, 2014 appellant had undergone a left arthroscopic partial medial and lateral meniscectomy and diffuse chondroplasty of the medial and lateral femoral condyles. Dr. Higgs opined that appellant had grade 3 and 4 chondromalacia diffusely over the lateral femoral condyle and grade 2 chondromalacia of the central medial femoral condyle. Dr. Higgs noted that he reevaluated appellant on October 13, 2014 and found that the left knee surgery had been beneficial. He noted that on November 24, 2014 appellant reported that his left knee was doing well and he was back to his normal activities. On this date he complained of right hip and left hip pain and radiographs were consistent with femoral acetabular impingement with some early osteoarthritis. Dr. Higgs noted that when he saw appellant on December 22, 2014, his right and left hip pain had improved. He stated that he did not know if the April 14, 2014 incident occurred at work, but that if it did occur at work, it certainly would be related to the diagnosis of his left knee meniscus tears and all subsequent treatment rendered would be due to that injury.

By decision dated March 4, 2015, OWCP denied appellant's claim as the medical evidence did not demonstrate that the claimed medical condition was related to the established work-related event.

On March 16, 2015 OWCP received a copy of a May 19, 2014 magnetic resonance imaging (MRI) scan of the left knee which showed complex radial tearing of the posterior horn root insertion of the medial meniscus, mild-to-moderate degeneration of the medial joint compartment; and a 14 x 15 mm full thickness cartilage defect posterior weight-bearing surface lateral femoral condyle with adjacent subtle undersurface tearing posterior horn lateral meniscus.

On March 26, 2015 appellant requested review of the written record by an OWCP hearing representative. In support of his request, he submitted a March 26, 2015 statement from the office manager, Kaye Edmonds, indicating that on April 22, 2014 she observed appellant entering his office limping and that he informed her that he had just suffered an injury coming up the steps to the building. She noted that he immediately informed her about what happened and that once she received the accident report she forwarded it to the Human Resources office. Appellant also submitted a statement by Timothy K. Wine indicating that on April 22, 2014,

appellant entered the building and appeared to be in knee pain, and that he explained that he twisted his knee on the steps leading into the building.

On May 20, 2015 appellant, through counsel, requested reconsideration. By letter dated May 26, 2015, OWCP informed counsel that appellant had previously requested a review of the written record. It explained that as it may consider only one type of appeal at a time, there would be no further action on counsel's request for reconsideration at this time.

Appellant also submitted additional evidence. In March 15 and April 5, 2010 reports, Brian Sokol, an occupational therapist, discussed his treatment of appellant's right upper extremity. Appellant also submitted reports by Dr. Higgs dated June 3, September 15, and October 13, 2014. These reports were discussed in detail in Dr. Higgs' February 15, 2015 report.

By decision dated August 19, 2015, the hearing representative affirmed OWCP's March 4, 2015 decision.

### **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 timely filed within the applicable time limitation period of FECA, that an injury was sustained 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>2</sup>

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 or exposure, which is alleged to have occurred.<sup>3</sup> In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.<sup>4</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>5</sup> The medical evidence required to establish causal relationship is usually rationalized medical 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

---

<sup>2</sup> *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

<sup>3</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

<sup>4</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

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 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.<sup>6</sup>

### ANALYSIS

The evidence establishes that on April 22, 2014 appellant was climbing stairs entering the office building when his left knee twisted, and the evidence also establishes that appellant has diagnosed conditions of his left knee, including a left knee meniscus tear. However, the Board finds that appellant has not submitted medical evidence establishing that his left knee conditions were causally related to the accepted employment incident.

The Board notes that Dr. Higgs listed April 14, 2014 as the date of injury, but that appellant had noted on his claim form that the employment incident occurred on April 22, 2014. Of greater importance, Dr. Higgs did not provide a rationalized medical opinion linking this incident to appellant's conditions. He noted that appellant was ascending stairs when he had instant pain. Dr. Higgs also noted that he did not know if the April 14, 2014 incident occurred at work, but that if it did occur at work, it certainly would be related to the diagnosis of left knee meniscus tear and all subsequent treatment rendered would be due to that injury. However, the reports of Dr. Higgs are insufficient to meet appellant's burden of proof. Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>7</sup> Dr. Higgs did not explain the process by which this employment incident would cause or contribute to the diagnosed condition or why such condition would not be due to nonwork factors. A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted incident could result in a diagnosed condition is not sufficient to meet a claimant's burden of proof regarding causal relationship.<sup>8</sup> As such, Dr. Higg's opinion is not based on a proper factual background and sufficiently rationalized to meet appellant's burden of proof.

The MRI scan report is also insufficient as it does not address causation, and is therefore of limited probative value.<sup>9</sup>

---

<sup>6</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

<sup>7</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>8</sup> *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

<sup>9</sup> *Id.*

The reports from the occupational therapist and physician assistant are not probative evidence. The Board has held that notes signed by a nurse, therapist, or physicians assistants are not considered medical evidence as these providers are not a physician under FECA.<sup>10</sup>

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there was a causal relationship between his or her condition and his or her employment.<sup>11</sup> As appellant did not submit a rationalized medical opinion supporting that his left knee conditions were causally related to the accepted April 22, 2014 employment incident, he did not meet his burden of proof to establish an employment-related traumatic injury.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish an injury causally related to an April 22, 2014 employment incident, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 19, 2015 is affirmed.

Issued: March 9, 2016  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

---

<sup>10</sup> *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA). *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

<sup>11</sup> *Patricia J. Glenn*, 53 ECAB 159, 160 (2001).