

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

R.B., Appellant

and

**DEPARTMENT OF THE NAVY, NORFOLK
NAVAL SHIPYARD, Portsmouth, VA, Employer**

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**Docket No. 16-0622
Issued: November 17, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 12, 2016 appellant filed a timely appeal from a December 24, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.²

ISSUE

The issue is whether appellant has met his burden of proof to establish a right knee condition causally related to a July 18, 2014 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant filed a timely request for oral argument. By order dated June 24, 2016, the Board exercised its discretion and denied his request as his arguments could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 16-0622 (issued June 24, 2016).

FACTUAL HISTORY

On July 21, 2014 appellant, then a 44-year-old marine machine mechanic, filed a traumatic injury claim (Form CA-1), alleging that he injured his right knee on July 18, 2014 while squatting. He indicated that on July 18, 2014 he was assigned to the general cleaning of a ship and, while proceeding down the starboard access, he squatted under a section of temporary staging to enter the shaft alley and his right knee cracked and popped. Appellant did not stop work.

By letter dated August 4, 2014, OWCP advised appellant of the type of evidence needed to establish his claim, particularly requesting that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

Appellant submitted work restriction forms from Dr. Devin Oakes, an osteopath, dated July 21 to October 17, 2014, who diagnosed acute right knee injury and noted that appellant was temporarily totally disabled. In reports dated July 21 and 24, 2014, Dr. Oakes treated appellant for a four-day history of right knee pain. Appellant reported an onset of pain with popping sensation while stooping down and twisting while at work. He reported multiple bouts of subjective locking and swelling with difficulty ambulating. Dr. Oakes diagnosed joint pain of the right knee and released appellant to work with restrictions. A July 22, 2014 magnetic resonance imaging (MRI) scan of the right knee revealed horizontal tear of the posterior horn and body of the medial meniscus, popliteal cyst, and a metallic susceptibility artifact.

On July 29, 2014 Dr. Ernest Fair, a Board-certified physiatrist, treated appellant for an acute right medial meniscal tear. Appellant reported sustaining the right knee injury while squatting.

In work restriction forms dated August 6 and 25, 2014, Dr. Robert J. Grzybowski, a resident, treated appellant for a right knee injury and noted that appellant was temporarily totally disabled. Appellant submitted reports from Dr. Grzybowski dated August 6 to September 8, 2014 who treated him for right knee pain status post fall while ambulating from his car to his workplace in the morning. He reported that his knee locked up and resulted in a fall. Dr. Grzybowski diagnosed internal derangement of the medial meniscus of the right knee with likely progression of the right meniscal tear. He returned appellant to work with restrictions from September 8 to 18, 2014. Similarly, in an August 4, 2014 work restriction form, Dr. Ramon Baez, a Board-certified general practitioner, returned appellant to work full duty.

In a decision dated September 15, 2014, OWCP denied appellant's claim finding that the evidence did not support that the injury or events occurred as alleged.

On October 10, 2014 appellant requested an oral hearing before an OWCP hearing representative. He submitted a work restriction form from Dr. Oakes dated October 17, 2014 noting that appellant was temporarily totally disabled. Appellant submitted an undated attending physician's report from Dr. Joyner who noted that appellant sustained a right knee injury on July 18, 2014 when squatting. Dr. Joyner diagnosed meniscal debridement of the right knee. He noted with a checkmark "yes" that appellant's condition was caused or aggravated by an

employment activity and noted compression of the right knee with a tool bag weighing over 30 pounds while squatting.

In a decision dated November 24, 2014, OWCP denied appellant's request for an oral hearing as the request was untimely filed.

On January 2, 2015 appellant requested reconsideration. He submitted a witness statement from Coworker R.S. who noted that on July 18, 2014 he and appellant were assigned the general cleaning of a ship and upon entering the shaft alley appellant squatted under staging and his knee popped. In a statement dated December 5, 2014, another coworker, G.B. indicated that on July 18, 2014 he saw appellant in the workshop with a knee problem and appellant reported his knee popped while he was in the engine room that morning.

In an August 4, 2014 work restriction form, Dr. Fair noted that appellant was temporarily totally disabled. Appellant also submitted an attending physician's report (Form CA-20) from John Spring, a physician assistant, who noted that on July 18, 2014 appellant injured his right knee while squatting under staging.³ Mr. Spring diagnosed horizontal tear of the meniscus in the right knee. He indicated that appellant's condition was caused or aggravated by a medical condition as appellant was injured when compressing his right knee with a tool bag weighing over 30 pounds. Mr. Spring continued to note appellant's status.

On August 11, 2014 Dr. Grzybowski treated appellant for right knee pain. He opined that appellant experienced likely progression of the right medial meniscus tear. Dr. Grzybowski diagnosed internal derangement of the medial meniscus of the right knee and provided restrictions. Appellant submitted notes from a physician assistant dated September 18 to November 10, 2014, who treated appellant postoperatively and diagnosed acute medial meniscal tear. In light-duty forms dated October 29 and November 26, 2014, the physician assistant noted that appellant could return to work with restrictions.

On October 17, 2014 Dr. Joyner performed a right knee arthroscopic medial meniscectomy and diagnosed right knee chronic bucket handle medial meniscus tear and right knee trochlear chondromalacia.

Appellant was treated by a physical therapist on October 29, 2014 status post lateral and medial meniscus debridement on October 17, 2014. He reported injuring his knee while squatting on July 18, 2014. The physical therapist diagnosed internal derangement of the medial meniscus of the right knee and recommended physical therapy for four weeks. Appellant continued to submit physical therapy reports.

In a decision dated February 25, 2015, OWCP denied modification of the decision dated September 15, 2014.

On March 16, 2015 appellant requested reconsideration. He noted that on July 18, 2014 he was assigned a job onboard a ship and while proceeding down the starboard access he

³ It is unclear when this report was issued. Mr. Spring's signature appears next to the date February 24, 2014 which is clearly in error as that predates the claimed injury.

squatted under a section of temporary staging into the shaft alley when his right knee cracked. Appellant reported that he was not in pain and completed his job and left the boat for lunch. He indicated that his right knee subsequently swelled and he could not put weight on the extremity. Appellant sought medical treatment and was diagnosed with a torn right knee meniscus.

In a decision dated June 12, 2015, OWCP modified the February 25, 2015 decision noting that the evidence established the claimed work incident of July 18, 2014. However, the medical evidence was insufficient to establish a causal relationship between the employment incidents of July 18, 2014 and a diagnosed medical condition.

Appellant requested reconsideration. He submitted a right knee MRI scan dated July 22, 2014 and an undated attending physician's report from Dr. Joyner, all previously of record. In an August 28, 2015 report, Dr. Joyner noted initially treating appellant in September 2014 after a right knee MRI scan revealed a horizontal tear of the posterior horn and body of the medial meniscus. Appellant underwent surgery on October 17, 2014 and was placed on permanent restrictions on May 12, 2015. Dr. Joyner opined that the injury appellant sustained to his right knee was caused as appellant described.

In a decision dated December 24, 2015, OWCP denied modification of the decision dated June 12, 2015.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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 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.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 medical evidence to establish that the employment incident caused a personal injury.⁵

Rationalized medical opinion evidence is generally required to establish causal relationship. 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

⁴ Gary J. Watling, 52 ECAB 357 (2001).

⁵ T.H., 59 ECAB 388 (2008).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

ANALYSIS

It is undisputed that on July 18, 2014 while performing his duties as a marine machine mechanic appellant had to squat under temporary staging to enter a shaft alley. However, the Board finds that appellant has not submitted sufficient medical evidence to establish that these work activities caused or aggravated his diagnosed right knee condition.

On October 17, 2014 Dr. Joyner performed a right knee arthroscopic medial meniscectomy and diagnosed right knee chronic bucket handle medial meniscus tear and right knee trochlear chondromalacia. In a report dated August 28, 2015, he opined that the injury appellant sustained to his right knee was caused by the incident as described by appellant. However, Dr. Joyner appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work related. To the extent that Dr. Joyner is providing his own opinion, he failed to provide a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.⁷ In an undated attending physician's report, Dr. Joyner noted that appellant sustained a right knee injury on July 18, 2014 when squatting down to go under staging and his right knee popped. He diagnosed meniscal debridement of the right knee. Dr. Joyner noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity and noted "compression of right knee with a tool bag, 30 pounds while squatting." The Board has held that an opinion on causal relationship which consists of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁸

Appellant submitted work restriction forms from Dr. Oakes dated July 21 to October 17, 2014, who diagnosed acute right knee injury and noted that appellant was temporarily totally disabled. In reports dated July 21 and 24, 2014, Dr. Oakes treated appellant for a four-day history of right knee pain. Appellant reported an onset of pain with a popping sensation while stooping down with valgus pressure on the knee and twisting while at work. Dr. Oakes diagnosed joint pain of the right knee and released appellant to work with restrictions. The Board finds that, although Dr. Oakes supported causal relationship, he did not provide medical

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

⁷ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁸ The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim. *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006).

rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's right knee condition and the factors of employment.⁹

On July 29 and August 4, 2014 Dr. Fair diagnosed acute meniscal tear. Appellant reported that he sustained an injury to the right knee joint when squatting down. On August 4, 2014 Dr. Baez returned appellant to full duty. Likewise, reports from Dr. Grzybowski dated August 6 to September 8, 2014 noted treating appellant for an unrelated injury in which appellant sustained an internal derangement of the medial meniscus of the right knee after a fall while ambulating from his car to the workplace in the morning. These reports are insufficient to meet appellant's burden of proof as they fail to clearly address how appellant's squatting on July 18, 2014 caused or contributed to a diagnosed medical condition.

The remainder of the medical evidence, including diagnostic test reports, is of limited probative value as it does not provide an opinion on the causal relationship between the July 18, 2014 work incident and appellant's diagnosed medical conditions.¹⁰

Appellant also submitted evidence from a physician assistant and physical therapists. However, the Board has held that treatment notes signed by a physical therapist or physician assistant are not considered medical evidence as these providers are not considered physicians under FECA.¹¹

Consequently, appellant has not submitted sufficient medical evidence to establish that the employment incident on July 18, 2014 caused or aggravated a diagnosed medical condition.

On appeal appellant asserts that his previous submissions in support of his claim were sufficient to establish that his injury on July 18, 2014 was causally related to his employment. He references the evidence that he submitted including Dr. Joyner's August 28, 2015 report. As noted above, the medical evidence does not establish that appellant's diagnosed conditions are causally related to his employment. Appellant has not submitted a physician's rationalized report which explains how the employment incident on July 18, 2014 caused or aggravated a right knee condition.

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.

⁹ See *T.M.*, Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹⁰ *A.D.*, 58 ECAB 149 (2006) (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).

¹¹ 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).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish a right knee condition as causally related to a July 18, 2004 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 24, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 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