United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 16-0885**
	)	**Issued: November 25, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Round Brook, NJ, Employer	)	

Appearances:
Robert D. Campbell, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 23, 2016 appellant, through counsel, filed a timely appeal from a February 18, 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 claim.

ISSUE

The issue is whether appellant met his burden of proof to establish a right knee injury causally related to the accepted June 10, 2014 employment incident.

[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.*

FACTUAL HISTORY

On June 11, 2014 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 10, 2014 his right knee buckled while he was descending stairs on the way down from the second floor bathroom. He stopped work on June 11, 2014. Appellant's supervisor noted that appellant had previous problems with his knees.[3]

Appellant submitted the first page of Form CA-16 authorization for examination and/or treatment along with June 10, 2014 patient discharge instructions for a knee sprain from Robert Wood Johnson University Hospital Somerset.

In a June 16, 2014 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. He was afforded 30 days to submit such evidence.

In response, OWCP received medical notes from Dr. Stephen Schneider, a Board-certified orthopedic surgeon. In a June 16, 2014 note, Dr. Schneider reported that appellant had a fall at work on June 10, 2014 when his right knee spontaneously gave out. He reviewed x-rays and indicated that appellant probably had an exacerbation of pain due to the buckling and fall over some osteoarthritic changes in his knee. In the June 23, 2014 note, Dr. Schneider indicated that appellant had significant osteoarthritic changes in the patellofemoral joint. In a June 23, 2014 physical therapy referral form and June 30, 2014 authorization request, he diagnosed a right knee sprain. In a July 14, 2014 duty status report (Form CA-17), Dr. Schneider indicated that on June 10, 2014 appellant was walking down stairs from a bathroom and felt right knee pop. He diagnosed right knee pain and opined that appellant was temporarily disabled.

A July 11, 2014 physical therapy evaluation was also submitted.

By decision dated July 24, 2014, OWCP denied the claim as the medical evidence did not establish that the claimed right knee condition was related to the June 10, 2014 work incident.

On January 28, 2015 OWCP received a January 19, 2015 request for reconsideration. In a January 19, 2015 brief, counsel argued that the newly submitted evidence supported causal relationship and provided a discussion on the medical evidence.

In a November 5, 2014 report, Dr. Hari P. Bezwada, a Board-certified orthopedic surgeon, indicated that he initially saw appellant in December 2013 for mild degenerative changes in his knees and was treated conservatively. He reported that appellant had a prior history of surgical arthroscopy on both knees in 2009. In September 2014, appellant returned as a result of a June 10, 2014 injury to his right knee while climbing stairs to use the bathroom at work. Dr. Bezwada noted appellant's medical course along with his September 30, 2014

[3] The employing establishment indicated that appellant had been on light duty since December 19, 2013 as an accommodation for nonwork-related medical conditions.

examination findings and diagnosed mild right knee arthritis with probable medical meniscus tear and possible medial collateral ligament sprain. Appellant underwent a magnetic resonance imaging (MRI) scan on October 7, 2014, which was consistent with a medial meniscus tear. On November 3, 2014 he underwent right knee surgical arthroscopy, which revealed medial meniscal tear, osteochondral defect of the medical femoral condyle, a lateral meniscal tear and osteochondral defect of the lateral femoral condyle, and osteochondral defect with delaminating cartilage in the patella. Dr. Bezwada advised that while it was likely appellant had some baseline arthritis, his symptoms were relatively mild and were treated with conservative measures. Subsequent to the June 10, 2014 injury, appellant had progressive mechanical symptoms involving the right knee, which were of limiting and disabling nature. Dr. Bezwada opined that appellant sustained a work-related injury involving the right knee, which included a medical arthroscopy, which revealed medial meniscal tear, lateral meniscal tear, and osteochondral defects.

In his October 7, 2014 report, Dr. Bezwada indicated that appellant's MRI scan of the right knee showed a medial meniscus tear and surgical arthroscopy was therefore recommended. He noted that appellant's mechanical symptoms were problematic, painful, and that he was severely limited. Dr. Bezwada opined that those symptoms were related to appellant's fall as he has had those symptoms since his fall at work.

In a December 19, 2013 prescription note, Dr. Bezwada indicated that appellant had severe limitations due to knee arthritis and set forth work restrictions.

Reports from Dr. Schneider were also received. In a June 23, 2014 duty status report, he provided an unreadable diagnosis and opined that appellant was temporarily disabled. Reports dated August 11 and 14, 2014 concerned the need for an additional MRI scan.

Also received were copies of physical therapy reports, an October 3, 2014 MRI scan of the right knee, and a November 3, 2014 operative report for right knee medical meniscus tear with an admission form diagnosing right knee medial meniscus tear.

By decision dated April 20, 2015, OWCP denied modification of its July 24, 2014 decision. It found that the medical evidence submitted was insufficient to establish causal relation.

On November 20, 2015 OWCP received appellant's November 15, 2015 request for reconsideration along with counsel's brief in support of reconsideration.

New evidence included a partial October 23, 2014 Equal Employment Opportunity (EEO) investigative affidavit completed by appellant, an April 21, 2015 MRI scan report, a picture of a handrail, a copy of the June 10, 2014 accident report, hospital records of November 3, 2014 and May 27, 2015 for right knee medial meniscus tear were submitted along with a November 3, 2014 and May 27, 2015 operative report for same diagnosis, and a June 10, 2014 emergency room report with discharge diagnosis of knee sprain.

In an April 28, 2015 report, Dr. Bezwada indicated that appellant sustained a work-related injury involving his right knee. He noted the history of injury as appellant climbing stairs to use the bathroom and his right knee buckled, at which point appellant fell onto his buttock.

Dr. Bezwada further noted that, as a result of this work injury, appellant underwent surgical intervention with both surgical arthroscopy and then viscosupplementation. He indicated that further treatment was medically necessary and appropriate.

In an August 6, 2015 report, Dr. Bezwada indicated that he reviewed appellant's medical records, including his operative reports and follow-up visits by Dr. Gregory J. Lane, a Board-certified orthopedic surgeon. He indicated that appellant's work injury occurred on June 10, 2014 while he was descending the staircase from the second floor bathroom. He described how appellant used both handrails on his way down until the handrail on one side ended about halfway down. While holding on to just one handrail, appellant's right knee buckled, causing him to fall down onto the stairs, landing on his buttocks. He was removed from the stairs by emergency personnel and taken to the emergency room. Dr. Bezwada provided a history of appellant's medical course. He summarized that appellant had previous treatment involving his knees, with the development of some degree of chondrosis and degenerative meniscal problems involving the knees. Dr. Bezwada previously underwent conservative treatment and was doing well until the June 10, 2014 work-related incident, which he opined permanently aggravated the preexisting knee conditions since appellant's symptoms persisted and were problematic and required additional treatments and repeat surgical arthroscopy.

In an April 5, 2011 report, Dr. Lane reported that appellant's right knee pain was causally related to a fall of March 4, 2009.

By decision dated February 18, 2016, OWCP denied modification of its prior decision. It found the medical evidence of record insufficient to establish causal relationship.

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, 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 burden of proof in establishing the occurrence of an injury when there are such

[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).

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 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.[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

Appellant filed a traumatic injury claim alleging his right knee condition and subsequent surgeries resulted when he was descending stairs from the second floor bathroom and his knee gave out on him on June 10, 2014. OWCP accepted that the June 10, 2014 incident occurred as alleged, but denied the claim as it found that the diagnoses of record were not causally related to the accepted incident.

The Board finds that appellant has not met his burden of proof to establish a right knee injury causally related to the June 10, 2014 work incident.

Several medical reports from Dr. Schneider were received. In his June 16, 2014 report, he reported that appellant had a fall at work on June 10, 2014 when his right knee spontaneously gave out. While Dr. Schneider reviewed x-rays and indicated that appellant probably had an exacerbation of pain due to the buckling and fall over some osteoarthritic changes in his knee, he did not diagnose any condition. On the June 30, 2014 Form CA-16 and in a July 14, 2014 duty status report, he diagnosed right knee pain. However, Dr. Schneider's description of pain in his June 16, 2014 report and diagnosis of right knee pain on the CA-16 form is a description of a symptom rather than a clear diagnosis of a medical condition.[11] In the June 23, 2014 physical therapy referral form and June 30, 2014 authorization request, he diagnosed a right knee sprain. However, Dr. Schneider provided no medical rationale as to how the June 10, 2014 work

[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).

[11] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Robert Broom*, 55 ECAB 339 (2004). (The Board has consistently held that pain is a symptom rather than a compensable medical diagnosis).

incident caused the right knee sprain. Without explaining how physiologically the act of descending stairs caused or contributed to the diagnosed condition, Dr. Schneider's diagnosis is of limited probative value.[12] The other reports from Dr. Schneider fail to diagnose a medical condition. Therefore, Dr. Schneider's reports are insufficient to establish a medical diagnosis in connection with the injury.

Several reports were received from Dr. Bezwada. In his November 5, 2014 and April 28, 2015 reports, Dr. Bezwada provides an inaccurate history of injury. Appellant indicated on his CA-1 form that he was descending stairs from the second floor bathroom when his knee gave out on him. In his November 5, 2014 report, Dr. Bezwada indicates that appellant was climbing stairs, instead of descending. In his April 28, 2015 report, he again erroneously noted the history of injury as appellant climbing stairs to use the bathroom when his right knee buckled. Dr. Bezwada additionally advised that appellant fell onto his buttock. However, it does not appear from the record that appellant indicated that he fell on his buttocks. The Board has held that medical reports must be based on a complete and accurate factual and medical background. Medical opinions based on an incomplete or inaccurate history are of limited probative value.[13] Dr. Bezwada did not provide a well-rationalized medical opinion explaining how appellant's right knee condition was causally related to his accepted employment incident of descending stairs. As his description of the June 10, 2014 incident is inaccurate, his opinion pertaining to the causal relationship of appellant's right knee condition is of little probative value.[14] Therefore, Dr. Bezwada's reports are insufficient to establish causal relationship.

In his August 6, 2015 report, Dr. Bezwada indicated an accurate history of the June 10, 2014 work incident as he noted that it occurred while appellant was descending the staircase from the second floor bathroom. He indicated that appellant had previous treatment involving his knees, with the development of some degree of chondrosis, and degenerative meniscal problems involving the knees. Dr. Bezwada reported that appellant previously underwent conservative treatment and was doing well until the June 10, 2014 work-related incident, when he started to have increased symptoms. He noted appellant's medical course, including a recurrent meniscal tear in April 2015. Dr. Bezwada opined that the June 10, 2014 work incident permanently aggravated the preexisting knee conditions since appellant's symptoms persisted, were problematic, and required additional treatments and repeat surgical arthroscopy. However, he provided no rationalized explanation supported by objective findings to establish how the recurrent meniscal tear or claimed aggravation were caused or aggravated by the June 10, 2014 work incident. Dr. Bezwada only notes appellant's subjective complaints of increased pain and symptoms. He does not distinguish the effects of appellant's preexisting bilateral knee conditions from the claimed work-related aggravation or explain how the June 10, 2014 work incident caused the alleged aggravation. This report therefore is insufficient to establish that appellant's right knee conditions are causally related to the June 10, 2014 work incident.[15]

[12] *See Lee R. Haywood*, 48 ECAB 145 (1996).

[13] *C.L.*, Docket No. 14-1585 (issued December 16, 2014); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[14] *See F.H.*, Docket No. 16-0204 (issued April 8, 2016).

[15] *T.W.*, Docket No. 15-1603 (issued October 20, 2015).

The additional medical evidence of record is of limited probative value. The MRI scan reports, hospital and surgical reports, while diagnosing a right knee condition, fail to offer a medical opinion as to how the reported work incident 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.[16] A medical opinion is especially needed in this case as the record reflects that appellant has preexisting knee conditions. Thus, these reports are insufficient to establish appellant's claim.

Also of record are reports and records from physical therapists. However, physical therapists are not considered physicians under FECA and are not competent to render a medical opinion.[17] Thus, these reports are insufficient to establish appellant's claim.

Dr. Lane's April 5, 2011 report relating appellant's right knee pain to a fall of March 4, 2009, predates the established June 10, 2013 work incident, and is irrelevant to this claim.

The nonmedical evidence, such as counsel's statements regarding the probative value of the medical evidence, the EEO report, and pictures of a handrail, are of no probative value. Causal relationship is a medical question that must be established by probative medical opinion from a physician.[18]

In this case, the Board finds that none of the medical evidence appellant submitted constitutes rationalized medical evidence, based upon a specific and accurate history of employment conditions, which are alleged to have caused or exacerbated his medical condition.[19] Accordingly, the Board finds that he has not established causal relationship between the work incident and his diagnosed conditions.

On appeal, counsel asserts that appellant's statement of factual and legal arguments challenging and disagreeing with OWCP's decision would be forthcoming. However, the Board has not received such a document. As found above, appellant has not established causal relationship between the June 10, 2014 work incident and his diagnosed conditions. None of the medical evidence he submitted constituted rationalized medical evidence, based upon a specific and accurate history of employment conditions, which are alleged to have caused or exacerbated his medical condition.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[20] An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation. Appellant's belief that the June 10, 2014 employment incident caused his medical injury is not in

[16] *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).

[17] *G.G.*, 58 ECAB 389 (2007). *See* 5 U.S.C. § 8101(2).

[18] *W.W.*, Docket No. 09-1619 (issued June 2010); *David Apgar*, 57 ECAB 137 (2005).

[19] *Patricia J. Bolleter*, 40 ECAB 373 (1988).

[20] *Daniel O. Vasquez*, 57 ECAB 559 (2006).

question, but that belief, however, sincerely held, does not constitute the medical evidence necessary to establish causal relationship. To establish a firm medical diagnosis and causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment alleged to have caused his condition and, taking these factors into consideration, as well as findings upon examination and his medical history, explain how these employment factors caused or aggravated any diagnosed condition, and present medical rationale in support of his opinion.[21]

Finally, the Board notes that the employing establishment executed a Form CA-16 on June 11, 2014 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.[22] Although OWCP denied appellant's claim for an injury, it did not address whether he is entitled to reimbursement of medical expenses pursuant to the Form CA-16. The Board finds that, upon return of the case record, this matter should be addressed.[23]

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 right knee injury causally related to the accepted June 10, 2014 employment incident.

[21] *C.B.*, *supra* note 11; *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[22] *See D.M.*, Docket No. 13-535 (issued June 6, 2013). *See also* 20 C.F.R. §§ 10.300 and 10.304.

[23] *See T.K.*, Docket No. 16-0813 (issued July 20, 2016).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 18, 2016 is affirmed.

Issued: November 25, 2016
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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