United States Department of Labor
Employees' Compensation Appeals Board

W.W., Appellant	)	
and	)	**Docket No. 16-0953**
	)	**Issued: November 10, 2016**
DEPARTMENT OF VETERANS AFFAIRS, ATLANTA VETERANS ADMINISTRATION MEDICAL CENTER, Decatur, GA, 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 April 4, 2016 appellant, through counsel, filed a timely appeal from a March 11, 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 May 3, 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 May 6, 2014 appellant, then a 49-year-old electrician, filed a traumatic injury claim (Form CA-1) alleging that on May 3, 2014 he twisted his right knee when he missed the last step while descending a ladder. Appellant did not stop work.

With the claim, appellant submitted a July 8, 2014 work excuse note which reported that appellant was being evaluated for knee pain, and unsigned employing establishment health unit form reports documenting emergency treatment on May 6 and June 9, 2014. OWCP also received the employing establishment's challenge letter of September 26, 2014 which indicated that appellant had a preexisting right knee condition.

In a September 29, 2014 letter, OWCP advised appellant of the deficiencies in his claim and provided him the opportunity to submit additional factual and medical evidence. Appellant was advised to complete a questionnaire and that he should submit a detailed narrative medical report from his treating physician containing a history of the injury and a medical explanation with objective evidence as to how the reported work incident caused or aggravated the claimed condition. He was afforded 30 days to submit such evidence.

In October 10 and 21, 2014 responses to OWCP's questionnaire, appellant acknowledged that he had complaints of right knee pain following left hip replacement surgery in 2009. He submitted documents unrelated to medical treatment, and a May 6, 2014 Form CA-16, which authorized medical treatment by Dr. Gregory Erens, a Board-certified orthopedic surgeon.

Several reports from Dr. Erens were received. Reports from 2009 indicated that appellant had left hip osteoarthritis and underwent left total hip resurfacing on August 13, 2009. Status reports post hip replacement surgery were received. In an April 5, 2012 report, Dr. Erens diagnosed left hip osteoarthritis. He noted appellant's complaints of bilateral knee pain and indicated the x-rays had minimal arthritic changes and the left hip was in good position. As appellant was having vague symptoms and perhaps swelling of the joints, mainly the left hip and both knees, Dr. Erens recommended some additional testing and noted a rheumatology consultation could be considered. In a March 6, 2014 report, Dr. Erens noted a history of left hip replacement and bilateral knee pain, left greater than right. The possibility of evaluation by a rheumatologist was rediscussed.

A May 3, 2014 employing establishment incident report noted that, on that date, appellant missed a step coming down a ladder and twisted his right knee. A May 4, 2014 note from the employee health unit indicated that appellant could work limited duty. In a May 5, 2014 form report, Dr. Michael B. Miller, an osteopath and chief occupational health physician, found appellant could work with restrictions pending an evaluation by an orthopedic surgeon.

In a May 28, 2014 report, Dr. Erens noted appellant had longstanding bilateral knee pain. He reported that on May 9, 2014 appellant injured his right knee at work while descending a ladder and heard and felt a pop in the right knee. The x-rays disclosed bilateral knee osteoarthritis, worse on the right side. An impression of knee pain was provided.

A June 25, 2014 magnetic resonance imaging (MRI) scan of the right knee revealed a tear of the posterior horn of the medial meniscus.

In a July 8, 2014 report, Dr. Erens indicated appellant was evaluated for right knee pain. He noted that appellant reported being limited by knee pain and unable to work from May 28 through June 30, 2014.

By decision dated November 3, 2014, OWCP denied the claim, finding that there was no medical evidence containing a medical diagnosis in connection with the alleged employment incident.

On November 24, 2014 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative which was held on June 3, 2015. Appellant testified at the hearing. He stated that he had right knee pain and arthritis for years prior to May 3, 2014. Appellant stated that he saw Dr. Erens for the May 3, 2014 work incident and denied any subsequent injury to his right knee. He testified that he told his physicians the history of the May 3, 2014 work incident and related that he had not returned to work.

Evidence was received prior to and after the hearing. Duplicative reports, previously of record, were received along with new evidence.

In a November 18, 2014 report, Dr. Vincent A. Fowble, a Board-certified orthopedic surgeon, noted a history of the left hip replacement in 2009 as well as the May 3, 2014 work incident. He noted examination findings of no deformity, instability or swelling, full strength and intact light touch sensation. Dr. Fowble reported bilateral knee medial joint line tenderness, slight restriction of patella mobility left and none right, and full extension of the right knee. He reported x-rays showed narrowing of the knee medial compartment and noted his review of the June 26, 2014 knee MRI scans. Dr. Fowble diagnosed bilateral knee internal derangement and arthritis.

In a November 25, 2014 report, Dr. Gary Wexler, a Board-certified orthopedic surgeon, related that several months prior, appellant had sustained an injury coming off a ladder at work and injured his knees. MRI scans of bilateral knees indicated complete tear of the medial meniscus. Dr. Wexler provided a diagnosis of knee pain, meniscus derangement, posterior horn, medial, and difficulty walking.

In a December 4, 2014 report, Dr. Fowble indicated that the November 24, 2014 MRI scans of both knees confirmed large tears involving the medial meniscus. An impression of status post left hip resurfacing and bilateral knee osteoarthritis/internal derangement was provided. Dr. Fowble referred appellant to Dr. Wexler for follow-up and arthroscopic surgery.

On December 11, 2014 appellant underwent right knee arthroscopic surgery with partial medial menisectomy and chondroplasty, which was performed by Dr. Wexler. In postoperative notes of December 12 and 19, 2014 and January 9 and February 3, 2015, Dr. Wexler noted appellant's progress and treatment for the right knee.

In a March 10, 2015 report, Dr. Wexler noted that appellant reported right knee discomfort. Right knee injections were recommended. In reports of March 12, 24, and 31, 2015, Dr. Wexler performed a series of injections to appellant's right knee.

On May 21, 2015 appellant underwent left knee arthroscopic surgery with partial medial menisectomy and chondroplasty performed by Dr. Wexler. Postoperative notes of the left knee dated May 22 and 29, 2015 were provided.

By decision dated July 17, 2015, an OWCP hearing representative modified OWCP's November 3, 2014 decision to accept fact of injury, but it affirmed the denial of the claim as appellant had not met his burden to establish causal relationship between the May 3, 2014 work incident and a diagnosed right knee condition.

On July 30, 2015 OWCP received counsel's letter requesting reconsideration based on medical reports from Dr. Fowble and Dr. Wexler. Counsel also submitted a July 30, 2015 letter, which contained duplicative reports from Dr. Fowble and Dr. Wexler.

OWCP received medical reports dated November 18 and December 4, 2014 from Dr. Fowble, previously of record.

In a June 26, 2015 letter, Dr. Wexler indicated that appellant had been a patient of his since his work-related injury of May 3, 2014. At that time, he was working on a ladder and fell. Dr. Wexler stated that he started to participate in the care of appellant's bilateral knee injuries after this incident. He reported that June 26, 2014 knee MRI scans showed evidence of a complex tear of the posterior horn of the medial meniscus for both the right and left knees. Dr. Wexler stated that appellant eventually underwent bilateral knee arthroscopic surgery with partial medial meniscectomy and chondroplasties of the patellofemoral joints. He opined that appellant's clinical history, his physical examination findings and his MRI scan findings suggested a diagnosis of traumatic bilateral knee meniscal tears that were directly related to his work injury. Appellant had no preexisting history of knee injury and there was no evidence of prior MRI scans or treatment with respect to his knees. Dr. Wexler concluded that the May 3, 2014 work incident, the fall, led to bilateral knee injuries, which necessitated surgical care.

By decision dated March 11, 2016, OWCP denied modification of its July 17, 2015 decision. It found the evidence submitted to be of insufficient probative value to establish causal relation.

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.[3] 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.[4]

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

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

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.[5] 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.[6] 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.[7]

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.[8] 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.[9]

ANALYSIS

Appellant filed a traumatic injury claim alleging that he missed the last step while coming down from a ladder and twisted his right knee on May 3, 2014. OWCP accepted that the May 3, 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 condition causally related to the accepted May 3, 2014 employment incident.

Medical reports from Dr. Erens were received. Several reports which predate the May 3, 2014 incident are not relevant to the current claim. However, they indicate that appellant had a history of long-standing bilateral knee pain and x-rays of the knees revealed "minimal arthritic changes." Two months prior to the May 3, 2014 incident, Dr. Erens had suggested in his March 6, 2014 report that appellant might want to be evaluated by a rheumatologist with respect to his bilateral knee pain.

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

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

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

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

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

In his May 28, 2014 report, Dr. Erens reported that on May 9, 2014 appellant injured his right knee at work while descending a ladder and heard and felt a pop in the right knee. The x-rays disclosed bilateral knee osteoarthritis, worse on the right side. An impression of knee pain was provided. In a July 8, 2014 report, Dr. Erens indicated that appellant was being evaluated for knee pain and noted that appellant reported being limited by knee pain and unable to work from May 28 through June 30, 2014. His reports, however, are of diminished probative value. Dr. Erens diagnosed knee pain and provided a wrong date of injury (May 9, 2014). Pain, however, is a description of a symptom rather than a clear diagnosis of a medical condition.[10] Thus, these reports do not contain a diagnosis in connection with the May 3, 2014 work injury and are insufficient to establish appellant's claim.[11]

Medical reports from Dr. Fowble were received. In his February 18, 2014 report, Dr. Fowble noted the history of appellant's left hip replacement in 2009 as well as the May 3, 2014 work incident. He provided examination findings and reviewed diagnostic tests. While Dr. Fowble diagnosed bilateral knee internal derangement and arthritis, he offered no opinion as to causal relationship between the diagnosed condition and the May 3, 2014 work incident. In a subsequent report of December 4, 2014, Dr. Fowble advised that the November 24, 2014 MRI scan showed large meniscal tears, but he offered no opinion as to the causal relationship. 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.[12] 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.

Several reports from Dr. Wexler were received. In his November 25, 2014 report, Dr. Wexler noted the history of the May 3, 2014 work incident and diagnosed meniscus damage based on knee MRI scan results. He performed a right knee surgery on December 11, 2014 and a left knee surgery on May 21, 2015 and provided postoperative reports on appellant's condition following each surgery. However, Dr. Wexler failed to provide an opinion as to causal relationship in any of his reports. As previously indicated, 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.[13] Thus, these reports are insufficient to establish appellant's claim.

In his June 26, 2015 report, Dr. Wexler diagnosed traumatic bilateral knee meniscal tear which he opined was directly related to the May 3, 2014 work injury. However, he provides an inaccurate history of injury. Dr. Wexler indicated that appellant had twisted and fallen off the ladder and sustained bilateral knee injuries. Appellant advised in his Form CA-1, statements of record and in his testimony that he missed the last step of the ladder and twisted his right knee only. Dr. Wexler also provided an inaccurate medical history. He stated that appellant's clinical

[10] *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).

[11] *See F.R.*, Docket No. 16-1029 (issued August 11, 2016).

[12] *See supra* note 9.

[13] *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).

history, physical examination findings and MRI scan findings suggested a diagnosis of traumatic bilateral knee meniscal tears directly related to his work injury. Dr. Wexler's explanation that appellant had no preexisting medical history regarding his knees and that there was no evidence of prior MRI scans or treatment with respect to his knees is contrary to the medical evidence of record as noted in Dr. Erens earlier reports. 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.[14] Dr. Wexler did not provide a well-rationalized medical opinion explaining how appellant's bilateral knee conditions were causally related to his accepted employment incident of May 3, 2014, for which he claimed injury to the right knee only.

The additional medical evidence 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.[15] A medical opinion is especially needed in this case as the record reflects appellant has preexisting and degenerative knee conditions. Thus, these reports are insufficient to establish appellant's claim.

The nonmedical evidence in this case is also of no probative value. Causal relationship is a medical question that must be established by probative medical opinion from a physician.[16]

In this case, the Board finds that none of the medical evidence is sufficiently rationalized, based upon a specific and accurate history of employment conditions, to establish that his conditions were either caused or exacerbated by employment factors.[17] Accordingly, the Board finds that appellant has not established causal relationship between the work incident and his diagnosed conditions.

On appeal, counsel asserts that OWCP's decision is contrary to fact and law. As discussed above, appellant has not established causal relationship between the May 3, 2014 work incident and his diagnosed conditions.

The Board also notes that the employing establishment issued appellant a Form CA-16 on May 6, 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.[18] 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. Upon return of the case record, OWCP should further address this matter.

[14] *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).

[15] *Supra* note 13.

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

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

[18] *See P.H.*, Docket No. 16-0654 (issued July 21, 2016).

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 May 3, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 11, 2016 is affirmed.

Issued: November 10, 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