

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

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S.M., Appellant )

and )

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

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**Docket No. 16-1142  
Issued: March 15, 2017**

*Appearances:*  
*Appellant, pro se*  
*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 May 9, 2016 appellant filed a timely appeal from a November 12, 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 that he was totally disabled for the period November 21, 2013 to January 24, 2014 due to a September 21, 2012 employment injury.

On appeal appellant maintains that his current condition is only related to the September 2012 employment injury and is not related to his 2008 employment injuries. He

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

generally asserts that the September 2012 claim should be expanded to include additional conditions.<sup>2</sup>

### **FACTUAL HISTORY**

On September 24, 2012 appellant, then a 41-year-old marine electrician, filed a traumatic injury claim (Form CA-1) alleging that on September 21, 2012 a steel plate, which was leaning on a fence, fell back causing a right lower leg injury. At that time he was on temporary duty in Portsmouth, New Hampshire. Appellant's regular duty station was Portsmouth, Virginia. He was taken to an emergency room where, following examination and x-ray, he was diagnosed with contusion of the right leg. Appellant was discharged in stable condition. OWCP accepted contusion of the right leg. Appellant received continuation of pay and wage-loss compensation, and returned to full duty on January 8, 2013. He was paid compensation for intermittent periods for medical appointments and medical treatment thereafter and was paid appropriate compensation.

On August 24, 2015 appellant filed a claim for compensation (Form CA-7) for the period November 21, 2013 to January 24, 2014. An attached time analysis form (Form CA-7a) indicated that he had not worked from November 25, 2013 through January 24, 2014.

By letter dated August 27, 2015, OWCP informed appellant of the evidence needed to substantiate disability caused by the September 21, 2012 employment injury.

Medical evidence of record relevant to the time of the claimed disability includes a November 21, 2013 report in which Dr. Paul J. Pontier, a Board-certified internist, noted appellant's complaint of recurrent right knee pain. Dr. Pontier described a history of a prior medial meniscus tear and noted that appellant reported new pain in the lateral knee. He found pain and effusion on examination and recommended an MRI scan.

A November 22, 2013 MRI scan of the right knee demonstrated likely postmeniscectomy changes and a new small tear in the horn of the medial meniscus. Anterior lateral meniscus degeneration was present with mild chondral abnormality as well as mild prepatellar and superficial infrapatellar bursitis.

In a treatment note dated December 17, 2013, Dr. Samuel I. Brown, a Board-certified orthopedic surgeon, noted a history of a new right knee problem after an old injury that occurred five years previously, and a two-week history of sharp discomfort and swelling of the right knee. He also reported a long history of sciatica. Following physical examination, Dr. Brown diagnosed right knee pain and medial meniscus tear. He related that appellant's pain was

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<sup>2</sup> The instant claim for the September 21, 2012 injury was adjudicated by OWCP under File No. xxxxxx449. As explained by appellant in this appeal, he has additional claims for injuries that occurred February 15 and July 26, 2008. OWCP adjudicated the February 15, 2008 claim under File No. xxxxxx188 and denied appellant's claim for lower back and neck pain. Under File No. xxxxxx817, OWCP accepted appellant's claim for meniscal tear of the left knee that occurred on July 26, 2008. An August 1, 2008 magnetic resonance imaging (MRI) scan of the right knee demonstrated a medial meniscus tear. The history also indicates that appellant was in a motor vehicle accident in 1991 when he fractured C7. A November 2008 MRI scan of the lumbar spine demonstrated mild disc bulges at L4-5 and L5-S1. File Nos. xxxxxx188 and xxxxxx817 are not before the Board on the present appeal.

atypical for meniscus pathology, opining that sciatica/radicular pain could be a factor. Dr. Brown advised that arthroscopic debridement was needed to rule out the knee as a source.

On December 23, 2013 he performed right knee arthroscopy with partial medial and partial lateral meniscectomy. On January 7, 2014 Dr. Brown noted that surgery revealed modest tearing of the medial and small area of the lateral meniscus. He advised that the knee looked excellent postoperatively, and it was hoped that appellant could return to full duty. In reports dated January 21, 2014, Dr. Brown noted a history of injury that beginning in December 2013 an old injury flared up and was painful. He diagnosed a medial meniscus tear and checked a form box marked “yes,” noting “work-related injury.” Dr. Brown indicated that appellant’s knee felt good, advised that he could return to full duty on January 27, 2014, but reported that appellant had been totally disabled from December 23, 2013 to January 26, 2014. He discharged appellant from treatment.

In the interim, appellant was seen by Dr. David G. Goss, a Board-certified orthopedic surgeon and associate of Dr. Brown. In a January 13, 2014 report, Dr. Goss diagnosed sciatica and low back pain and provided an epidural steroid injection. Appellant had a second epidural injection on February 7, 2014. On February 17, 2014 Dr. Goss reported that appellant continued to have moderate-to-severe radiating low back pain. He noted that a prior MRI scan showed mild stenosis and L3-4 and L4-5. Dr. Goss advised that, since appellant had not progressed nonsurgically, he would need to have surgical decompression. On February 25, 2014 he performed lumbar laminectomy and decompression at L3-4 and L4-5.<sup>3</sup> On March 27, 2014 Dr. Goss noted that appellant continued to have radiating low back pain postsurgery. He diagnosed herniated lumbar disc, low back pain, and sciatica.

In an attending physician’s report (Form CA-20) dated March 31, 2014, Dr. Pontier noted a history of right knee injury with a torn medial meniscus. He checked a box marked “yes,” noting “previous injuries to right knee.” Dr. Pontier advised that appellant was totally disabled from November 21, 2013 through February 3, 2014. He remarked that the surgeon would advise regarding when appellant could return to work. On an attending physician’s report dated April 4, 2014, Dr. Pontier reiterated his findings and conclusions.

On April 24, 2014 Dr. Goss noted that appellant continued to have severe radiating right leg pain and on June 5, 2014 reported that he was not much better. He advised that appellant showed him photographs that were date-time stamped and demonstrated significant bruising along the right lateral leg, just below the knee. Dr. Goss opined that it was possible that appellant’s symptoms could be related to a peripheral nerve crush injury and recommended a right lower extremity electrodiagnostic study.

On July 21, 2014 Dr. Goss reviewed the July 15, 2014 right lower extremity electrodiagnostic study and found it normal. He noted that appellant’s symptoms were unchanged. Dr. Goss reiterated his diagnoses, counseled appellant on the importance of regular exercise, weight control, strength training, and core conditioning, and advised that no additional treatment was required.

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<sup>3</sup> OWCP did not authorize the February 25, 2014 back surgery or the December 23, 2013 knee surgery.

In correspondence dated August 26, 2015, the employing establishment noted that on August 13, 2014 OWCP had denied a recurrence claim appellant had filed under File No. xxxxxx817 and maintained that the instant claim for wage loss was not causally related to the 2012 employment injury.

On October 14, 2014 Dr. Pontier reported that appellant had a known knee injury in 2008 and additional trauma to his “left” leg in 2012, and knee derangement had been found after this event.

On September 9, 2015 Dr. Brown reported that on December 17, 2013 appellant presented with a new injury to his right knee, as supported by a November 22, 2013 MRI scan that showed additional meniscal tearing.<sup>4</sup>

By decision dated November 12, 2015, OWCP denied appellant’s claim for wage-loss compensation for the period November 21, 2013 to January 24, 2014 because the medical evidence of record did not include a well-reasoned medical opinion explaining how his current disability was causally related to the September 21, 2012 employment injury.

### **LEGAL PRECEDENT**

Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>5</sup> Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.<sup>6</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>7</sup> 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

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<sup>4</sup> A May 1, 2014 lumbar spine MRI scan demonstrated postoperative changes, a mild disc bulge at L5-S1 with a small annular tear, bilateral facet arthropathy, and patent canal and foramina with no overt nerve impingement. Dr. Goss performed epidural steroid injections on May 8 and 22, 2014. An October 6, 2015 MRI scan of the lumbar spine showed postoperative changes with a widely patent canal, mild multilevel degenerative disc disease and facet arthrosis, and a right foraminal annular tear and disc herniation at L4-5 without nerve impingement. A right leg MRI scan that day demonstrated postoperative changes, tricompartmental mild chondral loss, and no evidence of new meniscal tears.

<sup>5</sup> See 20 C.F.R. § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>6</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>7</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>8</sup>

### ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he was totally disabled for the period November 21, 2013 to January 24, 2014 due to a September 21, 2012 employment injury, accepted for right leg contusion.

Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.<sup>9</sup>

The MRI scans dated November 22, 2013, May 1, 2014, and October 6, 2015 did not provide a cause of any diagnosed conditions, and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>10</sup> The lower extremity electrodiagnostic study was normal.

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the disability for which compensation is claimed is causally related to the accepted work injury and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>11</sup>

As noted, the September 21, 2012 employment injury was accepted for right leg contusion. Following this injury, appellant returned to full duty on January 8, 2013. He stopped work in November 2013 and claimed disability from November 21, 2013 to January 24, 2014.

Dr. Pontier noted on November 21, 2013 that appellant was complaining of recurrent right knee pain and had a prior history of meniscal tear. The Board notes that under File No. xxxxxx817 appellant had an accepted left meniscal tear that had occurred on July 26, 2008.<sup>12</sup> The August 1, 2008 right knee MRI scan noted a tear of the right meniscus, not the left.<sup>13</sup> While Dr. Pontier indicated on attending physician's reports dated March 31 and April 4, 2014 that appellant was totally disabled from November 21, 2013 through February 3, 2014 and checked a box marked "yes," noting "previous injuries to right knee," he exhibited no specific knowledge of the circumstances of the September 21, 2012 employment injury and failed to explain how

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<sup>8</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>9</sup> *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

<sup>10</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>11</sup> *A.D.*, 58 ECAB 149 (2006).

<sup>12</sup> *Supra* note 2.

<sup>13</sup> *Id.*

this injury led to appellant's current diagnosed condition. This opinion is therefore of limited probative value.

Likewise, Dr. Brown did not link appellant's current condition to the September 21, 2012 employment injury. Rather, he noted on December 17, 2013 that appellant had a right knee problem after an old injury that occurred five years previously, or in 2008 not 2012. Dr. Brown performed right knee arthroscopic surgery on December 23, 2013 and advised that appellant was totally disabled from December 26, 2013 to January 26, 2014. At no time did he mention the September 21, 2012 employment injury. Dr. Brown's opinion is also insufficient to meet appellant's burden of proof.

Dr. Goss saw appellant on January 13, 2014 for complaints of low back pain. He related in April 2014 that the pain radiated into the right leg. On June 5, 2014 Dr. Goss noted that appellant showed him photographs that were date-time stamped and demonstrated significant bruising along the right lateral leg, just below the knee. Although he opined that it was possible that appellant's symptoms could be related to a peripheral nerve crush injury and recommended a right lower extremity electrodiagnostic study, a July 15, 2014 right leg electrodiagnostic study was normal. Moreover, Dr. Goss did not mention what date was stamped on the photographs and at no time indicated that appellant's current condition was causally related to a September 21, 2012 employment injury.

Thus, there is no medical opinion evidence of record that associates the period of claimed disability in this case to the September 21, 2012 employment injury, accepted for right leg contusion.

It is appellant's burden of proof to establish that the claimed disability was causally related to the September 21, 2012 employment injury. Appellant submitted insufficient evidence to demonstrate a causal relationship between that injury and either his current right knee or low back condition. He has failed to meet his burden of proof.

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 that he was totally disabled for the period November 21, 2013 to January 24, 2014 due to a September 21, 2012 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 12, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2017  
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