

ISSUE

The issue is whether appellant met his burden of proof to establish a traumatic left knee injury sustained in the performance of duty on August 29, 2014.

FACTUAL HISTORY

On September 11, 2014 appellant, then a 46-year-old correctional counselor, filed a traumatic injury claim (Form CA-1) alleging that he strained his left knee while pat-searching inmates during a “fog watch” surveillance post at 8:45 a.m. on August 29, 2014. At that time, he described a popping sound in his left knee. Appellant did not stop work at the time of the claimed injury.

Dr. Truman Perry an attending Board-certified family practitioner, diagnosed right knee pain on September 12, 2014, and held appellant off work through September 24, 2014.

In a September 26 2014 letter, OWCP advised appellant of the type of additional evidence needed to establish his claim, including factual corroboration of the August 29, 2014 incident, and medical evidence diagnosing an injury resulting from that event. It afforded him 30 days to submit such evidence.

In response, appellant submitted an October 2, 2014 statement, reiterating that, while at his fog watch post at approximately 8:45 a.m. on August 29, 2014, his left knee made a popping sound as he knelt down to pat-search an inmate. He also submitted additional medical evidence.

Dr. Brent Morris, an attending Board-certified orthopedic surgeon, provided a September 25, 2014 report relating appellant’s account of experiencing a “pop” in his left knee during a pat-search on August 29, 2014, with the immediate onset of extreme medial-sided left knee pain. He obtained left knee x-rays demonstrating severe, end stage osteoarthritis, and varus deformity. Dr. Morris noted that appellant had lost approximately 200 pounds after undergoing lap band gastric surgery. On examination of the left knee, he observed medial tightness with varus alignment, significant joint line tenderness, patellofemoral crepitus, and extension limited to 110 degrees. Dr. Morris diagnosed end stage medial compartment arthritis of the left knee. He prescribed physical therapy³ and administered a corticosteroid injection.

September 22, 2014 x-rays and a magnetic resonance imaging (MRI) scan study of the left knee demonstrated very advanced osteoarthritic changes, meniscal maceration and degeneration, tricompartmental osteophyte formation, and an effusion.

In an October 2, 2014 report, Dr. Perry diagnosed a meniscal tear of the left knee, sustained on August 29, 2014 due to prolonged standing. He found appellant totally disabled for work from August 29 to October 6, 2014. Dr. Perry noted work restrictions prohibiting walking, climbing, and kneeling. On October 4, 2014 he opined that appellant injured his left knee at work on August 29, 2014 when he “moved slightly” after prolonged standing during a watch. Dr. Perry diagnosed a left medial meniscus tear. He prescribed a knee brace and physical

³ Appellant participated in physical therapy from October 2 to 29, 2014.

therapy. On October 9, 2014 appellant accepted a temporary sedentary position at the employing establishment, performing clerical duties. Dr. Perry approved the position. He limited appellant to light duty through November 30, 2014.

By decision dated November 20, 2014, OWCP denied the claim, finding that the factual component of fact of injury was not established due to inconsistencies in the descriptions of how the claimed injury occurred.

In a December 8, 2014 letter, appellant through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, held May 27, 2015. At the hearing, he noted that he had undergone surgery in 1990 or 1991 for a small left medial meniscus tear, but that his left knee was asymptomatic as of August 29, 2014. Appellant submitted additional evidence following the hearing, including April 6, 2015 work restrictions and a May 22, 2015 progress note from Dr. Morris, as well as December 31, 2014 and January 16, 2015 progress notes from Dr. Perry.

Dr. Morris provided a May 29, 2015 narrative report, noting that, at the time of injury, appellant was "performing a pat-down search, which required him to bend down." When appellant bent on his left knee, "[appellant] had an axial load with twisting, as he went down. This loaded his medial compartment, which was already damaged." Appellant also had a history of osteoarthritis, exacerbated by the "axial load with a torsion[-]type injury while bending to do the pat-down." Dr. Morris explained that this "caused additional injury to [appellant's] knee, including suspected additional worsening of a meniscal tear and additional articular cartilage damage to the medial compartment." He opined that, based on appellant's description and "the physiologic mechanism," appellant's "conditions were aggravated by the accident due to this axial load and twisting mechanism incurred during the stated injury."

By decision dated July 30, 2015, an OWCP hearing representative affirmed as modified the November 20, 2014 decision, accepting the August 29, 2014 incident occurred as alleged. However, she denied the claim as the medical evidence was insufficient to establish a causal relationship between the accepted incident and the claimed left knee injury. The hearing representative noted that appellant had not submitted medical evidence regarding his prior left knee surgery.

In a June 23, 2016 letter, counsel requested reconsideration. He submitted additional medical evidence. This included a November 1, 2001 report from Dr. W. Ben Kibler, an attending Board-certified orthopedic surgeon, who performed an arthroscopic debridement and repair of a torn left medial meniscus.

In an April 8, 2016 report, Dr. Neil Allen, a Board-certified internist and neurologist, consulting to counsel, reviewed the medical record. He did not examine appellant. Dr. Allen concurred with Dr. Morris' opinion that the August 29, 2014 incident caused a meniscal tear due to an axial load with twisting.

By decision dated August 11, 2016, OWCP affirmed the July 30, 2015 decision, finding that the additional medical evidence was 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 to establish the occurrence of an injury when there are such 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

ANALYSIS

Appellant alleged that he sustained a left meniscal tear in the performance of duty while bending down to pat-search an inmate on August 29, 2014. OWCP accepted that the August 29, 2014 incident occurred at the time, place, and in the manner alleged, but denied the claim as the medical evidence of record was insufficient to establish causal relationship.

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).

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).

Dr. Perry an attending Board-certified family practitioner, followed appellant beginning September 12, 2014. He initially diagnosed right knee pain on September 12, 2014. On October 2 and 4, 2014 Dr. Perry diagnosed a left meniscal tear attributable to moving after a period of prolonged standing during the August 29, 2014 fog watch. However, he did not explain the basis for this diagnosis. The September 22, 2014 x-rays and MRI scan study revealed meniscal maceration and degeneration, but no meniscal tear. In the absence of a clear presentation of the pathophysiologic basis for diagnosing a meniscal tear, Dr. Perry's opinion is insufficient to meet appellant's burden of proof.¹⁰ As Dr. Allen, a consulting Board-certified neurologist and internist, had not examined appellant, his opinion is also of diminished probative value in establishing causal relationship.¹¹

Dr. Morris, an attending Board-certified orthopedic surgeon, provided a May 29, 2015 narrative and opined that bending down during the pat-search created an axial load with twisting, creating a torsion-type injury, worsening the preexisting meniscal tear, and causing additional damage to the medial compartment cartilage. He supported causal relationship based on suspected worsening of a meniscal tear. However, there is no diagnostic test of record confirming a meniscal tear. The September 22, 2014 imaging studies did not demonstrate a medical tear. Therefore, Dr. Morris' opinion is insufficient to meet appellant's burden of proof as it is based on an inaccurate medical history.¹²

Reports from other physicians are of limited probative value as these reports did not specifically address whether the August 29, 2014 work incident caused or aggravated a diagnosed medical condition.¹³

On appeal, counsel contends that OWCP's August 11, 2016 merit decision is contrary to law and fact. He asserts that OWCP has an affirmative duty to "develop the claim regardless of theory of causation." Counsel's general argument is, on its face, without merit. OWCP accepted that the August 29, 2014 incident occurred as alleged. Appellant has the burden of proof to submit sufficient rationalized medical evidence to establish a causal relationship between the accepted surveillance and search activities and the claimed left knee injury. As noted above, he did not submit such evidence, and thus 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.

¹⁰ *Supra* note 8.

¹¹ See *Yvonne McGinnis*, 50 ECAB 272 (1999) (generally, findings on examination are needed to justify a physician's opinion regarding disability); *R.E.*, Docket No. 16-0615 (issued October 3, 2016) (medical report deemed conclusory and insufficient to establish appellant's traumatic injury claim where the physician did not examine appellant).

¹² *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹³ *J.F.*, Docket No. 09-1061 (issued November 17, 2009) (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).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a traumatic left knee injury sustained in the performance of duty on August 29, 2014.

ORDER

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

Issued: May 8, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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