

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

O.R., Appellant	)	
	)	
and	)	<b>Docket No. 18-0013</b>
	)	<b>Issued: April 9, 2018</b>
DEPARTMENT OF HOMELAND SECURITY,	)	
TRANSPORTATION SECURITY	)	
ADMINISTRATION, Miami, FL, Employer	)	
	)	

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

On October 2, 2017 appellant filed a timely appeal from a September 20, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). The Board assigned Docket No. 18-0013.<sup>1</sup>

On May 22, 2017 appellant, then a 32-year-old former transportation security screening officer, filed a traumatic injury claim (Form CA-1) alleging that, on August 6, 2014, he injured his right knee while participating in a physical therapy/work conditioning program. He was reportedly doing lunge exercises at the time. Appellant further alleged that his right knee pain worsened over time at work. He described his claimed condition as right knee joint effusion with ruptured popliteal cyst and vastus medialis obliquus (VMO) atrophy. Appellant last worked on November 16, 2015.<sup>2</sup>

Appellant has an accepted traumatic injury claim for lumbar sprain and herniated disc at L5-S1, which arose on April 22, 2013. That claim was assigned OWCP File No. xxxxxx033. He

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<sup>1</sup> The record includes evidence received after OWCP issued its September 20, 2017 decision. The Board's jurisdiction is limited to the evidence that was in the case record at the time of OWCP's final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

<sup>2</sup> Effective July 8, 2016, appellant was removed from employment.

also has an accepted claim for aggravation of L5-S1 disc herniation, which arose on May 14, 2013, assigned OWCP File No. xxxxxx403. On April 1, 2014 appellant underwent lumbar surgery.

Under the current claim, appellant submitted post-surgery physical therapy treatment records covering the period August 6 through 11, 2014. The August 6, 2014 physical therapy record noted that appellant complained of increased right knee “pain after doing lunges...” Appellant also submitted an April 8, 2015 treatment/consultation note with a final impression of right knee pain. An April 23, 2015 right knee magnetic resonance imaging (MRI) scan revealed joint effusion, intact cruciate ligaments and menisci, as well as a 1.2 centimeters cartilage defect seen superiorly in the trochlea.

In a November 16, 2015 statement, appellant indicated that he requested an accommodation to work exclusively at the passenger check point. He explained that the lifting requirements at the passenger check point were not as physically demanding on his back and right leg as the baggage area. Appellant further stated that he did not feel capable of continued bending, squatting, pushing, dragging, and lifting items in excess of 50 pounds in an awkward, repetitive position. He also noted that the employing establishment suggested that he file a notice of recurrence.<sup>3</sup>

A March 31, 2016 right knee MRI scan revealed a joint effusion with evidence of ruptured popliteal cyst and findings suggestive of a bone bruise at the posterior outer lateral tibial plateau.

In an April 5, 2016 report, Dr. Samy F. Bishai, an orthopedic surgeon, provided the following diagnoses: herniated lumbar disc at L5-S1 with right-sided lumbar radiculopathy affecting the right lower extremity; status post right L5 and S1 hemilaminectomy; L5 nerve root and lysis adhesions with excision of L5-S1 disc herniation; slight right knee VMO atrophy; and rule out right knee internal derangement. He noted that appellant initially injured his lumbar spine at work on April 22, 2013, and then aggravated it on May 14, 2013 pulling and dragging oversized luggage at the airport. Dr. Bishai indicated that appellant’s right knee VMO atrophy was unrelated to primary knee joint pathology, but instead related to his May 14, 2013 lumbar injury.

On June 2, 2017 OWCP requested that appellant provide additional factual and medical evidence, and afforded him 30 days to submit the necessary information. It asked that appellant clarify whether he was claiming an occupational disease or a traumatic injury. OWCP also inquired why appellant waited nearly two and a half years before filing his claim for an August 6, 2014 right knee injury.

Appellant resubmitted his August 2014 physical therapy records and the April 23, 2015 and March 31, 2016 right knee MRI scans.

By decision dated July 7, 2017, OWCP denied appellant’s claim because he failed to establish the factual component of fact of injury.

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<sup>3</sup> The record includes a November 16, 2015 Form CA-2a, claiming a recurrence of disability beginning November 16, 2015, causally related to appellant’s April 22, 2013 employment-related lumbar injury. He indicated that his required job duties gave him back knots and aggravated his right leg problems.

OWCP subsequently received appellant's July 12, 2017 supplemental statement. He explained that he was claiming a right knee traumatic injury that occurred on August 6, 2014 during postoperative physical therapy. Appellant further explained that his right knee condition worsened on or about November 1, 2014 when the employing establishment demanded that he work at baggage check.

On August 8, 2017 appellant requested reconsideration. He submitted January 23, 2015 treatment notes from Dr. Jonathan A. Hyde, a Board-certified orthopedic surgeon, who diagnosed lumbar disc displacement. Appellant also submitted an undated report from Dr. Jesse Z. Shaw, an orthopedic surgeon, who first treated appellant on October 5, 2015 for complaints of right knee pain and swelling.

In a June 14, 2017 report, Dr. Bishai reiterated his prior assessment that appellant's right knee VMO atrophy was primarily lumbar-related, but added that constant kneeling at work may have contributed to the development of problems with appellant's right knee joint.

In a September 20, 2017 decision, OWCP reviewed the merits of appellant's claim, and modified its basis for denial, finding that while he had established both the factual and medical components of fact of injury, appellant had not submitted sufficient medical evidence to establish causal relationship.<sup>4</sup>

The Board finds that the case is not in posture for decision. Pursuant to 20 C.F.R. § 501.2(c)(1), the Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Decisions on claims are based on the written record, which may include forms, reports, letters, and other evidence of various types such as photographs, videotapes or drawings.<sup>5</sup> Evidence may not be incorporated by reference, nor may evidence from another case file of the claimant be used.<sup>6</sup> Evidence contained in another of the claimant's case files may be used, but a copy of that evidence should be placed into the case file being adjudicated.<sup>7</sup> All evidence that forms the basis of a decision must be in that claimant's case record.<sup>8</sup>

In its September 20, 2017 decision, OWCP referenced several of appellant's prior claims, including his two lumbar-related injuries that occurred on April 22 (OWCP File No. xxxxxx033) and May 14, 2013 (OWCP File No. xxxxxx403). OWCP quoted an August 22, 2014 treatment note from Dr. Hyde that it obtained from File No. xxxxxx033. Additionally, it quoted another undated report from Dr. Shaw, which was also obtained from File No. xxxxxx033.

Although OWCP relied on the above-referenced reports from Dr. Hyde and Dr. Shaw in determining appellant's entitlement to FECA benefits, it neglected to include the referenced

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<sup>4</sup> Although OWCP found that appellant established he was injured on August 6, 2014 doing lunges during physical therapy, it did not specifically address whether appellant was in the performance of duty at the time of injury.

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5a (June 2011).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

information from File No. xxxxxx033 in the current case record. Because of this oversight, the Board is not in a position to make an informed decision regarding appellant's entitlement to FECA benefits.<sup>9</sup> Therefore, the case shall be remanded to OWCP for further development. As noted, all evidence that forms the basis of a decision must be included in the case record.<sup>10</sup> After OWCP has developed the record consistent with the above-noted directive, it shall issue a *de novo* decision regarding appellant's entitlement to FECA benefits with respect to his claimed August 6, 2014 right lower extremity injury.

**IT IS HEREBY ORDERED THAT** the September 20, 2017 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this order.

Issued: April 9, 2018  
Washington, DC

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

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

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

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<sup>9</sup> See *K.P.*, Docket No. 15-1945 (issued February 10, 2016); *M.C.*, Docket No. 15-1706 (issued October 22, 2015).

<sup>10</sup> *Supra* note 5.