

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

A.G., Appellant

and

**U.S. POSTAL SERVICE, MADISON SQUARE
POST OFFICE, New York, NY, Employer**

)
)
)
)
)
Docket No. 18-0281
Issued: July 12, 2018

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

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 November 27, 2017 appellant, through counsel, filed a timely appeal from an October 3, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a right knee injury causally related to his accepted March 15, 2011 employment incident.

On appeal, counsel contends that OWCP's decision ignores the evidence and created a false burden of proof by requiring biomedical evidence instead of medical evidence.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On October 4, 2011 appellant, then a 29-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that while performing his federal employment duties on March 15, 2011 he felt a pop inside of his right knee and that, since then, every time he took a step he felt discomfort. The employing establishment controverted his claim.

By decision dated January 17, 2012, OWCP denied appellant's claim for failure to establish that the event occurred as alleged. Appellant requested an oral hearing before an OWCP hearing representative. After reviewing the evidence and conducting the hearing, by decision dated July 2, 2012, the hearing representative found that, although appellant's claim was filed for an occupational disease, he was actually claiming a traumatic injury on March 15, 2011. She found that he had established that the employment incident occurred as alleged. However, the claim remained denied because the medical evidence of record was insufficient to establish a diagnosed condition causally related to the accepted employment incident.

Appellant subsequently requested reconsideration. By decision dated January 7, 2013, OWCP denied modification of its prior decision.

On February 27, 2013 appellant appealed to the Board. By decision dated August 22, 2013, the Board affirmed OWCP's January 7, 2013 decision, finding that he had not established that he sustained an employment-related injury to his right knee on March 15, 2011, as alleged.⁴

On August 14, 2014 appellant, through counsel, requested reconsideration, and submitted additional medical evidence. By decision dated February 11, 2015, OWCP reviewed the merits of the claim, including the new evidence submitted by appellant, but denied modification, finding that the evidence submitted was of insufficient probative value to modify the prior decisions.

On March 18, 2015 appellant appealed to the Board. By decision dated July 22, 2015, the Board affirmed OWCP's February 11, 2015 decision. The Board determined that the reports by appellant's treating physician submitted on reconsideration were substantially similar to his prior

³ Docket No. 15-0917 (issued July 22, 2015); Docket No. 13-0860 (issued August 22, 2013).

⁴ Docket No. 13-0860 (issued August 22, 2013).

reports and did not constitute rationalized medical opinion evidence sufficient to establish that the March 15, 2011 accepted employment incident resulted in appellant's medical conditions.⁵

On March 21, 2016 appellant, through counsel, requested reconsideration. In support of the reconsideration claim, counsel submitted to OWCP a new medical report by Dr. Neil Allen, a Board-certified internist and neurologist. He contended that, based upon this new evidence, the prior decision should be overturned.

In a February 19, 2016 report, Dr. Allen reviewed appellant's medical records in order to determine whether they established causal relationship between appellant's right knee injury and employment-related trauma sustained on March 15, 2011. On February 29, 2016 he contacted appellant for a statement. Appellant informed Dr. Allen that, while working on duty as a letter carrier walking his route on March 15, 2011, he stepped down on a fully extended right knee and felt a pop followed by intense pain. Dr. Allen noted that, after this incident, appellant could no longer bear weight on his right leg nor fully extend his right leg. Appellant reported initial symptoms of right knee pain up to 10 on a scale of 10 accompanied by tingling in the right knee. He indicated difficulty walking and standing on the day of, and the days following, the accident. Appellant reported increased pain with climbing in and out of his vehicle, walking, and climbing stairs. Although physical therapy helped relieve his symptoms, he reported that he was no longer able to do things he was able to do before the accident.

Dr. Allen reviewed appellant's medical reports. He opined that appellant's case should be updated to include the diagnosis of "other tear of medial meniscus, current injury, [and] right knee." Dr. Allen noted that appellant's right medial meniscal tear and anterior cruciate ligament (ACL) sprain were directly caused by occupational-related trauma sustained on March 15, 2011. He noted that, according to the Journal for the American Association of Orthopedic Surgeons, meniscal tears in isolation often occur during a twisting injury or hyperflexion event and they may present with acute pain and swelling. Dr. Allen noted that the article also quoted a study indicating that slightly more than one-third of all tears were associated with an ACL injury. He concluded that the mechanism and presentation described within the literature mirrors were described by appellant and by his treating physician.

By decision dated October 3, 2017, OWCP reviewed appellant's case on the merits, but denied modification of its prior decisions. It noted that even though Dr. Allen concluded that the right medial meniscal tear and ACL sprain were directly caused by occupational-related trauma on March 15, 2011, he did not explain the mechanism of the injury, *i.e.*, how appellant sustained a right medial meniscal tear and ACL sprain due to stepping while performing his employment duties as a mail carrier.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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

⁵ Docket No. 15-0917 (issued July 22, 2015).

⁶ *Supra* note 2.

United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁷ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged.⁹ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.¹⁰

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable 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.¹¹

ANALYSIS

The Board finds that appellant has not established a right knee condition causally related to the accepted March 15, 2011 employment incident.

In the prior decisions dated August 22, 2013 and July 22, 2015, the Board determined that the medical evidence of record was insufficient to establish that appellant sustained a right knee injury causally related to the accepted March 15, 2011 employment incident. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹² The Board will, therefore, not review the evidence addressed in the prior appeals.

On March 21, 2016 appellant, through counsel, submitted a new report from Dr. Allen and requested that OWCP reconsider the merits of his claim.

⁷ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *J.O.*, Docket No. 17-0789 (issued May 15, 2018); *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift, whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5(q), (ee), *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

⁹ See *J.O.*, *id.*; *Julie B. Hawkins*, 38 ECAB 393 (1987).

¹⁰ See *J.O.*, *supra* note 8; *John J. Caralone*, 41 ECAB 354 (1989).

¹¹ See *J.O.*, *supra* note 8; see also *I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹² See *H.G.*, Docket No. 16-1191 (issued November 25, 2016).

The Board finds that the new report of Dr. Allen is insufficient to establish causal relationship. Dr. Allen discussed appellant's statement with regard to how the injury occurred. He also discussed the medical evidence of record. Regarding causal relationship, Dr. Allen discussed a medical journal article regarding meniscal tears. He concluded that the mechanism and presentation described by appellant and his physician mirrored the journal's description of how ACL tears occur.

Dr. Allen did not provide a well-rationalized opinion establishing causal relationship. He basically reiterated appellant's conclusions and conclusions from a medical journal. The Board has held that newspaper clippings, medical texts, and excerpts from publications are of no evidentiary value in establishing causal relationship as they are of general application and are not determinative of whether the specific condition claimed was causally related to the particular employment factors alleged.¹³ Dr. Allen did not specifically discuss how any medical findings supported that appellant's injury resulted from the specific event on March 15, 2011. A mere conclusion without necessary rationale explaining why the physician believes that a claimant's accepted employment incident resulted in the diagnosed condition is not sufficient.¹⁴ Without explaining how, physiologically, the employment incident caused or contributed to the diagnosed conditions, Dr. Allen's report is insufficiently rationalized and of limited probative value.¹⁵

The issue of whether a claimant's disability is causally related to the accepted conditions is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the claimed condition or disability is causally related to the employment incident and supports that conclusion with sound medical reasoning.¹⁶ As appellant has not submitted such evidence, he has not met 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 has not met his burden of proof to establish a right knee injury causally related to the accepted March 15, 2011 employment incident.

¹³ See *R.O.*, Docket No. 08-1133 (issued October 8, 2008).

¹⁴ *D.O.*, Docket No. 18-0086 (issued March 28, 2018).

¹⁵ *M.B.*, Docket No. 17-1647 (issued April 2, 2018); *D.J.*, Docket No. 17-0364 (issued April 13, 2018).

¹⁶ *P.M.*, Docket No. 17-1131 (issued January 29, 2018).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 3, 2017 is affirmed.

Issued: July 12, 2018
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