United States Department of Labor
Employees' Compensation Appeals Board

F.A., Appellant	)	
and	)	**Docket No. 17-0468**
	)	**Issued: June 15, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Chelsea, MA, Employer	)	

Appearances:
Daniel B. Shapiro, Esq., for the appellant[1]
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 December 28, 2016 appellant, through counsel, filed a timely appeal from a September 2, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP).[2] Pursuant to the Federal Employees' Compensation Act[3] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this 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] Together with the appeal request, counsel, on behalf of appellant, submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion, by order dated April 5, 2018, the Board denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 17-0468 (issued April 5, 2018).

[3] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury casually related to the accepted November 14, 2015 employment incident.

FACTUAL HISTORY

On January 13, 2016 appellant, then a 62-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a left knee injury while delivering mail at work on November 14, 2015. He asserted that, while climbing onto a curb with a full satchel on his right shoulder, he felt a "sting/pop" in his left leg and the leg buckled beneath him. Appellant stopped work on November 14, 2015.

In a November 16, 2015 report, Dr. Abraham T. Shurland, an attending Board-certified orthopedic surgeon, indicated that appellant returned to his office complaining of left knee pain again. Appellant advised that he was doing well and then all of a sudden began to have severe left knee pain. Dr. Shurland noted that appellant reported feeling a pop in his left knee and having pain mostly in the medial aspect of the knee. He reported the findings of his November 16, 2015 physical examination of appellant's left knee, noting that the knee exhibited normal alignment without swelling, warmth, erythema, or effusion. There was tenderness to palpation along the patellofemoral joint line, but strength was 5/5, range of motion was from 0 to 110 degrees, and stability was found upon varus/valgus stress, anterior/posterior drawer, and Lachman testing. Dr. Shurland diagnosed left knee pain and recommended obtaining a magnetic resonance imaging (MRI) scan of the left knee to evaluate the medial meniscus. In a November 16, 2015 note, he found that appellant was unable to return to work until a date to be determined.

A December 1, 2015 MRI scan of appellant's left knee contained an impression of a large radial oblique tear of the posterior horn of the medial meniscus with a large meniscal fragment displaced posteriorly to the medial femoral condyle.

In a December 3, 2015 report, Dr. Shurland provided a history of appellant's medical condition which was the same as that contained in his November 16, 2015 report, except that he now noted that appellant had undergone a left knee MRI scan. He detailed physical examination findings for appellant's left knee which were the same as those obtained on November 16, 2015. Dr. Shurland diagnosed left knee medial meniscus tear and recommended left knee surgery.

On January 29, 2015 appellant underwent arthroscopic left knee surgery, including partial medial meniscectomy. The procedure was not authorized by OWCP.

In a February 16, 2016 development letter, OWCP requested that appellant submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation as to how the reported employment incident caused or aggravated a medical condition. It requested that he complete and return an attached questionnaire which posed various questions regarding the circumstances of his claimed employment injury and the course of his medical treatment. OWCP afforded appellant 30 days to submit a response.

On March 17, 2016 OWCP received appellant's responses to its development questionnaire. Appellant indicated that he had sought treatment for his claimed November 14, 2015 injury on the date of the injury.[4] He asserted that he reported the injury to his supervisor on the date of injury, noting that his supervisor picked him up after the accident and drove him back to the employing establishment premises. Appellant noted that he previously sustained an employment-related injury on September 11, 2015 and that the employing establishment provided him with a form for claiming a recurrence of disability due to the September 11, 2015 injury (Form CA-2a). He explained that he delayed in filing a claim for a November 14, 2015 traumatic injury (using a Form CA-1), because he initially filed a claim for recurrence of disability due to the September 11, 2015 injury after OWCP gave him "the wrong paperwork."

In a January 20, 2016 report, Thomas F. Walsh, an attending physician assistant, noted that appellant reported sustaining a left knee injury three months prior. He indicated that he advised appellant regarding the nature of his upcoming left knee surgery. On February 8, 2016 Mr. Walsh noted that appellant's left knee pain had resolved after his January 29, 2016 surgery and he advised appellant to return that week to full-duty work with restrictions.

In a February 8, 2016 note, Dr. Shurland indicated that appellant would be able to return to work on February 10, 2016.

By decision dated March 18, 2016, OWCP denied appellant's claim for an employment-related November 14, 2015 injury, finding that the evidence of record was insufficient to establish that the November 14, 2015 incident occurred as alleged.[5]

In a March 9, 2016 report, Dr. Shurland indicated that appellant had been treated for an injury he sustained at work on September 11, 2015. He noted that a December 1, 2015 MRI scan of appellant's left knee revealed a complex meniscal tear and that surgery for this tear was performed on January 29, 2015. Dr. Shurland indicated that OWCP denied appellant's request for authorization of the surgery due to insufficient evidence that the meniscal tear was caused by the work injury. He noted, "It is my opinion that his work injury either caused his tear or was a major contributing factor. Please reconsider your denial of his case as his surgery was due to the meniscal tear which was found after his work injury."

On April 14, 2016 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. He resubmitted a copy of Dr. Shurland's March 9, 2016 report.

By decision dated September 2, 2016, OWCP's hearing representative affirmed OWCP's March 18, 2016 decision as modified to reflect that, while appellant had established that the November 14, 2015 employment incident occurred as alleged, he failed to establish a diagnosed medical condition causally related to this accepted November 14, 2015 employment incident. She

[4] It is noted that the above-noted November 16, 2015 report and note are the oldest medical documents in the case record.

[5] OWCP asserted that appellant failed to complete and submit the questionnaire attached to the February 16, 2016 development letter within the afforded 30-day time period. The Board notes that OWCP actually received appellant's responses to the questionnaire on March 17, 2016, a date 30 days after the date of the development letter.

found that the medical evidence of record, including Dr. Shurland's March 9, 2016 report, did not contain an opinion that appellant sustained an injury due to the November 14, 2015 employment incident.[6]

LEGAL PRECEDENT

An employee seeking benefits under FECA[7] 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 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.[8] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[9]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[10] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[11]

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 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.[12]

[6] The hearing representative noted that OWCP had previously accepted a left knee condition due to a September 11, 2015 employment incident under OWCP File No. xxxxxx229. She indicated that the present claim, OWCP File No. xxxxxx268, should be administratively combined with OWCP File No. xxxxxx229, with OWCP File No. xxxxxx268 designated as the master file.

[7] *See supra* note 3.

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

[9] *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 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).

[10] *Julie B. Hawkins*, 38 ECAB 393 (1987).

[11] *John J. Carlone*, 41 ECAB 354 (1989).

[12] *See I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury causally related to the accepted November 14, 2015 employment incident.

Appellant submitted a March 9, 2016 report in which Dr. Shurland indicated that he had been treated for a work injury he sustained at work on September 11, 2015. Dr. Shurland noted that a December 1, 2015 MRI scan of appellant's left knee revealed a complex meniscal tear and that surgery for this tear was performed on January 29, 2015. He indicated that OWCP denied appellant's request for authorization of the surgery due to insufficient evidence that the meniscal tear was caused by the work injury. Dr. Shurland noted, "It is my opinion that his work injury either caused his tear or was a major contributing factor. Please reconsider your denial of his case as his surgery was due to the meniscal tear which was found after his work injury."

The Board finds that Dr. Shurland's March 9, 2016 report is insufficient to establish appellant's claim for a November 14, 2015 employment injury. The subject of OWCP's decision presently before the Board, *i.e.*, OWCP's September 2, 2016 decision, is whether appellant established a traumatic injury causally related to the accepted November 14, 2015 employment incident. The matter of any employment-related medical conditions sustained on September 11, 2015 is not currently before the Board. Dr. Shurland's March 9, 2016 report is of no probative value on the relevant issue of the present case because Dr. Shurland did not provide an opinion that appellant sustained a diagnosed condition due to the accepted November 14, 2015 employment incident. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[13] In fact, in his March 9, 2016 report, Dr. Shurland did not provide any mention of a November 14, 2015 employment incident.

In November 16 and December 3, 2016 reports, Dr. Shurland noted appellant's self-reported history of suddenly experiencing severe left knee pain after feeling a pop in that knee. However, he did not clearly describe the November 14, 2015 employment incident in either of these reports. In the December 3, 2016 report, Dr. Shurland diagnosed left knee medial meniscus tear, but he did not comment on the cause of the condition. These reports also are of no probative value on the relevant issue of the present case because Dr. Shurland did not provide an opinion that appellant sustained a diagnosed condition due to the accepted November 14, 2015 employment incident.[14] Appellant also submitted January 20 and February 8, 2016 reports of Mr. Walsh, an attending physician assistant, but these reports are of no probative value regarding appellant's claim for a November 14, 2015 employment injury because they do not constitute probative medical evidence from a physician within the meaning of FECA. Under FECA, the

[13] *See Charles H. Tomaszewski*, 39 ECAB 461 (1988).

[14] *See id*.

report of a nonphysician, including a physician assistant, does not constitute probative medical evidence.[15]

On appeal counsel contends that an improper procedure was used to "implement" the September 2, 2016 OWCP decision, resulting in loss of appellate rights on an issue that appellant had no knowledge was under consideration. He contends that this action had "due process implications." However, counsel did not provide any details regarding the claimed procedural error by OWCP or cite any authority to support his contention.

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 traumatic injury causally related to the accepted November 14, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 2, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 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

[15] *R.S.*, Docket No. 16-1303 (issued December 2, 2016); *L.L.*, Docket No. 13-0829 (issued August 20, 2013). *See* 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).