United States Department of Labor
Employees' Compensation Appeals Board

E.G., Appellant	)	
and	)	**Docket No. 16-0923**
	)	**Issued: March 5, 2018**
DEPARTMENT OF JUSTICE, U.S. MARSHALS SERVICE, Phoenix, AZ, Employer	)	

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 22, 2016 appellant filed a timely appeal from a September 25, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

[1] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from September 25, 2015, the date of OWCP's last decision was March 23, 2016. Because using April 1, 2016, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is March 22, 2016, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant met his burden of proof to establish a right knee condition causally related to the accepted October 23, 2014 employment incident.

FACTUAL HISTORY

On October 27, 2014 appellant, then a 52-year-old supervisory deputy marshal, filed a traumatic injury claim (Form CA-1) alleging that, on October 23, 2014, he twisted his right knee while bowling. He indicated that bowling was part of a required training class. He did not stop work. The employing establishment indicated on the reverse side of the claim form that appellant was in the performance of duty at the time of the alleged incident.

In e-mail correspondence dated November 4, 2014, A.R., a supervisory deputy marshal, indicated that the bowling exercise appellant participated in was a mandatory part of a leadership program.

In a January 19, 2015 treatment note/work status report, Dr. P. Dean Cummings, an orthopedic surgeon, noted an October 24, 2014 date of injury and diagnosed right knee patellofemoral syndrome and osteoarthritis. He advised that appellant had no restrictions and could return to full-duty work. OWCP also received physical therapy treatment records for the period November 21, 2014 through January 7, 2015.

In January 28, 2015 claim development letters, OWCP requested additional information from appellant and the employing establishment. It noted that appellant's claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and appellant's claim was administratively handled to allow a limited amount of medical payments. However, his claim was being reopened as appellant's physician had requested authorization for additional treatment. OWCP informed appellant of the type of medical evidence needed to support his claim and requested that he submit such evidence within 30 days.

In a January 19, 2015 follow-up narrative report, Dr. Cummings noted an October 24, 2014 date of injury. He related that appellant's cortisone injection and physical therapy gave him significant relief, but that appellant still experienced grinding and popping, as well as retropatellar pain. Dr. Cummings examined him and found full range of motion, but advised that appellant still had patellofemoral joint crepitus. He diagnosed patellofemoral chondromalacia and recommended additional injections.

On January 27, 2015 Dr. Cummings diagnosed right knee patellofemoral syndrome and osteoarthritis, and requested authorization for continued physical therapy. OWCP received additional physical therapy treatment records for the period January 9 to 30, 2015.

In a February 20, 2015 statement, appellant noted that he twisted his knee while in a leadership class that involved bowling. He denied that he sustained any other injury, either on or off duty between the date of the injury and the date it was reported. Appellant explained that his knee had swelling and was painful. He indicated that he used ice and elevation two to three times a day to relieve the symptoms. In response to whether appellant had a similar disability or

symptoms before the injury appellant responded, "not to that part of my knee." He confirmed that the bowling activity was part of his leadership training and he was required to participate.

By decision dated March 12, 2015, OWCP denied appellant's claim as the medical evidence of record was insufficient to establish causal relationship. It explained that the medical reports from Dr. Cummings did not mention the causal relationship between the work activity and the injury.

Thereafter, appellant submitted a February 23, 2015 report from Dr. Cummings who diagnosed patellofemoral chondromalacia or osteoarthrosis of the patellofemoral joint. Dr. Cummings indicated that this was clearly seen on radiographic studies performed on November 3, 2014 with lateral and medial osteophytic changes with significant changes of the intercondylar groove. He also found tibial spiking and medial joint space narrowing of the knee. Dr. Cummings indicated that appellant continued to have retropatellar pain. He opined that despite a corticosteroid injection, physical therapy, and anti-inflammatories, appellant failed to have symptomatic relief. Dr. Cummings recommended hyaluronic acid injections.

In a March 25 2015 report, Dr. Cummings advised that he was providing causation regarding appellant's affected extremity. He noted that appellant related that he was attending a leadership class on team building and that he had pain in the anterior aspect of his knee while bowling. Dr. Cummings indicated that appellant advised that the pain was markedly different from his previous issues. He advised that appellant had a previous right knee problem, which was not associated with his current symptomatology. Dr. Cummings reported that appellant had partial lateral meniscectomy in 2011 and had complete resolution of symptomatology with no untoward side effects. He opined that appellant's current complaints were a new issue that occurred while bowling.

On April 6, 2015 appellant requested a review of the written record.

By decision dated September 25, 2015, OWCP's hearing representative affirmed the March 12, 2015 decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.[4]

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 in conjunction with one another. The first component is whether the employee actually experienced the employment

[3] *See supra* note 2.

[4] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

incident that allegedly occurred.[5] The second component is whether the employment incident caused a personal injury.[6] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[7]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[8] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[9] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[10]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[11]

ANALYSIS

OWCP found that appellant established both the factual and medical components of fact of injury. However, it denied appellant's traumatic injury claim because the medical evidence of record failed to adequately demonstrate how appellant's right knee patellofemoral chondromalacia and/or osteoarthritis was either caused or aggravated by the accepted October 23, 2014 employment incident. The Board finds that appellant failed to meet his burden of proof to establish his claim.

Dr. Cummings' January 19, 2015 work status report and follow-up narrative report incorrectly identified October 24, 2014 as the date of injury, and did not include a specific history of injury. Moreover, he did not specifically address the particular cause of appellant's right knee condition(s). 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.[12] Therefore, Dr. Cummings' January 19, 2015 reports are insufficient to establish causal relationship.

[5] *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[7] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[8] *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] *Id.*

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[12] *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

In his February 23, 2015 report, Dr. Cummings diagnosed patellofemoral chondromalacia or patellofemoral joint osteoarthrosis, but again, he failed to offer an opinion on causal relationship. This report also did not include a date of injury or a specific history of injury. Consequently, Dr. Cummings' February 23, 2015 report is similarly insufficient to establish causal relationship.[13]

The fact that a condition manifests itself during a period of employment is not sufficient to establish causal relationship.[14] Temporal relationship alone will not suffice.[15] Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship.[16]

In a March 25, 2015 report, Dr. Cummings explained that he was providing an opinion on causation regarding appellant's affected extremity. He related that appellant was attending a leadership class on team building and that he had pain in the anterior aspect of his knee while bowling. Dr. Cummings indicated that appellant believed the pain was markedly different from his previous issues. He noted that appellant had a previous right knee problem, which was not associated with his current symptomatology. Dr. Cummings reported that appellant had a partial lateral meniscectomy in 2011 and had complete resolution of symptomatology with no untoward side effects. He opined that appellant's current complaints were a new issue that occurred while bowling. However, Dr. Cummings did not explain how he arrived at this conclusion. Appellant claimed to have twisted his right knee while bowling, but Dr. Cummings made no mention of this. As noted, a physician's opinion on causal relationship must be based on a complete factual and medical background and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[17] Accordingly, Dr. Cummings' March 25, 2015 report is also insufficient to establish causal relationship.

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 failed to meet his burden of proof to establish a right knee condition causally related to the accepted October 23, 2014 employment incident.

[13] *Id.*

[14] 20 C.F.R. § 10.115(e).

[15] *See D.I.*, 59 ECAB 158, 162 (2007).

[16] *See M.H.*, Docket No. 16-0228 (issued June 8, 2016).

[17] *Victor J. Woodhams*, *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2015 decision of the Office of Workers' Compensation Programs is affirmed.[18]

Issued: March 5, 2018
Washington, DC

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

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

[18] Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017.