United States Department of Labor
Employees' Compensation Appeals Board

W.G., Appellant	)	
and	)	**Docket No. 17-1866**
	)	**Issued: March 5, 2018**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, Fairton, NJ, Employer	)	

Appearances:
Jason S. Lomax, 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 August 29, 2017 appellant, through counsel, filed a timely appeal from a March 2, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 case.[3]

[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.*

[3] 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 March 2, 2017, the date of OWCP's last decision was August 29, 2017. Since using September 1, 2017, 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 August 29, 2017, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

ISSUE

The issue is whether appellant has met his burden of proof to establish a right knee injury causally related to an accepted August 4, 2014 employment incident.

FACTUAL HISTORY

On August 7, 2014 appellant, then a 48-year-old unicor supervisor, filed a traumatic injury claim (Form CA-1) alleging that, while responding to an emergency alarm on August 4, 2014, he made a sharp left turn and his lower right knee popped. He did not stop work.

On August 18, 2014 appellant was treated by Dr. Thomas A. Dwyer, a Board-certified orthopedist, for right knee pain that occurred while working as a supervisor for the employing establishment. He reported that he was responding to an emergency on August 4, 2014, when his right knee "popped." Appellant iced his knee overnight, but continued to experience stiffness and a dull ache under the kneecap. His history was significant for a right knee arthroscopy in 2005. Right knee examination revealed healed arthroscopy portals, crepitation, medial joint line tenderness, and restricted range of motion. Dr. Dwyer diagnosed pain in the joint, lower leg, chondromalacia patella, and tear of the medial cartilage of the knee. He injected the right knee with Xylocaine and provided a wraparound patellofemoral brace. Dr. Dwyer returned appellant to work without restrictions. On September 22, 2014 he treated appellant for medial side pain of his right knee. Examination revealed trace effusion, retropatellar crepitation, medial joint line tenderness, and restricted motion. Dr. Dwyer diagnosed pain in the joint, lower leg, chondromalacia of the patella, and tear of the medial cartilage or meniscus of knee. He noted the magnetic resonance imaging (MRI) scan of the right knee confirmed the presence of a medial meniscus tear and he recommended arthroscopic partial medial meniscectomy.[4]

On August 25, 2014 appellant was treated by Dr. Vincent Disabella, an osteopath, in follow up for evaluation of his right knee. He reported the cortisone injection provided limited relief, but he continued to have medial knee pain and cracking. Findings on examination of the right knee revealed healed arthroscopy portals, crepitation, medial joint line tenderness, restricted range of motion, and positive McMurray's test. Dr. Disabella noted x-ray of the knees revealed anterior and medical compartment degeneration. He diagnosed pain in the joint, lower leg, chondromalacia of the patella, and tear of the medial cartilage or meniscus of the knee. Dr. Disabella recommended a right knee MRI scan and continued full duty with a brace.

On February 2, 2015 Dr. Dwyer treated appellant for persistent right knee pain. He noted the recommended surgery was not authorized by OWCP. Right knee findings included trace effusion, slight genuvarum deformity, retropatellar crepitation, medial joint line tenderness, and limited motion. Dr. Dwyer diagnosed pain in the joint, lower leg, chondromalacia of the patella, and tear of the medial cartilage or meniscus of knee. He recommended surgery and continued appellant's work status without restriction. On April 23, 2015 Dr. Dwyer treated him in follow-

[4] A September 17, 2014 right knee MRI scan revealed severe advanced degenerative changes involving the medial joint compartment, minimal bone bruises, joint fluid, popliteal cyst, chondromalacia, and linear tear within the anterior horn of the medial meniscus. An August 22, 2014 right knee x-ray revealed severe osteoarthritic changes of the knee joint and minimal change of degenerative disease of the left knee joint.

up evaluation for the right knee. Appellant reported another episode at work where he twisted his knee. Findings on examination revealed trace effusion and medial and lateral joint line tenderness. Dr. Dwyer diagnosed pain in joint lower leg, chondromalacia of the patella, and tear of the medial cartilage or meniscus. He injected the right knee with Xylocaine and continued his work status, regular duty wearing the knee brace.

On July 25, 2015 appellant, through counsel, requested that OWCP reopen his case for development. Counsel noted that appellant's claim was opened as a short-form closure case, but that appellant now required further medical care including surgery.

By letter dated August 24, 2015, OWCP advised appellant of the type of evidence needed to establish his claim, including a physician's reasoned opinion addressing the relationship of his claimed condition to his specific employment factors. It also requested that appellant respond to a development questionnaire to substantiate the factual elements of his claim.

Appellant submitted reports from Dr. Dwyer dated August 18, 2014 to April 23, 2015, previously of record.

By decision dated September 29, 2015, OWCP denied appellant's claim for compensation because the evidence of record did not support that the injury or events occurred as alleged.

On October 7, 2015 appellant requested a telephone hearing before an OWCP hearing representative, which was held on June 7, 2016. During the hearing, appellant explained how his claimed injury occurred.

By decision dated August 18, 2016, an OWCP hearing representative affirmed the September 29, 2015 decision, as modified. He found that appellant had submitted sufficient evidence to establish that the employment incident occurred as alleged, but denied the claim because he failed to establish an injury causally related to factors of his federal employment.

On January 13, 2017 appellant, through counsel, requested reconsideration.

Appellant submitted reports from Dr. Dwyer dated August 19 and December 1, 2016 who noted that appellant presented with right knee pain that occurred at work on August 4, 2014 when he was responding to an emergency and his right knee "popped." His history was significant for a twisting injury to his right knee in 2004. Appellant reported first seeing Dr. John Bannon, a Board-certified orthopedist, on December 28, 2004. On May 4, 2005 Dr. Bannon performed a right arthroscopic partial medial meniscectomy and shaving of articular cartilage of the medial femoral condyle. Appellant returned to regular duty and had no follow up after discharge in July 2005. Dr. Dwyer noted that appellant currently worked as a supervisor and was required to walk the compound daily and quickly respond to emergency alarms. Appellant reported that on August 4, 2014, while responding to an emergency, his right knee popped and he had pain. A Depo-Medrol injection was performed and a brace prescribed. An MRI scan showed severe advanced degenerative changes in the right medial joint compartment with associated minimal bone bruises and degenerative cystic change. Dr. Dwyer recommended an arthroscopic partial medial meniscectomy. On May 18, 2015 appellant had another work-related twisting injury. A right knee MRI arthrogram showed advanced osteoarthritis.

Dr. Dwyer opined that, based on review of all medical and treatments provided, appellant sustained three work-related injuries to the right knee which contributed to his diagnoses of osteoarthritis. He opined that the osteoarthritis was directly related to the work injuries and work demands required to perform appellant's job.

On March 2, 2017 OWCP denied modification of its August 18, 2016 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

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 and place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[7]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.[8]

ANALYSIS

It is undisputed that on August 4, 2014 appellant was working as a supervisor and, while responding to an emergency alarm, he made a sharp left turn and his lower right knee popped. However, the Board finds that he failed to submit sufficient medical evidence to establish that his diagnosed medical condition was causally related to the accepted August 4, 2014 employment incident. On August 24, 2015 OWCP requested that appellant submit a comprehensive report from his treating physician which included a reasoned explanation as to how the accepted work incident caused his claimed injury.

[5] *Supra* note 2.

[6] *Gary J. Watling*, 52 ECAB 357 (2001).

[7] *T.H.*, 59 ECAB 388 (2008).

[8] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Appellant submitted reports from Dr. Dwyer dated August 19 and December 1, 2016 in which he reported that his right knee popped on August 4, 2014 while responding to an emergency. A right knee MRI scan documented severe advanced degenerative changes in the medial joint compartment and an MRI scan arthrogram showed advanced osteoarthritis. On May 18, 2015 appellant reported experiencing another work-related twisting injury. Dr. Dwyer opined that appellant sustained three work-related injuries to the right knee which contributed to his diagnoses of osteoarthritis. He opined that, within a reasonable degree of medical certainty, the osteoarthritis was directly related to the work injuries and work demands required to perform appellant's job. The Board finds that, although Dr. Dwyer supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding causal relationship between appellant's right knee condition and the August 4, 2014 work incident.[9] Rather, Dr. Dwyer attributed appellant's right knee osteoarthritis to three separate work injuries. He did not explain the process by which twisting would have aggravated the diagnosed conditions and why the conditions were not nonwork-related, like age-related degenerative changes. Medical rationale was particularly necessary given that appellant had preexisting severe advanced degenerative changes involving the medial joint compartment in his right knee. As the opinion of appellant's physician regarding causal relationship was conclusory and unexplained, it was insufficient to meet appellant's burden of proof. This report is thus insufficient to establish appellant's claim.[10]

In an August 18, 2014 report, Dr. Dwyer treated appellant for right knee pain that occurred while working as a supervisor for the employing establishment. Appellant related the history of the August 4, 2014 work incident and Dr. Dwyer noted appellant's right knee arthroscopy in 2005. Dr. Dwyer provided diagnoses and indicated that, with a knee brace, appellant could work without restriction. On September 22, 2014 and February 2, 2015 he again treated appellant's right knee, noting findings, diagnoses, and treatment recommendations. While Dr. Dwyer repeated the history of injury as reported by appellant, he did not provide his own opinion regarding whether his condition was work related. To the extent that he is providing his own opinion, he failed to provide a rationalized opinion regarding causal relationship between appellant's right knee condition and the accepted work incident.[11] Therefore, this report is insufficient to meet his burden of proof.

On April 23, 2015 Dr. Dwyer treated appellant for another episode at work where he twisted his right knee. However, he did not provide a history of injury on August 4, 2014[12] or

[9] *See T.M.*, Docket No. 08-0975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale). The Board notes that the present claim involves only the claim for an August 4, 2014 injury.

[10] *J.M.*, 58 ECAB 478 (2007) (where the Board found that appellant did not meet his burden of proof in establishing a work-related right wrist condition where his physician provided only conclusory support for causal relationship. Medical rationale was particularly necessary given that appellant injured his wrist while lifting luggage in private employment. As the opinion of appellant's physician regarding causal relationship was conclusory and unexplained, it was insufficient to meet appellant's burden of proof).

[11] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[12] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

specifically address whether the August 4, 2014 employment incident caused or aggravated a diagnosed medical condition.[13] Rather, Dr. Dwyer referenced another twisting injury at work which is not before the Board on the present appeal.

The remainder of the medical evidence, including Dr. Disabella's report and reports of diagnostic testing, are of limited probative value as they fail to provide a physician's opinion on the causal relationship between appellant's August 4, 2014 work incident and his diagnosed right knee injury.[14] Thus, this evidence is insufficient to meet his burden of proof.

Consequently, the Board finds that appellant failed to submit sufficient medical evidence to establish that his accepted work incident on August 4, 2014 caused or aggravated a diagnosed medical condition. He has failed to meet his burden of proof.

On appeal appellant asserts that he submitted sufficient evidence to establish that he was injured on the job. However, as found, the medical evidence of record does not establish that his diagnosed medical conditions are causally related to the accepted work incident on August 4, 2014. Appellant has not submitted a physician's report which adequately describes how the incident on August 4, 2014 was sufficient to have caused or aggravated a right knee injury.[15]

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 August 4, 2014 employment incident.

[13] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[14] *Id.*

[15] *Franklin D. Haislah*, *supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the March 2, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 5, 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