

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

M.E., Appellant)	
)	
and)	Docket No. 18-0330
)	Issued: September 14, 2018
DEPARTMENT OF HOMELAND SECURITY,)	
CUSTOMS & BORDER PATROL, Bisbee, AZ,)	
Employer)	
)	

Appearances:
Appellant, pro se
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 4, 2017 appellant filed a timely appeal from an October 11, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a left knee condition causally related to the accepted February 1, 2017 employment incident.

FACTUAL HISTORY

On February 2, 2017 appellant, then a 43-year-old auto mechanic, filed a traumatic injury claim (Form CA-1) alleging that, on February 1, 2017, he dislocated his left knee when his left foot became stuck on a mat in the weight room. On the reverse side of the claim form, the

¹ 5 U.S.C. § 8101 *et seq.*

employing establishment checked the box marked “yes” indicating that the injury occurred in the performance of duty.

The employing establishment issued appellant a properly completed authorization for examination and/or treatment (Form CA-16) dated February 1, 2017, which indicated that appellant was authorized to seek medical treatment for a left knee injury.

A February 1, 2017 x-ray noted appellant’s history of left knee dislocation and reported no evidence of a fracture and limited left knee evaluation with lateral patella subluxation. A second x-ray taken from a different view reported small left knee joint effusion, bony alignment was anatomic, and no evidence of a fracture.

In a Copper Queen Community Hospital report dated February 1, 2017, Bethzaid Perez Kyles, a certified nurse practitioner, noted that appellant was treated for unspecified left patellar dislocation.

In a return to work form dated February 1, 2017, Noelle Flythe, a registered nurse, noted that appellant had been treated. She checked a box on the form indicating that it was undetermined whether the injury was work related. Ms. Flythe released appellant to return to work with restrictions.

OWCP also received a February 3, 2017 report signed by Tonya L. Johnson, a nurse practitioner, diagnosing a left knee injury. Ms. Johnson checked the box marked “yes” indicating that the diagnosed condition was caused or aggravated by the employment activity described. She noted a period of total disability from February 3 to April 3, 2017.

In a February 3, 2017 report, Dr. Scott V. Slagis, a treating Board-certified internist and orthopedic surgeon, diagnosed left dislocated patella. He described the February 1, 2017 incident and noted that appellant had a prior history of left kneecap dislocation. Physical examination findings were noted and review of an x-ray showed a normal left knee.

The record contains an undated attending physician’s report (Form CA-20) signed by Dr. Slagis noting that appellant was seen on February 6, 2017 and diagnosing a dislocated patella. Dr. Slagis checked the box marked “yes” indicating that the diagnosed condition had been caused or aggravated by the employment activity described. He indicated that appellant was totally disabled from work beginning February 6, 2017.

In a February 6, 2017 report, Dr. Slagis noted appellant’s history of injury, provided examination findings, and diagnosed dislocated left patella. He observed that this was a recurrent problem based on appellant’s history and the fact that it occurred with relatively minor trauma.

In February 28, 2017 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 the claim was administratively handled to allow a limited amount of medical payments. However, OWCP noted that appellant’s claim was being reopened as his physician had requested authorization for surgery. It informed appellant of the type of medical evidence needed to establish his claim and afforded him 30 days to submit such evidence.

OWCP continued to receive medical evidence. A February 14, 2017 magnetic resonance imaging scan (MRI) revealed left patella dislocation.

In a February 22, 2017 work status note, Dr. Slagis indicated that appellant was capable of performing mainly sedentary light-duty work with the use of a knee brace. In notes dated February 22, 2017, he reported a history of two prior patellar dislocations. A physical examination of the left knee revealed normal muscle tone, strength, and sensation, negative instability, effusion, and tenderness along the patellofemoral joint line. Review of a left knee MRI scan showed lateral patellar dislocation with osteochondral fracture. Dr. Slagis diagnosed recurrent lateral patellar dislocation and recommended surgery as this was appellant's third episode of patellar dislocation.

On March 22, 2017 Dr. Slagis diagnosed recurrent left knee dislocation. Appellant related that he continued to have soreness, the left knee swelling had diminished, and he continued with light-duty work. Dr. Slagis noted appellant's injury claim and request for authorization for surgery had been denied. He recommended that an independent medical evaluation be conducted to determine whether the diagnosed condition was work related.

By decision dated March 29, 2017, OWCP denied appellant's claim. It found that the evidence submitted was sufficient to establish the February 1, 2017 incident occurred, as alleged. However, OWCP found that the medical evidence submitted was insufficient to establish causal relationship between the diagnosed left knee condition and the accepted February 1, 2017 employment incident.

On July 26, 2017 appellant requested reconsideration.

In a May 3, 2017 report, Dr. Slagis noted that appellant reported an injury at his employing establishment gym. He opined that the mechanism of injury was consistent with appellant's description of twisting of his knee while at the gym. Examination findings were provided including left knee medial patellar tenderness at the joint line and mild effusion. Dr. Slagis reviewed an MRI scan, which showed patellar dislocation with osteochondral fracture.

On August 1, 2017 OWCP received a June 14, 2017 note from Dr. Slagis diagnosing recurrent left knee patella dislocation. According to appellant, the injury to his knee occurred at his employing establishment gym. Dr. Slagis opined that appellant's working out in the gym was the cause of his left knee patellar dislocation.

By decision dated October 11, 2017, OWCP denied modification of its prior decision. It found none of the medical evidence appellant submitted contained a rationalized opinion explaining how the diagnosed left knee patellar dislocation had been caused or aggravated by the accepted February 1, 2017 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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

² *Supra* note 1.

limitation, that an injury was sustained while 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established.⁵ 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.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.¹⁰

ANALYSIS

The Board finds that appellant has not established a left knee condition causally related to the accepted February 1, 2017 work incident.

OWCP accepted that the February 1, 2017 employment incident occurred as alleged. The issue is whether the accepted incident caused the diagnosed left knee patellar dislocation.

Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically-sound explanation of how the claimed work

³ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁴ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3.

⁶ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁷ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3.

⁸ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

⁹ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

event caused or aggravated the claimed condition.¹¹ No physician offered such an opinion in this case.

In support of his claim, appellant submitted reports from Dr. Slagis diagnosing left knee patellar dislocation. In reports dated February 3, 6, and 22, 2017, Dr. Slagis noted appellant's history of left kneecap dislocation. In his February 6 and 22, 2017 reports, he noted that appellant's patellar dislocation was recurrent. Dr. Slagis offered no definitive opinion as to the cause of the diagnosed condition in these reports. Medical evidence offering no opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹² Dr. Slagis did not offer any medical opinion addressing whether the diagnosed condition was caused or aggravated by the accepted February 1, 2017 employment incident.¹³ Therefore, these reports are insufficient to meet appellant's burden of proof.

In a May 3, 2017 report, Dr. Slagis noted that appellant sustained an injury at the employing establishment gym. He opined that the twisting of appellant's knee at the gym was consistent with a mechanism of injury. Dr. Slagis diagnosed patellar dislocation with osteochondral fracture. He, in an August 1, 2017 note, attributed the diagnosed left knee patellar dislocation to working out at the gym.

The Board notes that, although Dr. Slagis provided an affirmative opinion which supported causal relationship, he did not offer any rationalized medical explanation to support his opinion. Medical evidence that states a conclusion, but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁴ The Board has found that a physician must provide a narrative description of the identified employment incident and a reasoned opinion explaining how physiologically the employment incident described caused or contributed to appellant's diagnosed medical condition.¹⁵ Without explaining how physiologically the movements involved in the accepted employment incident caused or contributed to the diagnosed condition, Dr. Slagis' opinion on causal relationship is equivocal in nature and of limited probative value.¹⁶

The undated Form CA-20 from Dr. Slagis is also insufficient to support appellant's claim. On this form Dr. Slagis checked the box marked "yes" in response to the question of whether appellant's condition was caused or aggravated by the described injury. He, however, did not provide any explanation or offer any medical rationale to support his opinion on causal relationship. The Board has held that when a physician's opinion on causal relationship consists

¹¹ *D.D.*, Docket No. 13-1517 (issued April 14, 2014); *Michael S. Mina*, *supra* note 9.

¹² *L.H.*, Docket No. 17-0982 (issued July 9, 2018).

¹³ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁴ *J.F.*, *id.*; *A.D.*, 58 ECAB 149 (2006).

¹⁵ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁶ *See H.R.*, Docket No. 18-0223 (issued June 27, 2018).

only of checking “yes” to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹⁷

The February 14, 2017 MRI scan and February 1, 2017 x-rays did not provide a cause of any diagnosed conditions. The Board has long held that diagnostic reports which offer no opinion regarding causal relationship are of limited probative value.¹⁸

OWCP also received reports from a nurse and a nurse practitioner. However, nurses and nurse practitioners are not considered physicians under FECA and their reports, therefore, do not constitute probative medical evidence.¹⁹

In a letter dated February 28, 2017, OWCP requested that appellant submit a comprehensive report from his treating physician, which included a reasoned explanation as to how the accepted work incident had caused his diagnosed medical conditions. It did not receive the necessary medical evidence.

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee’s own belief of causal relationship.²⁰ Appellant’s honest belief that his employment duties caused a medical injury, however, sincerely held, does not constitute medical evidence sufficient to establish causal relationship.²¹

Because appellant has not submitted reasoned medical evidence explaining how a diagnosed medical condition was caused by his accepted employment incident, he has not met his burden of proof.²²

On appeal appellant contends that the medical evidence is well-rationalized and sufficient to establish his claim. Contrary to appellant’s contention, the medical evidence is insufficiently rationalized explaining how the diagnosed left knee condition had been caused or aggravated by the accepted February 1, 2017 incident. As discussed above, none of the medical evidence

¹⁷ *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹⁸ *See G.H.*, Docket No. 17-1387 (issued October 24, 2017).

¹⁹ 5 U.S.C. 8102(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.404; *C.P.*, Docket No. 17-0042 (issued December 27, 2016); *Roy L. Humphrey*, 57 ECAB 238 (2005); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

²⁰ *D.D.*, 57 ECAB 734 (2006).

²¹ *See J.S.*, Docket No. 17-0967 (issued August 23, 2017).

²² The Board notes that the employing establishment executed a Form CA-16 on February 1, 2017 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee’s claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. Although OWCP denied appellant’s claim for an injury, it did not address whether he is entitled to reimbursement of medical expenses pursuant to the Form CA-16. *L.D.*, Docket No. 16-1289 (issued December 8, 2016).

appellant submitted contains sufficient rationale explaining how the diagnosed left knee condition was causally related to the accepted February 1, 2017 incident.

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 left knee condition causally related to the accepted February 1, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 11, 2017 is affirmed.

Issued: September 14, 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