

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

V.P., Appellant)	
)	
and)	Docket No. 18-1815
)	Issued: April 22, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
White Plains, NY, Employer)	
)	

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 September 28, 2018 appellant, through counsel, filed a timely appeal from an August 1, 2018 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 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 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a right knee condition causally related to the accepted September 18, 2012 employment incident.

FACTUAL HISTORY

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

On September 18, 2012 appellant, then a 50-year-old automotive lead technician, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he sustained a right knee injury when he slipped and twisted his right knee while stepping out of a vehicle in the performance of duty. He did not stop work.

OWCP initially denied the claim on January 31, 2013, finding that the claimed incident did not occur in the performance of duty as alleged. By decision dated August 12, 2013, OWCP's Branch of Hearings and Review affirmed the January 31, 2013 decision as modified, finding that appellant had established that the incident occurred as alleged, but the claim remained denied as the evidence of record was insufficient to establish causal relationship between appellant's diagnosed right knee conditions and the accepted employment incident. Appellant, through counsel, subsequently appealed to the Board. By decision dated July 25, 2014, the Board affirmed the hearing representative's August 12, 2013 decision.

Appellant, through counsel, subsequently requested reconsideration. By decisions dated October 20, 2015 and June 5, 2017, the Board affirmed OWCP's March 25, 2015⁴ and January 4, 2017 decisions, which denied modification of the prior decisions finding that appellant had not met his burden of proof to establish a right knee condition causally related to the September 18, 2012 employment incident.

On May 18, 2018 appellant, through counsel, requested reconsideration and submitted a May 11, 2018 report from Dr. Daniel Zelazny, a Board-certified orthopedic surgeon. In his report Dr. Zelazny noted that his review of medical records that day confirmed that appellant's injury, which occurred on September 18, 2012, resulted in more significant damage to his right knee, which ultimately resulted in worsening of his arthrosis, which subsequently resulted in knee replacement surgery. Counsel also resubmitted a copy of Dr. Zelazny's August 11, 2014 report which was previously of record.

³ Docket No. 17-0752 (issued June 5, 2017); Docket No. 15-1301 (issued October 20, 2015); Docket No. 14-0306 (issued July 25, 2014).

⁴ In its March 25, 2015 decision, OWCP authorized payment for appellant's medical treatment for the requisite 60 days from the employing establishment's issuance of a properly executed authorization for examination and/or treatment (Form CA-16) dated September 20, 2012.

By decision dated August 1, 2018, OWCP denied modification of its prior decision, finding that Dr. Zelazny's opinion was insufficient to establish causal relationship between the diagnosed conditions and the accepted September 18, 2012 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ 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.⁷

To determine if 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 incident that allegedly occurred.⁸ The second component is whether the employment incident caused a personal injury. 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 employment incident.⁹

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.¹⁰ 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 incident identified by the claimant.¹¹

⁵ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹⁰ *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

¹¹ *D.S.*, Docket No. 18-1553 (issued February 8, 2019); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted September 18, 2012 employment incident.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's January 4, 2017 decision because the Board considered that evidence in its June 5, 2017 decision and found it insufficient to establish causal relationship. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹²

In his May 11, 2018 report, Dr. Zelazny indicated that the medical records he reviewed confirmed that the injury which occurred on September 18, 2012 resulted in more significant damage to appellant's right knee and subsequently required knee replacement surgery. Dr. Zelazny concluded that appellant's right knee conditions were causally related to the September 18, 2012 work incident. However, he did not provide rationale in support of his conclusory opinion. A mere conclusory opinion provided by a physician, without the necessary rationale explaining how and why the accepted employment incident was sufficient to result in the diagnosed medical condition is insufficient to meet a claimant's burden of proof to establish a claim.¹³ The Board has also held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was related to an accepted employment incident.¹⁴ Therefore the report is of limited probative value and insufficient to establish causal relationship in this case.

Appellant also resubmitted Dr. Zelazny's August 11, 2014 report in support of his request for reconsideration. However, as noted above, the Board has already considered that report in its June 5, 2017 decision.¹⁵

As appellant has not submitted rationalized medical evidence to support his claim that he sustained a right knee condition causally related to the accepted September 18, 2012 employment incident, he has not met his burden of proof to establish entitlement to compensation benefits.

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.

¹² See *J.M.*, Docket No. 18-1467 (issued March 5, 2019).

¹³ *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

¹⁴ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁵ *Supra* note 12.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted September 18, 2012 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 1, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 22, 2019
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