

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

O.R., Appellant)	
)	
and)	Docket No. 18-1458
)	Issued: August 2, 2019
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Miami, FL, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 28, 2018 appellant filed a timely appeal from a July 9, 2018 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 over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a right knee injury causally related to the accepted August 6, 2014 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On May 22, 2017 appellant, then a 34-year-old former transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on August 6, 2014 he injured his right knee when reportedly doing lunge exercises as part of a physical therapy/work conditioning program while in the performance of duty. He further alleged that his right knee pain worsened over time at work. Appellant described his claimed condition as right knee joint effusion with ruptured popliteal cyst and vastus medialis obliquus atrophy. He last worked on November 16, 2015.³ On the reverse side of the claim form, a supervisor stated that August 6, 2014 was a scheduled day off for appellant.

Appellant submitted physical therapy treatment records covering the period August 6 through 11, 2014. An August 6, 2014 physical therapy record noted that he complained of increased right knee "pain after doing lunges."

In a consultation note dated April 8, 2015, Dr. Francis McCormick, an orthopedic surgeon, examined appellant and diagnosed right knee pain. She noted no evidence of fracture or dislocation in his x-rays.

On April 23, 2015 a magnetic resonance imaging (MRI) scan of appellant's right knee demonstrated a 1.2 centimeter cartilage defect superiorly in the trochlea; joint effusion; and intact cruciate ligaments and menisci. Attached to this report was another diagnostic report dated April 1, 2016. This MRI scan of appellant's right knee demonstrated joint effusion with a ruptured popliteal cyst, no definitive internal derangement of the knee, and findings suggesting a bone bruise of the posterior outer lateral tibial plateau without definitive fracture.

In a report dated April 5, 2016, Dr. Samy Bishai, an orthopedic surgeon, diagnosed a herniated lumbar disc at L5-S1 with right-sided radiculopathy of the right lower extremity, a status postop right inferior L5 hemilaminectomy and right S1 hemilaminectomy and partial facetectomy for the L5 nerve root and lysis of adhesions with excision of disc herniation at L5-S1, and slight atrophy of the vastus medialis right knee joint. He noted that on April 22, 2013 appellant sustained an injury at work after lifting heavy passenger luggage, which resulted in a sprain of his lumbar spine. Dr. Bishai noted that appellant suffered an aggravation of his condition at work on May 14, 2013 when he dragged oversized luggage. He stated that Dr. Jonathan A. Hyde, a Board-certified orthopedic surgeon, performed surgery on appellant's back on April 1, 2014 including a right inferior L5 hemilaminectomy, a right S1 anterior hemilaminectomy, an S1 foraminotomy, a partial facetectomy for the L5 nerve root, and lysis of adhesions and excision of the disc herniation at the L5-S1 disc space. Dr. Bishai opined that within a reasonable degree of medical certainty that

² *Order Remanding Case*, Docket No. 18-0013 (issued April 9, 2018).

³ Effective April 14, 2016, appellant was removed from employment.

appellant's vastus medialis atrophy was not related to a primary pathology of the right knee joint, but rather related to his back condition, which was due to an injury on May 14, 2013.

By letter dated May 12, 2017, appellant explained that, after he had back surgery due to an accepted work-related injury claim, he attended physical therapy/work conditioning. He stated that on or about August 6, 2014 he began to feel pain in his right knee after performing lunges. The knee pain became worse over time, and although it improved with rest and ice, it would resume intermittently in the performance of appellant's duties. Appellant stated that he was released to full duty and returned on August 25, 2014 after which his right leg condition and back condition began to deteriorate. He noted that he felt that he was not capable of bending, squatting, pushing, dragging, or lifting items in excess of 50 pounds in an awkward, repetitive position on a permanent basis.

By development letter dated June 2, 2017, OWCP advised appellant of the factual and medical deficiencies of his claim. It provided a questionnaire for his completion to establish the employment factors alleged to have caused or contributed to his medical condition and requested a medical report from his attending physician explaining how and why his federal work activities caused, contributed to, or aggravated his medical condition. OWCP afforded appellant 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated July 7, 2017, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the August 6, 2014 incident occurred in the performance of duty as alleged.

On August 14, 2017 appellant requested reconsideration and submitted January 23, 2015 treatment notes from Dr. Hyde, who diagnosed lumbar disc displacement.

In a report dated June 14, 2017, Dr. Bishai stated that, in his initial report of April 5, 2016, he had indicated that appellant's vastus medialis atrophy was not related to a primary pathology in the right knee joint, but rather to his back condition. He also indicated his opinion that the atrophy was related to an injury on May 14, 2013 which aggravated his original injury of April 22, 2013, and caused the development of radiculopathy due to compression of a nerve root in his back.

By decision dated September 20, 2017, OWCP modified the prior decision to find that appellant had established a diagnosis. However, the claim remained denied as appellant had not submitted sufficient medical evidence to establish causal relationship between his diagnosed conditions and the accepted employment incident.

On October 2, 2017 appellant timely appealed the September 20, 2017 decision to the Board. By order dated April 9, 2018, the Board set aside OWCP's September 20, 2017 decision and remanded the case for further development. The Board found that OWCP had referenced an August 22, 2014 treatment note from Dr. Hyde and an undated report from Dr. Jesse Z. Shaw, an orthopedic surgeon, both obtained from OWCP File No. xxxxxx033, but had not included the referenced evidence in the current case record, OWCP File No. xxxxxx404.

On remand OWCP included additional evidence in the current file, OWCP File No. xxxxxx404. In an August 22, 2014 treatment note, Dr. Hyde examined appellant for a follow-up after physical therapy. He stated that physical therapy had helped appellant and that appellant was

ready to return to work. Appellant informed Dr. Hyde that, when he performed flexibility stretches while attending physical therapy treatment, he felt pain radiating down his right leg. On examination he noted normal findings in the right knee, as well as normal findings on inspection of the right and left lower extremities. Dr. Hyde diagnosed lumbar disc displacement and stated that appellant was at maximum medical improvement. By letter dated October 5, 2015, Dr. Shaw, an orthopedic surgeon, indicated that appellant sustained a work-related injury on April 22, 2013 after lifting luggage. He noted that an MRI scan of appellant's lumbar spine demonstrated disc protrusion at L5-S1 and that appellant had a lumbar laminectomy/discectomy on April 1, 2014. Dr. Shaw opined that the atrophy of the right quadriceps was due to the injury of appellant's lumbar spine on April 22, 2013, which led to nonphysiological altered gait mechanics and pathologic knee symptoms.

On October 26, 2015 Dr. Shaw examined appellant for complaints of right thigh and knee pain. On examination of the right thigh he noted tenderness on palpation, 4/5 strength, and full active and passive range of motion without pain. Dr. Shaw noted that an MRI scan revealed a 1.2 cm cartilage defect of the trochlea. He diagnosed right joint effusion, right muscle wasting and atrophy, and generalized right muscle weakness. Dr. Shaw noted that there was atrophy of the right quadriceps, leading to nonphysiological altered gait and pathological knee symptoms. He stated that he believed that appellant's symptoms resulted from a prior injury.

In an attached accompanying undated letter, Dr. Shaw stated that appellant had been seen in his office on October 5, 2015. He noted that appellant had sustained a work-related injury on April 22, 2013 after lifting luggage at work, with complaints of pain radiating down his right leg. An MRI scan demonstrated disc protrusion at L5-S1 with a mass effect on the right nerve root. An electromyogram and nerve conduction velocity test demonstrated increased insertional activity at the right L5 and S1 regions with some increased activity. Dr. Shaw noted that appellant underwent lumbar surgery on April 1, 2014, after which appellant attended physical therapy. Appellant began to complain of right knee pain and spasms down the leg, along with problems walking and standing for long periods of time without fatigue. On examination, Dr. Shaw observed tenderness of the right thigh with weakness on strength testing of the quadriceps. He diagnosed right quadriceps muscle weakness and atrophy, right knee effusion, and right knee cartilage defect of the trochlea. Dr. Shaw opined that the atrophy of the right quadriceps was due to the injury of appellant's lumbar spine on April 22, 2013 leading to nonphysiological altered gait and pathologic knee symptoms.

By letter dated May 19, 2018, appellant argued that a review of his physical therapy notes would indicate that he sustained knee pain around August 11, 2014. He stated that he had no history of knee pain prior to his physical therapy sessions. Appellant therefore attributed his knee conditions to physical therapy and subsequent duties of his federal employment.

By *de novo* decision dated July 9, 2018, OWCP denied appellant's claim. It found that he had not submitted sufficient medical evidence to establish that performing lunge exercises on August 6, 2014 had caused his diagnosed right knee conditions. OWCP concluded, therefore, that the requirements had not been met to establish an injury or condition causally related to the accepted 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 of FECA, 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.⁴ 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.⁵

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. 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 question that requires rationalized medical opinion evidence to resolve the issue. 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. 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).⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right knee injury casually related to the accepted August 6, 2014 employment incident.

In support of his claim, appellant submitted reports from Dr. Shaw and Dr. Bishai dated October 5, 2015 through June 14, 2017. On October 5, 2015 Dr. Shaw, an orthopedic surgeon, stated that appellant sustained a work-related injury on April 22, 2013 after lifting luggage. He opined that the atrophy of the right quadriceps was due to the injury of appellant's lumbar spine on April 22, 2013. On October 26, 2015 Dr. Shaw examined appellant for complaints of right thigh and knee pain. He stated that he believed that appellant's symptoms resulted from a prior

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *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).

⁶ *S.F.*, Docket No. 18-0926 (issued July 26, 2018); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

injury. In an undated letter, Dr. Shaw stated that appellant had sustained a work-related injury on April 22, 2013 after lifting luggage at work and opined that the atrophy of the right quadriceps was due to the injury of appellant's lumbar spine on April 22, 2013. In a report dated April 5, 2016, Dr. Bishai noted that on April 22, 2013 appellant sustained an injury at work after lifting heavy passenger luggage, and that he suffered an aggravation of his condition at work on May 14, 2013. On June 14, 2017 he stated that vastus medialis atrophy was related to an injury on May 14, 2013 which aggravated appellant's original injury of April 22, 2013.

It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of limited probative value.⁹ While Dr. Shaw and Dr. Bishai provided opinions on the cause of appellant's condition, they did not attribute appellant's conditions to an injury resulting from the accepted August 6, 2014 employment incident.¹⁰

In an August 22, 2014 treatment note, Dr. Hyde examined appellant for a follow-up after physical therapy. Appellant informed Dr. Hyde that, when he performed flexibility stretches while attending physical therapy treatment, he felt pain radiating down his right leg. In this treatment note, Dr. Hyde merely repeated the history of injury as reported by appellant without providing his own opinion regarding whether his condition was related to an incident on August 6, 2014.¹¹ Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹²

Appellant submitted notes from Dr. Hyde and Dr. McCormick dated January 23 and April 8, 2015. In January 23, 2015 treatment notes, Dr. Hyde diagnosed lumbar disc displacement. On April 8, 2015 Dr. McCormick examined appellant and diagnosed right knee pain. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship. These notes do not offer such an opinion and are therefore insufficient to establish appellant's claim.¹³

Appellant submitted the results of MRI scans of his right knee dated April 1 and 23, 2015. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment incident and a diagnosed condition.¹⁴ Appellant also submitted physical therapist records dated August 6 through 11, 2014. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists,

⁹ *T.C.*, Docket No. 18-1351 (issued May 9, 2019); *J.M.*, Docket No. 17-1002 (issued August 22, 2017); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹⁰ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.* Docket No. 17-1549 (issued July 6, 2018).

¹¹ *See R.T.*, Docket No. 17-1353 (issued December 3, 2018).

¹² *See supra* note 10.

¹³ *K.K.*, Docket No. 18-1209 (issued March 7, 2019).

¹⁴ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

and social workers are not considered “physician[s]” as defined under FECA.¹⁵ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁶

As appellant has not submitted rationalized medical evidence to support his claim that he sustained an injury causally related to the accepted employment incident of August 6, 2014, the Board finds that he has not met his burden of proof.

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 6, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2018 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: August 2, 2019
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees’ Compensation Appeals Board

¹⁵ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹⁶ See *M.F.*, Docket No. 17-1973 (issued December 31, 2018).