

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

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<b>S.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-0027</b>
	)	<b>Issued: December 30, 2019</b>
<b>DEPARTMENT OF JUSTICE, FEDERAL</b>	)	
<b>BUREAU OF PRISONS METROPOLITAN</b>	)	
<b>DETENTION CENTER, Brooklyn, NY,</b>	)	
<b>Employer</b>	)	
	)	

*Appearances:*  
*Thomas S. Harkins, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
JANICE B. ASKIN, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On October 1, 2018 appellant, through counsel, filed a timely appeal from a June 19, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish a left knee condition causally related to the accepted June 20, 2017 employment incident.

## FACTUAL HISTORY

On June 30, 2017 appellant, then a 55-year-old police lieutenant, filed a traumatic injury claim (Form CA-1) alleging that, on June 20, 2017, he injured his left knee while in the performance of duty. He indicated that he had just arrived at work when his body alarm activated. Appellant stopped work on August 8, 2017.

In a July 7, 2017 report, Dr. Moiz Manaqibwala, a Board-certified orthopedic surgeon, recounted appellant's complaints of left knee pain that started after he ran to help a fellow officer at work. He noted a date of injury of June 20, 2017. Dr. Manaqibwala related that appellant had a similar episode five years earlier. Upon examination of appellant's left knee, he observed mild effusion and patellar compression tenderness and crepitus. Dr. Manaqibwala diagnosed left knee osteoarthritis and left knee strain. He opined that the June 20, 2017 incident, as described by appellant, was the cause of his left knee injury. Dr. Manaqibwala explained that appellant's complaints were consistent with this type of injury and the history of injury was consistent with objective examination findings. He reported that appellant's work-related injury resulted in significant aggravation of a previous underlying arthritic condition.

In a July 11, 2017 report, Dr. James A. Germano, a Board-certified orthopedic surgeon, noted a June 20, 2017 date of injury and recounted that appellant twisted his left knee when he fell down while at work. Examination of appellant's left knee showed mild effusion and medial line tenderness and crepitus about the patella. Dr. Germano related that a left knee x-ray revealed advanced patellofemoral osteoarthritis. He diagnosed left knee primary osteoarthritis with acute medial joint line tenderness. Dr. Germano related that appellant was unable to work.

In an August 17, 2017 development letter, OWCP informed appellant that his claim was initially accepted as a minor injury, but was now being reopened to formally consider the merits of the claim. It advised him of the factual and medical evidence necessary to establish his claim and also provided a questionnaire for completion. OWCP afforded appellant 30 days to provide the necessary factual information and medical evidence.

Appellant submitted a June 22, 2017 report by Dr. Manaqibwala, who related that appellant complained of left knee pain that started when he ran to help another police officer at work and twisted his left knee. Dr. Manaqibwala reviewed appellant's history and noted left knee examination findings of mild effusion and patellar compression tenderness and crepitus about the patella. He diagnosed left knee primary osteoarthritis and left knee sprain. Dr. Manaqibwala reported that appellant's work-related injury resulted in significant aggravation of his previous underlying arthritic condition.

OWCP received an authorization for examination and/or treatment form (Form CA-16) dated June 22, 2017 from the employing establishment, which authorized medical treatment for his claimed June 20, 2017 left knee injury. In Part B of the authorization, dated July 6, 2017, an

unknown provider with an illegible signature indicated that appellant was injured while at work on June 20, 2017. Appellant was diagnosed with primary left knee osteoarthritis and left knee injury. The provider checked a box marked “yes” indicating that the condition was caused or aggravated by the described employment activity.

A July 6, 2017 duty status report (Form CA-17) by Dr. Manaqibwala noted that appellant could not work in any capacity at this time.

An August 7, 2017 left knee magnetic resonance imaging (MRI) scan demonstrated tricompartmental chondral loss and osteophytes with effusion, mild chronic anterior cruciate ligament (ACL) sprain, and extensor mechanism tendinopathy without tear.

In an August 15, 2017 report, Dr. Germano indicated that appellant was seen for a follow-up examination due to continued left knee pain. He reviewed appellant’s history and noted that a left knee MRI scan showed no meniscus tear chondral loss. Dr. Germano provided examination findings and diagnosed left knee primary osteoarthritis.

In an August 17, 2017 work status note, Dr. Germano indicated that appellant could not return to work until further notice.

By decision dated October 2, 2017, OWCP denied appellant’s claim finding that fact of injury had not been established. It explained that he had not responded to its development questionnaire and therefore failed to establish that the alleged June 20, 2017 employment incident occurred as he described. OWCP also noted that the medical evidence of record was insufficient to establish a medical condition causally related to the alleged incident.

On March 21, 2018 appellant, through counsel, requested reconsideration. In an accompanying brief, counsel argued that appellant had clearly established “fact of injury” as defined under FECA with respect to the June 20, 2017 employment incident. He indicated that appellant had prepared a detailed statement, which outlined the specific circumstances surrounding the June 20, 2017 employment incident. Counsel also indicated that a March 13, 2018 narrative report constituted new medical evidence and established that appellant’s June 20, 2017 work injury was causally related to the described employment incident.

Appellant submitted his completed questionnaire dated March 5, 2018. He recounted that he was on his way to an office when he heard the body alarm activated. Appellant indicated that he immediately responded and that when he spun around in the narrow corridor, he felt a sharp pain in his left knee. He described that his left knee was extremely swollen and painful. Appellant noted that he had not sustained any other injury between the date of injury and the date he first reported the incident to his supervisor. He also noted that a similar incident, which resulted in similar symptoms, occurred in late 2008 and was reported to the employing establishment.

In a March 13, 2018 narrative report, Dr. Germano recounted how appellant twisted his left knee at work on June 20, 2017 when he abruptly spun around to help one of his coworkers. He reported left knee examination findings of medial joint line tenderness and crepitus about the patella and mild effusion. Dr. Germano noted guarding during the examination and flexion to 120 degrees upon range of motion testing. Sensation examination was intact to light touch throughout. Dr. Germano indicated that a left knee x-ray revealed advanced patellofemoral osteoarthritis. He

provided a detailed history of the medical treatment that he provided and indicated that appellant still complained of left knee pain despite physical therapy and cortisone injections. Dr. Germano diagnosed left knee osteoarthritis and left knee contusion. He opined that appellant's left knee injury was causally related to the June 20, 2017 work incident. Dr. Germano explained that appellant had underlying osteoarthritis, which was stable, but exacerbated it when he twisted his left knee and spun around abruptly while at work on June 20, 2017.

OWCP received additional medical reports dated September 12 to October 3, 2017 by Dr. Germano. Dr. Germano noted the June 20, 2017 work injury and reported left knee examination findings of large effusion and medial joint line tenderness and crepitus about the patella. He diagnosed left knee patellofemoral osteoarthritis with acute medial joint line tenderness. Dr. Germano opined that appellant's knee pain was directly related to his twisting injury and aggravated his underlying condition.

By decision dated June 19, 2018, OWCP modified its October 2, 2017 decision finding that appellant had met his burden of proof to establish the factual and medical portion of fact of injury. However, it denied appellant's claim because the medical evidence of record was insufficient to establish causal relationship between his left knee condition and the accepted June 20, 2017 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.<sup>7</sup> 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

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<sup>3</sup> *Id.*

<sup>4</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *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).

<sup>7</sup> *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

time, place, and in the manner alleged.<sup>8</sup> Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>9</sup>

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.<sup>10</sup> 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 factor(s) identified by the employee.<sup>11</sup> The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>12</sup>

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.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted June 20, 2017 employment incident.

In reports dated July 11 to October 3, 2017, Dr. Germano related how appellant experienced left knee pain after the June 20, 2017 incident and provided examination findings. He diagnosed left knee patellofemoral osteoarthritis with acute medial joint line tenderness and attributed his injury to the June 20, 2017 twisting injury at work. In a March 13, 2018 narrative report, Dr. Germano further explained that appellant's underlying osteoarthritis was stable, but was exacerbated when he twisted his left knee and spun around while at work on June 20, 2017. Although his March 13, 2018 report contains an affirmative opinion on causal relationship, it is not sufficiently rationalized as it does not provide a detailed opinion explaining how appellant's preexisting left knee condition had been aggravated beyond what was expected with normal degeneration.<sup>14</sup> As Dr. Germano failed to discuss whether appellant's preexisting injury had

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<sup>8</sup> *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>9</sup> *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>10</sup> *See S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

<sup>11</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>12</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

<sup>14</sup> *See K.C.*, Docket No. 19-0834 (issued October 28, 2019).

progressed beyond what might be expected from the natural progression of that condition, the opinion is insufficient to establish the claim.<sup>15</sup>

Similarly, in June 22 and July 6 and 7, 2017 reports, Dr. Manaqibwala also opined that appellant's June 20, 2017 injury resulted in a significant aggravation of his underlying left knee arthritic condition. He did not, however, provide discussion or medical rationale explaining how appellant's current left knee symptoms resulted from the June 20, 2017 employment incident in light of appellant's underlying arthritic condition.<sup>16</sup> These reports, therefore, are insufficient to establish appellant's claim.

The August 7, 2017 left knee MRI scan also fails to establish appellant's claim as the Board has explained that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.<sup>17</sup>

On appeal counsel alleges that Dr. Germano's March 13, 2018 report contained an unequivocal opinion, supported by sound medical rationale, that the injuries described were causally related to the employment incident. As explained above, however, Dr. Germano's opinion regarding causal relationship fails to establish appellant's claim as it did not adequately explain how the accepted June 20, 2017 employment incident aggravated or contributed to appellant's underlying left knee degenerative condition. In order to obtain benefits under FECA, an employee 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.<sup>18</sup> Because appellant has not provided such evidence, he has not met his burden of proof to establish his traumatic injury claim.

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.<sup>19</sup>

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted June 20, 2017 employment incident.

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<sup>15</sup> *M.O.*, Docket No. 18-0229 (issued September 23, 2019); *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

<sup>16</sup> *See supra* note 13; *see also W.S.*, Docket No. 17-1769 (issued July 26, 2018); *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

<sup>17</sup> *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

<sup>18</sup> *Supra* notes 5 & 6.

<sup>19</sup> The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 19, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 30, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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