United States Department of Labor
Employees' Compensation Appeals Board

B.J., Appellant	)	
and	)	**Docket No. 19-1099**
	)	**Issued: December 18, 2019**
DEPARTMENT OF VETERANS AFFAIRS, SEPULVEDA AMBULATORY CARE CENTER, North Hills, CA, 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
JANICE B. ASKIN, Judge

JURISDICTION

On April 15, 2019 appellant filed a timely appeal from a February 1, 2019 merit decision and a February 20, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the February 1, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish an injury in the performance of duty on November 5, 2018, as alleged; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 11, 2018 appellant, then a 62-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 5, 2018 he suffered a left quadriceps tendon tear when he was walking toward the parking lot, during his lunch break, while in the performance of duty. On the reverse side of the claim form, appellant's supervisor noted that he was on a paid lunch break and was, therefore, not injured in the performance of duty. Appellant stopped work the same day.

In a development letter dated December 31, 2018, OWCP informed appellant that he submitted no evidence to establish that the claimed November 5, 2018 employment incident occurred as alleged. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary information.

By decision dated February 1, 2019, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the November 5, 2018 employment incident occurred in the performance of duty, as alleged. It noted that it was unclear as to what caused appellant to fall because he had not responded to the December 31, 2018 questionnaire and, therefore, had not established the factual component of his claim.

On February 13, 2019 appellant requested reconsideration of the February 1, 2019 decision and submitted additional evidence.

In a November 5, 2018 incident report, appellant indicated that at 9:30 p.m. he slipped off the grassy area while walking toward the parking lot. He provided that he experienced left leg pain going up to his hip.

In a December 10, 2018 magnetic resonance imaging (MRI) scan of appellant's left knee, Dr. Mehdi Jalili, a Board-certified radiologist, found a complete avulsion of the distal rectus femoris tendon from its patella attachment with approximately 3.5 cm retraction of the torn fibers, a longitudinal horizontal oblique tear of the posterior horn and body of the medial meniscus, a possible longitudinal horizontal tear of the posterior horn and body of the lateral meniscus, a high-grade chondral fissuring of the median ridge of the patella, and a moderate-sized joint effusion.

Appellant also submitted multiple work status reports dating from November 6 to December 17, 2018, indicating that he had been held off of work from November 6, 2018 through February 11, 2019 due to left hip joint pain, left leg pain, left knee joint pain and surgery performed to treat his left quadriceps tendon tear related to an accidental fault.

By decision dated February 20, 2019, OWCP denied appellant's request for reconsideration of the merits of the claim.

LEGAL PRECEDENT -- ISSUE 1

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,[3] 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 whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[6] Fact of injury consists of two components that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.[7] 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.[8]

An employee's statement that an injury occurred at a given time and place, and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence. Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[9] Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statement in determining whether a *prima facie* claim has been established.

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

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

[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] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[7] *Gary J. Watling,* 52 ECAB 278 (2001).

[8] *Deborah L. Beatty,* 54 ECAB 340 (2003).

[9] *S.N.*, Docket No. 12-1222 (issued August 23, 2013); *Tia L. Love*, 40 ECAB 586, 590 (1989).

opinion evidence supporting such causal relationship.[10] Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[11] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[12] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[13]

ANALYSIS -- ISSUE 1

The Board finds that appellant has met his burden of proof to establish that the November 5, 2018 employment incident occurred, as alleged.

Appellant indicated on his claim form that he suffered a left quadriceps tendon tear while in the performance of duty on November 5, 2018. He explained that at 9:30 p.m. on that date he was walking toward the parking lot, when he slipped on a muddy hill and fell on his knee during his break. On the reverse side of the claim form, the employing establishment checked a box marked "no" indicating appellant was not injured while in the performance of duty, noting that he was on paid lunch break at the time of the alleged incident. It further noted that he stopped work at 11:15 p.m. on the same day of the alleged incident.

In a November 5, 2018 incident report, appellant again indicated that at 9:30 p.m., he slipped off the grassy area at work while walking toward the parking lot and noted that he experienced left leg pain going up to his hip as a result. It was not until December 10, 2018 when appellant underwent a left knee MRI scan that he understood the severity of his condition. Appellant also provided multiple work status reports dating from November 6 to December 17, 2018, in which he was held off of work from November 6, 2018 through February 11, 2019 due to left hip joint pain, left leg pain, left knee joint pain and surgery performed to treat his left quadriceps tendon tear.

The Board finds that appellant's description on the Form CA-1 and the November 5, 2018 incident report are sufficient to establish that the November 5, 2018 employment incident occurred at the time, place, and in the manner alleged. Appellant provided a consistent account of the mechanism of injury that has not been refuted by evidence contained in the record.[14] The medical

[10] *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[11] *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[12] *L.D., id*.; *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[13] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[14] *See S.W.*, Docket No. 17-0261 (issued May 24, 2017) (the Board found that OWCP improperly determined that the alleged employment incident did not occur when appellant provided consistent accounts of the claimed incident and there was no evidence to refute her detailed description); *see also J.L.*, Docket No. 17-1712 (issued February 12, 2018).

evidence of record also substantiated that appellant was unable to work after the November 5, 2018 alleged employment incident due to left hip joint pain, left leg pain, left knee joint pain, and surgery performed to treat his left quadriceps tendon tear, as a result of an accidental fall. While the employing establishment asserted that appellant was injured during a paid lunch break, and therefore he was not in the performance of duty, it did not dispute how and where the employment incident occurred.

As noted above, a claimant's statement that an injury occurred at a given time, place, and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[15] The Board finds, therefore, that appellant has established that the November 5, 2018 employment incident occurred in the performance of duty, as alleged.

As appellant has established that the November 5, 2018 employment incident factually occurred, the question becomes whether this incident caused an injury.[16] The case must therefore be remanded for consideration of the medical evidence of record. Following this and other such further development as is deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden of proof to establish a diagnosed condition causally related to the accepted November 5, 2018 employment incident.[17]

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that an injury occurred in the performance of duty on November 5, 2018 as alleged. The case is not in posture for decision, however, with regard to whether he has established a diagnosed condition causally related to the accepted November 5, 2018 employment incident.[18]

[15] *A.C.*, Docket No. 18-1567 (issued April 9, 2019); *Gregory J. Reser*, 57 ECAB 277 (2005).

[16] *See C.M.*, Docket No. 19-0009 (issued May 24, 2019).

[17] *A.C., supra* note 15; *see also Gregory J. Reser, supra* note 15; *Betty J. Smith*, 54 ECAB 174 (2002).

[18] Due to the disposition of issue 1, issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the February 20 and 1, 2019 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 18, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board