United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 19-1329**
	)	**Issued: December 17, 2019**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS & BORDER PROTECTION, Orlando, FL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 May 29, 2019 appellant, through counsel, filed a timely appeal from a March 21, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 July 28, 2017 employment incident.

FACTUAL HISTORY

On August 2, 2017 appellant, then a 64-year-old field technology officer, filed a traumatic injury claim (Form CA-1) alleging that on July 28, 2017 he sustained a swollen right knee as a result of lifting switches from a table and stacking them on the side of a wall while in the performance of duty.

In an August 7, 2017 state workers' compensation form, Dr. Segundo Corripio, an occupational medicine specialist, noted a date of injury as July 28, 2017. He indicated that appellant had a work-related sprain of an unspecified site of the right knee, initial encounter. Dr. Corripio further indicated that appellant had a preexisting condition that contributed to his current medical disorder. He listed appellant's functional limitations and restrictions.

In a prescription dated August 7, 2017, Ricardo Espinosa, a physician assistant, diagnosed right knee sprain and ordered physical therapy.

In a referral slip dated July 28, 2017, Dr. Bernard S. Chapnik, a family and an emergency medicine specialist, ordered a magnetic resonance imaging (MRI) scan to rule out internal derangement. In a state workers' compensation form and narrative medical report dated August 14, 2017, he noted a date of injury as July 28, 2017. Dr. Chapnik diagnosed sprain of an unspecified site of the right knee, subsequent encounter. He listed appellant's functional limitations and restrictions. Dr. Chapnik explained that a right knee MRI scan was necessary to rule out recent internal derangement because appellant had undergone two prior right knee surgeries.

An authorization for examination and/or treatment (Form CA-16) was completed by the employing establishment on August 4, 2017 which authorized appellant to receive treatment for his swollen right knee. In the attending physician's report (Part B of Form CA-16), dated August 7, 2017, Mr. Espinosa provided an illegible history of injury and reiterated his prior diagnosis of right knee sprain. He checked a box marked "No" to the question of whether the diagnosed condition was caused or aggravated by the described employment activity. Mr. Espinosa released appellant to light-duty work as of the date of his examination.

Dr. Corripio, in an August 7, 2017 narrative report, noted a history of injury that on July 28, 2017 appellant experienced right knee pain while moving equipment at work. He continued to diagnosis right knee sprain and to place appellant on light duty.

A right knee MRI scan report dated August 18, 2017 by Dr. Philip B. McDonald, a Board-certified diagnostic radiologist, provided impressions of radial tears of the anterior and posterior horns of the medial meniscus, radial tear of the anterior horn of the lateral meniscus, complex tear of the posterior horn of the lateral meniscus with radial component, full-thickness chondral loss of

the medial compartment and lateral femoral condyle, partial-thickness chondral loss of the lateral patellar facet, small joint effusion, and tri-compartmental osteophytosis and no acute fracture.

A state workers' compensation form and narrative report dated August 21, 2017 from Dr. Susan F. Nelson, an osteopath specializing in emergency medicine, noted a date of injury of July 28, 2017. She diagnosed sprain of an unspecified site of the right knee, subsequent encounter. Dr. Nelson listed appellant's functional limitations and restrictions, and indicated that he was on light duty.

Physical therapy notes dated August 15 through 25, 2017 were submitted.

An August 29, 2017 state workers' compensation form by Dr. Mario Berkowitz, a Board-certified orthopedic surgeon, indicated that appellant had effusion, other internal derangements, and other tear of the medial meniscus, initial encounter, of the right knee. It also noted that he had no functional limitations or restrictions. In a prescription also dated August 29, 2017, Dr. Berkowitz diagnosed unilateral primary osteoarthritis of the right knee. He ordered physical therapy, three times a week for four weeks and an elastic sleeve for appellant's right knee. On September 14, 2017 Dr. Berkowitz prescribed ibuprofen. In an additional state workers' compensation form dated September 14, 2017, he indicated that there were no changes regarding his clinical assessment/determinations and again advised that appellant had no functional limitations or restrictions.

OWCP, in an October 17, 2017 development letter, advised appellant that when his claim was first submitted it appeared to be a minor injury that resulted in minimal or no lost time from work and it therefore had administratively approved payment of a limited amount of medical expenses. It explained that his claim was being reopened for formal consideration of the merits because his medical bills had exceeded $1,500.00. OWCP requested that appellant provide additional medical evidence to establish that he sustained a diagnosed condition as a result of the alleged employment incident and provided a factual questionnaire for his completion. It afforded him 30 days to submit the necessary evidence.

In an October 27, 2017 statement, appellant essentially reiterated the factual history of injury he provided on the August 2, 2017 CA-1 form. He also indicated that he moved empty boxes to the passenger area against a wall. Appellant described his right knee symptoms and bilateral knee permanent impairment. He maintained that he had not sustained an injury on or off duty between the date of his claimed injury and the date his injury was first reported.

Appellant submitted additional medical evidence from Mr. Espinosa and Dr. Berkowitz. In an August 7, 2017 attending physician's report (Form CA-20), Mr. Espinosa reiterated his prior diagnosis of right knee sprain and again checked a box marked "No" to the question of whether the diagnosed condition was caused or aggravated by the July 28, 2017 employment activity.

Dr. Berkowitz, in a state workers' compensation form, narrative report, order form, and prescription noted dated October 16, 2017, and a November 13, 2017 duty status report (Form CA-17), continued to diagnose effusion, other internal derangements, other tear of the medial meniscus, initial and subsequent encounters, and unilateral primary osteoarthritis of the right knee. He also reiterated that appellant had no functional limitations or restrictions and advised that he

could perform full-duty work with no restrictions. Dr. Berkowitz ordered a hinged knee brace and ibuprofen.

Treatment notes dated October 23 and 30, and November 2, 2017 from appellant's physical therapists were submitted.

By decision dated November 27, 2017, OWCP denied appellant's traumatic injury claim finding that the evidence of record was insufficient to establish that the employment incident occurred as described and therefore the factual component of fact of injury had not been established. It concluded that he had not met the requirements to establish an injury as defined by FECA.

On December 13, 2017 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In narrative reports dated August 29, September 14, and November 13, 2017, and a Form CA-17 report dated December 5, 2017, Dr. Berkowitz discussed findings on physical and x-ray examination, and again noted his prior right knee diagnoses. He advised that appellant could continue full-duty work and his established treatment.

An October 16, 2017 report from Dr. Babak Sheikh, a Board-certified orthopedic surgeon, noted a date of injury as July 28, 2017. He examined appellant and diagnosed other tear of the medial meniscal, arthritis, joint effusion, other internal derangements, and unilateral primary osteoarthritis of the right knee.

By decision dated March 22, 2018, an OWCP hearing representative modified the November 27, 2017 decision to find that appellant had established that the July 28, 2017 employment incident had occurred as alleged. However, she affirmed the denial of the claim as he failed to provide rationalized medical evidence sufficient to establish that his diagnosed conditions were causally related to the accepted employment incident.

In an additional report dated November 13, 2017, Dr. Sheikh noted that appellant presented for a follow-up evaluation of his right knee condition. Appellant had 50 percent improvement of his symptoms after receiving a cortisone injection two weeks prior. Dr. Sheikh again noted his prior right knee diagnoses and recommended that appellant continue his established treatment.

On January 9, 2019 appellant, through counsel, requested reconsideration. Counsel submitted a letter dated December 17, 2018 from Dr. Neil Allen, Board-certified in internal medicine and neurology. Dr. Allen noted a history of the accepted July 28, 2017 employment incident and that appellant had prior right knee injuries in 2006 and 2008 for which he underwent arthroscopic surgery. He reviewed his medical records, including Dr. McDonald's August 18, 2017 MRI scan report and Dr. Berkowitz' August 29, 2017 x-ray report. Dr. Allen advised that appellant's condition should be updated to include sprain/strain; precipitation of other tear of the medial meniscus, current injury; precipitation of the other tear of the lateral meniscus, current injury; and aggravation of unilateral primary osteoarthritis of the right knee based on Dr. Berkowitz' August 29, 2017 reports. He referenced, at some length, medical literature describing osteoarthritis in the 14th edition of the Merck Manual, risk factors associated with occupationally-related osteoarthritis in a Framingham study, and the causes of a repetitive

meniscal injury in an article published in the journal of the American Academy of Orthopedic Surgeons. Dr. Allen opined that appellant's right knee osteoarthritis and meniscal condition(s) were directly precipitated and/or aggravated by the acute trauma sustained on July 28, 2017. He indicated that his opinion was consistent with and supported by the scientific evidence discussed in the above-noted medical literature. Dr. Allen related that his opinion was not based on the medical literature. He maintained that his references to the medical literature were meant to be illustrative and not a substitute for medical reasoning.

OWCP, by decision dated March 21, 2019, denied modification of its November 27, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[4] and 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.[5] 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.[6]

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.[7] There are 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.[9]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[10] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a

[3] *Id.*

[4] *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *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).

[7] *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[8] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *E.M., id.; John J. Carlone*, 41 ECAB 354 (1989).

[10] *S.S., supra* note 7; *Robert G. Morris*, 48 ECAB 238 (1996).

complete factual and medical background.[11] 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 incident.[12]

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.[13]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted July 28, 2017 employment incident.

In a December 17, 2018 letter, Dr. Allen noted a history of the accepted July 28, 2017 employment incident and that appellant had prior right knee injuries in 2006 and 2008 for which he underwent arthroscopic surgery. He diagnosed sprain/strain, precipitation of other tear of the medial meniscus, current injury, precipitation of the other tear of the lateral meniscus, current injury, and aggravation of unilateral primary osteoarthritis of the right knee based on his review of appellant's medical records, including the reports and diagnostic studies of Dr. Berkowitz and Dr. McDonald. Dr. Allen opined that appellant's right knee osteoarthritis and meniscal condition(s) were directly precipitated and/or aggravated by the July 28, 2017 employment incident. He maintained that his opinion was consistent with and supported by the scientific evidence from medical literature referenced in his report. Although Dr. Allen's report contains an affirmative opinion on causal relationship, the Board finds that it does not contain sufficient medical rationale explaining how moving switches and empty boxes at work, caused or contributed to appellant's right knee conditions. The Board has found that medical evidence that provides a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[14] Because Dr. Allen did not provide a reasoned opinion explaining how the July 28, 2017 employment incident caused or contributed to appellant's right knee conditions, his report is insufficient to establish his claim. The need for rationalized medical opinion evidence is particularly important in this case since appellant had preexisting right knee conditions for which he underwent surgeries.[15]

[11] *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[12] *Id.*

[13] *R.C.*, Docket No. 18-1146 (issued August 12, 2019); *J.F.*, Docket No. 19-0456 (issued July 12, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[14] *See R.C., id.*; *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[15] *See supra* note 13.

Dr. Corripio's state workers' compensation form and narrative report dated August 7, 2017 noted a history of the accepted July 28, 2017 employment incident, diagnosed sprain of an unspecified site of the right knee, initial encounter, and listed appellant's functional limitations and restrictions. He found that appellant's diagnosed condition was work related. However, Dr. Corripio did not provide rationale explaining, physiologically, how appellant's diagnosed condition was caused or aggravated by the accepted July 28, 2017 employment incident. The Board has 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/disability was related to employment factors.[16] Dr. Corripio further noted that appellant had a preexisting condition that contributed to his current medical disorder. 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.[17] Thus, Dr. Corripio's opinion is insufficient to establish appellant's burden of proof.[18]

The July 28 and August 21, 2017 state workers' compensation forms and August 21, October 16, and November 13, 2017 reports from Drs. Chapnik, Nelson, and Sheikh noted a date of injury of July 28, 2017, diagnosed sprain of an unspecified site of the right knee, subsequent encounter, and other tear of the medial meniscal, arthritis, joint effusion, other internal derangements, and unilateral primary osteoarthritis of the right knee, and listed appellant's limitations and restrictions. They did not, however, offer an opinion as to whether the accepted employment incident caused or aggravated appellant's conditions and resulted in the current limitations and restrictions. The Board has held that a medical report is of no probative value if it does not offer an opinion on whether the accepted employment incident caused or aggravated the claimed condition.[19] For these reasons, the Board finds that the reports of Drs. Chapnik, Nelson, and Sheikh are insufficient to establish appellant's claim.

Similarly, Dr. Berkowitz' August 29, September 14, October 16, November 13, and December 5, 2017 state workers' compensation forms, prescriptions, narrative reports, and Form CA-17 report which diagnosed effusion, other internal derangements, other tear of the medial meniscus, initial encounter, and unilateral primary osteoarthritis of the right knee also are deficient as these reports do not provide a medical opinion on causal relationship.[20]

Appellant submitted Dr. McDonald's August 18, 2017 MRI scan report. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on

[16] *See J.M.*, Docket No. 17-1002 (issued August 22, 2017); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

[17] *Supra* note 13 at Chapter 2.805.3e (January 2013).

[18] *See Cardelia Walden*, Docket No. 96-87 (issued January 7, 1998).

[19] *See D.H.*, Docket No. 19-0803 (issued September 10, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *J.M.*, Docket No. 16-0306 (issued May 5, 2016).

[20] *Id.*

causal relationship between the accepted employment factors and a diagnosed condition.[21] For this reason, this evidence is insufficient to establish appellant's claim.

Appellant also submitted reports from a physician assistant and physical therapists. These reports do not constitute competent medical evidence because these individuals are not considered "physicians" as defined under FECA.[22] Consequently, their medical findings and opinions are insufficient to establish entitlement to compensation benefits.

As there is no well-reasoned medical opinion establishing appellant's claim for compensation, the Board finds that he has not met his burden of proof.[23]

On appeal counsel contends that OWCP's March 21, 2019 decision was not rationalized and appellant's new evidence was not properly considered. Contrary to counsel's contentions, OWCP considered the medical evidence relevant to causal relationship and clearly explained the reasons why it found the medical evidence submitted by appellant insufficient to establish that he sustained a right knee condition causally related to the accepted July 28, 2017 employment incident.[24]

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 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 condition causally related to the accepted July 28, 2017 employment incident.

[21] *See W.D.*, Docket No. 19-1124 (issued October 22, 2019); *D.B.*, Docket No. 19-0481 (issued August 20, 2019).

[22] Section 8101(2) of FECA provides that medical opinion, in general, can only be given by a qualified physician. This section defines a physician as 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); *see S.J.*, Docket No. 19-0693 (issued August 23, 2019); *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *M.M.*, Docket No. 16-1617 (issued January 24, 2017) (lay individuals such as physician assistants and physical therapists are not competent to render a medical opinion under FECA). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

[23] *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 2018).

[24] 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); *C.P.*, Docket No. 18-0225 (issued August 5, 2019); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the March 21, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 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