United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
and	)	**Docket No. 19-0412**
	)	**Issued: July 8, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Washington, DC, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 18, 2018 appellant, through counsel, filed a timely appeal from a November 21, 2018 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 lower extremity condition causally related to the accepted March 21, 2018 employment incident.

FACTUAL HISTORY

On March 21, 2018 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a "ruptured tendon in right knee" that day as a result of slipping on the snow after he walked off a porch while in the performance of duty. He stopped work on the date of injury.

In a development letter dated April 17, 2018, OWCP indicated that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay (COP) or challenge the case, payment of a limited amount of medical expenses was administratively approved. It reopened the claim for formal consideration of the merits because it had received an indication that he had not returned to work in a full-time capacity. OWCP requested additional evidence and afforded appellant 30 days to respond to its inquiries.

The employing establishment subsequently sent OWCP a "Priority for Assignment Worksheet" indicating that no adequate work was available to appellant.

By decision dated May 24, 2018, OWCP accepted that the March 21, 2018 employment incident occurred as alleged, but denied the claim finding that the medical evidence of record failed to establish a diagnosis in connection with the accepted employment incident. Therefore, it concluded that the requirements have not been met to establish an injury as defined by FECA.

On June 11, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted a July 13, 2018 prescription from Dr. Steven H. Bernstein, a Board-certified orthopedic surgeon, who advised that appellant should remain off work for an additional 12 weeks as he continued to rehabilitate from right knee surgery.

Progress reports dated April 16 and 26, and May 30, 2018 from Dr. Bernstein noted that appellant underwent surgery on April 11, 2018 for a right quadriceps tendon repair and was rehabilitating his right lower extremity with physical therapy.

In a progress report dated July 13, 2018, Dr. Bernstein noted that appellant was doing much better with physical therapy, but that it was not safe for him to return to mail delivery. He explained that appellant should remain out of work for an additional 12 weeks, with a plan for release back to work without restrictions at that time.

In a duty status report (Form CA-17) dated September 21, 2018, Dr. Bernstein related that appellant sustained a right quadriceps tendon rupture on March 21, 2018 while in the performance of duty. He was released to work effective September 26, 2018 with a restriction for working up to six hours per day.

On October 18, 2018 a telephonic hearing was held before an OWCP hearing representative. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence. OWCP did not receive additional evidence.

By decision dated November 21, 2018, OWCP modified the May 24, 2018 decision finding that the March 21, 2018 employment incident occurred as alleged. However, the claim remained denied because the medical evidence of record failed to establish causal relationship between appellant's diagnosed condition of a right quadriceps tendon tear and the accepted March 21, 2018 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,[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 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. 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.[6] The second component is whether the employment incident caused a personal injury.[7]

An employee may establish that an incident 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 incident.[8]

[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] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[9] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the accepted employment incident.[10] 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 incident identified by the employee.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right lower extremity injury causally related to the accepted March 21, 2018 employment incident.

In support of his claim, appellant submitted medical reports and a duty status report from Dr. Bernstein who indicated that appellant sustained an injury to his right lower extremity on March 21, 2018 while in the performance of duty and subsequently underwent a surgical procedure on April 11, 2018 for a right quadriceps tendon repair. Dr. Bernstein held appellant off work until September 26, 2016, when he was released to work with restrictions. However, neither the medical reports nor the duty status report contained medical rationale explaining how appellant's diagnosed right lower extremity condition was causally related to the accepted employment incident. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.[12] As none of these medical reports provide medical rationale as to the cause of appellant's diagnosed conditions they are insufficient to establish his claim.

As appellant has not submitted rationalized medical evidence to support his claim that he sustained a right lower extremity condition causally related to the accepted March 21, 2018 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.

[9] *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *Y.J.*, Docket No. 18-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-156 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

[10] *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

[11] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right lower extremity condition causally related to the accepted March 21, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 2019
Washington, DC

Christopher J. Godfrey, 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