United States Department of Labor
Employees' Compensation Appeals Board

J.F., Appellant	)	
and	)	**Docket No. 19-0456**
	)	**Issued: July 12, 2019**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, Edgefield, SC, 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 27, 2018 appellant, through counsel, filed a timely appeal from an August 27, 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 left knee injury causally related to the accepted January 2, 2017 employment incident.

FACTUAL HISTORY

On January 4, 2017 appellant, then a 26-year-old correctional officer, filed a claim for traumatic injury (Form CA-1) alleging that he injured his left knee on January 2, 2017 while in the performance of duty. He indicated that he picked up an inmate then another officer grabbed the inmate by the shoulders, which caused appellant to come down on his left knee. Appellant explained that his left knee was swollen and painful, and that he needed to follow-up with the physician who previously operated on his knee to make sure nothing was damaged. On the reverse side of the Form CA-1, the employing establishment indicated that he was in the performance of duty when injured. It further noted that appellant stopped work on January 3, 2017. Appellant did not submit any medical evidence in support of his claim for FECA benefits.

By development letter dated January 10, 2017, OWCP advised appellant of the type of evidence needed to establish his claim for FECA benefits. It explained that it had not received any medical evidence, and requested that he provide a narrative report from his physician. OWCP also inquired about appellant's preexisting left knee condition and the surgery he referenced on the Form CA-1. It specifically asked whether appellant's condition had resolved prior to the January 2, 2017 incident. OWCP afforded her 30 days to submit the requested factual and medical evidence. No additional evidence was received.

By decision dated February 14, 2017, OWCP denied appellant's traumatic injury claim. It accepted that the January 2, 2017 employment incident occurred as alleged; however, appellant did not submit any medical evidence containing a diagnosis in connection with his injury. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

OWCP subsequently received a January 16, 2017 report from Dr. Todd Tupis, a Board-certified orthopedist, who saw appellant for follow-up regarding his left knee. Dr. Tupis indicated that appellant's history was significant for anterior cruciate ligament (ACL) reconstruction on May 1, 2014. He also noted that appellant had reached maximum medical improvement (MMI) and was released on November 3, 2014. Dr. Tupis further noted that appellant reported that on January 2, 2017 he was picking an inmate up and a coworker came up behind the inmate lifting him from his shoulders, which caused appellant to fall down causing him to strike his left knee on the concrete. Appellant reported seeking treatment from a local hospital and underwent x-rays and was issued a knee immobilizer. Findings on examination revealed small effusion of the left knee, a clean and dry incision, some mild quadriceps atrophy, mild tenderness at the medial joint line, and sensation was intact. Dr. Tupis diagnosed pain in the left knee. He noted x-rays of the left knee revealed ACL reconstruction with no change in placement of the hardware. Dr. Tupis referred appellant for a magnetic resonance imaging (MRI) scan, prescribed a brace, and released him to work full duty.

On February 5, 2018 appellant requested reconsideration and resubmitted Dr. Tupis' January 16, 2017 treatment notes.

By a decision dated February 16, 2018, OWCP denied modification of the decision dated February 14, 2017. It found that although Dr. Tupis correctly recounted the nature of appellant's January 2, 2017 employment incident, he did not provide a diagnosis in connection with the incident. OWCP explained that pain and swelling were symptoms of an underlying condition, rather than a diagnosis in their own right.

On July 12, 2018 counsel requested reconsideration of the February 16, 2018 decision.

Additional evidence received since OWCP's most recent decision included January 4, 2017 emergency room treatment records. Dr. Stephen L. Shelton, Board-certified in emergency medicine, examined appellant for a left knee injury that reportedly occurred at work two days prior. He noted a May 2014 history of multiple ligament repairs to the left knee. Appellant reported working as a prison guard where two days prior he was involved in an altercation with an inmate. Dr. Shelton noted that appellant lifted the inmate into the air causing appellant to fall and land directly on his left knee. He reported persistent left knee pain with mild swelling. An x-ray of the left knee revealed status post prior ACL repair, no fractures, no knee joint effusion, and proper anatomic alignment. Dr. Shelton diagnosed left knee contusion, placed appellant in a knee immobilizer with crutches, and discharged him.

On October 2, 2017 appellant was seen by Dr. James D. Washburn, an emergency medicine specialist, and subsequently seen by Dr. Jeffrey Guy, a Board-certified orthopedist. Dr. Washburn treated appellant in the emergency department for complaints of chronic left knee pain. He noted appellant's prior history of left ACL repair. Dr. Washburn also indicated that appellant reported that his left knee had been bothering him since January 2017 when he fell onto it. He provided an assessment of chronic left knee pain and history of left ACL repair. Dr. Washburn discharged appellant and recommended that he follow-up with an orthopedist.

Later that same day, Dr. Guy examined appellant. He noted that appellant had undergone left knee hamstring reconstruction in 2014. Appellant reported falling at work in January 2017, and subsequently experiencing left knee swelling and instability. Findings on examination of the left knee revealed a well-healed prior ACL surgical incision, small effusion, no tenderness or swelling, normal range of motion, and intact strength, sensation, and reflexes. X-rays of the left knee revealed prior ACL reconstruction and mild osteophyte formation of the medial and patellofemoral compartments. Dr. Guy diagnosed status post left knee ACL repair in May 2014, with recurrent left ACL tear by examination. In a separate note dated October 2, 2017, he returned appellant to work with restrictions.

An October 17, 2017 left knee MRI scan revealed a complex tear of the posterior horn of the medial meniscus and a small tear of the lateral meniscus.

Dr. Guy saw appellant in follow-up on October 19, 2017 for complaints of left knee instability, popping, and clicking. He noted that the MRI scan demonstrated a medial and lateral meniscus tear. Dr. Guy diagnosed complex tear of the posterior horn of the medial meniscus of

the left knee and undersurface tear of the lateral meniscus. He recommended a left knee arthroscopic partial medial and lateral meniscectomy. On March 2, 2018 Dr. Guy returned appellant to light duty with a left knee brace.

A November 1, 2017 addendum to Dr. Guy's initial October 2, 2017 treatment records noted that appellant reported that a reinjury occurred in September 2017 while going upstairs at work. Appellant denied falling, and reportedly just felt sharp pain.

By decision dated August 27, 2018, OWCP denied modification of the decision dated February 16, 2018. It explained that appellant failed to provide evidence that contained a physician's diagnosis of a medical condition associated with the January 2, 2017 employment incident.

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 filed within the applicable time limitation of FECA,[4] 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 whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.[7] Generally, 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.[8] The second component is whether the employment incident caused a personal injury.[9] An employee may establish that an injury 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 employment incident.[10]

[3] *Id.*

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

[5] *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] *K.M.*, Docket No. 15-1660 (issued September 16, 2016).

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

[8] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

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

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[11] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.[12] 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 the specific employment incident.[13]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left knee injury causally related to the accepted January 2, 2017 employment incident.

Appellant claimed to have injured his left knee as a result of an incident with an inmate on January 2, 2017. OWCP accepted that the January 2, 2017 incident occurred as alleged. Appellant also had a history of a preexisting left knee injury, which required left knee hamstring reconstruction surgery in 2014. 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.[14]

Following the January 2, 2017 employment incident, appellant was treated in the emergency department on January 4, 2017. Dr. Shelton referenced appellant's prior left knee surgery, as well as a January 2017 incident at work where he lifted an inmate, which caused him to fall and land directly on his left knee. Although he diagnosed left knee contusion, he did not specifically address the cause of the diagnosed condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[15]

Dr. Tupis examined appellant on January 16, 2017. He provided an assessment of left knee pain, and advised that appellant could return to work full duty. As OWCP correctly noted, pain is a symptom, not a specific medical diagnosis.[16] Accordingly, Dr. Tupis' January 16, 2017 report

[11] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[12] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[13] *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[14] *M.E.*, Docket No. 18-0940 (issued June 11, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

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

[16] Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. *Supra* note 14 at Chapter 2.803.4a(6) (August 2012).

is insufficient to satisfy appellant's burden of proof. Dr. Washburn's October 2, 2017 assessment of chronic left knee pain is similarly insufficient to establish entitlement to FECA benefits.[17]

In his separate October 2, 2017 report, Dr. Guy noted that appellant underwent a left knee hamstring reconstruction in 2014 and was progressing well until a fall in January 2017. He diagnosed status post left knee ACL repair in May 2014, with recurrent left ACL tear. After reviewing appellant's recent left knee MRI scan, Dr. Guy no longer diagnosed recurrent left knee ACL tear, but instead diagnosed tears of the left medial and left lateral meniscus. In his October 19, 2017 report, he recommended arthroscopic surgery to repair the noted left knee meniscal tears. Both the October 2 and October 19, 2017 reports are insufficient to establish causal relationship because Dr. Guy did not specifically address whether appellant's employment activities either caused or aggravated his current left knee condition.[18]

Additionally, Dr. Guy's October 2, 2017 and March 2, 2018 work status form reports are insufficient to establish causal relationship because they fail to include a diagnosis and an opinion on causal relationship.[19]

An October 17, 2017 left knee MRI scan revealed tears in the medial and lateral meniscus. The Board has held that diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and a diagnosed condition.[20]

As the medical evidence of record fails to establish causal relationship between appellant's left knee condition and the January 2, 2017 employment incident, appellant is not entitled to FECA 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.

CONCLUSION

The Board finds that appellant has not established a left knee injury causally related to the accepted January 2, 2017 employment incident.

[17] *Id.*

[18] *See A.D.*, 58 ECAB 149 (2006).

[19] *Id.*

[20] *See J.M.*, Docket No. 17-1688 (issued December 13, 2018).

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 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