United States Department of Labor
Employees' Compensation Appeals Board

N.S., Appellant	)	
and	)	**Docket No. 19-0167**
	)	**Issued: June 21, 2019**
DEPARTMENT OF JUSTICE, U.S. MARSHALS SERVICE, Trenton, NJ, Employer	)	

Appearances:
James D. Muirhead, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 31, 2018 appellant filed a timely appeal from a June 12, 2018 merit decision and an August 14, 2018 nonmerit 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.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a left knee condition causally related to the accepted June 8, 2017 employment incident; (2) and whether

[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.*

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 June 12, 2017 appellant, then a 52-year-old Deputy U.S. Marshal, filed a traumatic injury claim (Form CA-1) alleging that on June 8, 2017 his left knee gave out when walking on uneven pavement while in the performance of duty. He explained that his left knee felt tight on the back side where the hamstring attaches immediately prior to his knee giving out.

In an undated statement, a fellow Deputy U.S. Marshal, M.W., indicated that he was conducting a foot patrol with appellant at the time of the claimed incident. He noted that appellant indicated that his knee began to hurt and M.W. noticed appellant visibly limping. M.W. noted that appellant finished the tour of duty, elevated his knee and did minimal walking during the remainder of the detail.

In a magnetic resonance imaging scan report dated June 29, 2017, Dr. James Cozzarelli, a Board-certified orthopedic surgeon, provided impressions of medial meniscus tear, pes anserine semimembranosus-tibial collateral ligament bursitis, degenerative changes most advanced at the medial compartment, and small joint effusion.

In a physician evaluation report dated July 14, 2017, Dr. Cozzarelli noted diagnoses of left knee pain, medial meniscus tear, left knee effusion, bursitis (left knee), and chondromalacia in patella. He indicated that appellant was tentatively expected to return to full duties without restrictions one month following left knee arthroscopic surgery, which was pending OWCP approval.

By development letter dated August 16, 2017, OWCP informed appellant that the evidence submitted was deficient. It advised him of the type of factual and medical evidence needed and afforded him 30 days to submit the necessary evidence.

In response, appellant submitted evidence relating to his June 11, 2009 injury in OWCP File No. xxxxxx401, in which OWCP accepted sprain of left knee on January 13, 2010. In a March 8, 2010 report, Dr. John Schnell, a Board-certified orthopedic surgeon, discussed appellant's left knee arthroscopy, partial meniscectomy, chondroplasty of the medial femoral condyle, and patellofemoral joint that treated appellant's diagnosed left knee medial meniscus tear and chondromalacia of the patella and medial femoral condyle. In a May 7, 2010 report, he noted that appellant had full range of motion and had reached maximum medical improvement. Appellant also submitted treatment notes from Dr. Schnell dated January 29, March 5 and 19, and April 9, 2010.

In a series of examinations of appellant on June 16 and July 7, 2017, Dr. Cozzarelli provided impressions of vertical tear posterior horn medial meniscus, blunting of the meniscal apex consistent with free edge injury, mild grade 1 medial collateral ligament strain, mild chondromalacia patella, small joint effusion, and semimembranosus-tibial collateral ligament burs compatible with bursitis. He noted that appellant had sustained a previous injury to his left knee, but opined that the current treatment symptoms were causally related to the June 8, 2017 walking

incident. Dr. Cozzarelli explained that his opinion was based on his current clinical picture of appellant, result of the imaging studies, and the history of the injury.

By decision dated November 8, 2017, OWCP accepted that the June 8, 2017 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish causal relationship between the accepted employment factors and the claimed left knee injury.

On November 30, 2017 appellant, through counsel, requested a hearing with a representative of OWCP's Branch of Hearings and Review. A hearing was held on May 9, 2018 and the case record remained open 30 days for the submission of additional evidence.

In a June 7, 2018 report, Dr. Aaron Sporn, a Board-certified orthopedic surgeon, detailed appellant's history, including a February 15, 2018 left knee surgery that included debridement and limited partial medial menisectomy, chondroplasty, tricompartmental, and excision of the plica.[3] He opined that "[t]he June 8, 2017 incident caused a significant aggravation and worsening of preexisting pathology." Dr. Sporn further indicated that "[t]he February 15, 2018 surgery was medically necessary and indicated because of the 'new' and acute injury which occurred on June 8, 2017."

By decision dated June 12, 2018, OWCP's hearing representative affirmed the prior decision, finding that the evidence of record was insufficient to establish appellant's traumatic injury claim.

On August 10, 2018 appellant, through counsel, requested reconsideration. Counsel contended that the preexisting condition should not have negated appellant's claim, which Dr. Cozzarelli's July 7, 2017 report and Dr. Sporn's June 7, 2017 reports sufficiently described as caused by the June 8, 2017 employment incident. He asked OWCP to administratively combine this case with the prior case File No. xxxxxx401, for which appellant previously received a three percent schedule award.

By decision dated August 14, 2018, OWCP denied appellant's request for reconsideration of the merits of his claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[4] 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, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the

[3] The Board notes Dr. Sporn's report also refers to a surgery on "January 15, 2018." However, it appears that the date listed was a typographical error.

[4] *Supra* note 2.

employment injury.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[6]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[7] 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.[8] 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.[9]

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.[10]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted June 8, 2017 employment incident.

Dr. Sporn in his June 7, 2018 report discussed appellant's employment duties, including the walking he was engaged in when he sustained the June 8, 2017 left knee injury, and he further explained that the mechanism of appellant's traumatic injury supports the diagnosis as he fell while walking on uneven pavement. He opined that the June 8, 2017 left knee injury was a new and acute injury that caused a significant aggravation and worsening of preexisting pathology. However, the mere recitation of a claimant's history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.[11] Without explaining physiologically how the accepted employment incident caused or contributed to the

[5] *J.P.*, Docket No. 18-1165 (issued January 15, 2019); *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[6] *J.P., id.*; *see Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[7] *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[8] *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[9] *J.P.*, *supra* note 5; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[11] *See J.G.*, Docket No. 17-1382 (issued October 18, 2017).

diagnosed conditions, the physician's report is of limited probative value.[12] Therefore, this report of Dr. Sporn is insufficient to meet appellant's burden of proof.

In reports dated June 29 and July 14, 2017, Dr. Cozzarelli noted appellant's diagnostic impressions, but provided no opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[13] These reports, therefore, are insufficient to establish appellant's claim.

Similarly, Dr. Cozzarelli on June 16 and July 7, 2017 noted appellant's previous injury and opined that appellant's symptoms were causally related to the June 8, 2017 left knee injury, however, his reports are conclusory in nature as they fail to explain in detail how appellant's symptoms were caused by the accepted June 8, 2017 employment incident and not by his preexisting pathology or any other factor.

As appellant has not submitted sufficiently rationalized medical evidence to support his claim that he sustained an injury causally related to the accepted June 8, 2017 employment incident the Board finds that he has not met his burden of proof.

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.

LEGAL PRECEDENT -- ISSUE 2

To be entitled to a merit review under FECA section 8128(a) of an OWCP decision denying or terminating a benefit, a claimant must file his or her application for review within one year of the date of that decision.[14] OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.[15] Section 10.608(b) of OWCP regulations provide that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.[16]

[12] *See A.B.*, Docket No. 16-1163 (issued September 8, 2017).

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

[14] *See H.H.*, Docket No. 18-1660 (issued March 14, 2019).

[15] *D.K.*, 59 ECAB 141 (2007).

[16] *P.H.*, Docket No. 18-1020 (issued November 1, 2018); *K.H.*, 59 ECAB 495 (2008).

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

The Board finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. In his August 10, 2018 request for reconsideration, appellant, through counsel, contended that OWCP failed to note that Drs. Cozzarelli and Sporn referred to appellant's previous 2010 left knee injury. Counsel argued that appellant's preexisting condition should not have negated this case and asked OWCP to administratively combine this case with case File No. xxxxxx401, for which he previously received a three percent schedule award.

These contentions are not legal arguments that address the underlying issue of whether appellant submitted sufficient medical evidence to establish causal relationship between his diagnosed condition and the accepted June 12, 2017 employment incident. The Board has held that the submission of evidence or an argument which does not address the particular issue involved does not constitute a basis for reopening a case. As such, appellant's statements are irrelevant to the claim and do not comprise a basis for reopening the case on its merits.[17] Accordingly, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).

The Board further finds that appellant has submitted no additional evidence with his request for reconsideration. As the underlying issue in this case is medical in nature, namely whether appellant has met his burden of proof to establish a left knee injury causally related to the accepted June 12, 2017 employment incident, it must be addressed by relevant and pertinent new medical evidence not previously considered by OWCP. Thus, he is also not entitled to a review of the merits of his claim based on the third above-noted requirement under section 10.606(b)(3).

The Board, therefore, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.[18]

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 8, 2017 employment incident. The Board also finds that OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

[17] *See J.G.*, Docket No. 16-1576 (issued November 18, 2016); *S.C.*, Docket No. 11-1395 (issued September 22, 2011).

[18] *See L.A.*, Docket No. 18-1226 (issue December 28, 2018).

ORDER

IT IS HEREBY ORDERED THAT the August 14 and June 12, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 21, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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