

ISSUE

The issue is whether appellant has met his burden of proof to establish a left knee condition causally related to the accepted June 14, 2017 employment incident.

FACTUAL HISTORY

On June 16, 2017 appellant, then a 64-year-old track safety inspector, filed a traumatic injury claim (Form CA-1) alleging that on June 16, 2017 he suffered a left knee injury when he stepped in a badger hole while in the performance of duty. He did not stop work.

Appellant was initially treated by Ryan Kessel, a certified physician assistant. In a progress note dated June 16, 2017, Mr. Kessel related that the day before appellant was walking along railroad tracks at work when he stepped into a badger hole. Examination of appellant's left knee showed tenderness in the medial and patellofemoral lines and limited antalgic limp. A June 16, 2017 left knee x-ray showed moderate medial and patellofemoral osteoarthritis. Mr. Kessel diagnosed left leg injury, including left knee strain, and underlying left severe knee arthritis. He opined that appellant had an "injury mechanism" that "likely exacerbated a preexisting condition."

Mr. Kessel also completed an attending physician's report (Form CA-20) of the same date. He noted a preexisting condition of left knee osteoarthritis and diagnosed left knee strain. Mr. Kessel checked a box marked "yes" indicating that appellant's condition was caused or aggravated by the employment activity.

In a report dated August 21, 2017, Dr. Wesley Smidt, a Board-certified orthopedic surgeon, noted appellant's complaints of marked discomfort and persistent pain since an injury earlier that year when appellant stepped in a hole at work. He reviewed appellant's history and noted that x-ray examination showed advanced degenerative changes of the left knee. Upon examination of appellant's left knee, Dr. Smidt observed a marked amount of crepitus with active range of motion and tenderness in the medial and lateral joint line. He diagnosed advanced left knee degenerative joint disease. Dr. Smidt indicated that appellant wished to proceed with left total knee arthroplasty surgery. He reported that the "work-related injury had necessitated the need for the total knee." Dr. Smidt noted that prior to the injury appellant had left knee symptoms, but was still able to perform his regular duties. He reported that it was unlikely that appellant would need a total knee replacement without his work-related injury. Dr. Smidt completed a work status note indicating that appellant could return to work without restrictions on that date.

In an August 29, 2017 development letter, OWCP noted 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 was therefore administratively approved for payment of a limited amount of medical expenses. It requested that appellant provide additional factual and medical evidence to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary factual information and medical evidence. A similar letter was sent to the employing establishment.

In a letter dated September 18, 2017, J.P., a program consultant for the employing establishment, controverted appellant's claim.

On September 18, 2017 OWCP received appellant's completed questionnaire, dated September 16, 2017. Appellant described that on the morning of June 14, 2017 he was performing a walking track safety inspection when he stepped into a badger hole. He noted that at first the pain was not that bad so he was able to continue working, but he subsequently experienced worsening left knee and left ankle pain. Appellant related that he sought medical treatment because he still experienced pain, difficulty walking, and problems with sleep. He reported that he had previously sought medical treatment for his left knee in 2011.

OWCP received a report dated August 10, 2011 by Dr. David H. Larsen, an orthopedic surgeon. Dr. Larsen related appellant's complaints of left knee pain and noted examination findings of mild effusion, medial joint line tenderness, and patellar crepitus with motion. He discussed appellant's diagnostic testing and diagnosed degenerative arthritis of the left knee.

By decision dated October 27, 2017, OWCP denied appellant's traumatic injury claim. It accepted that the June 14, 2017 incident occurred as alleged and that there was a diagnosed left knee condition. However, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed condition and the accepted June 14, 2017 employment incident.

On November 2, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on March 6, 2018.

In a letter dated October 26, 2017, Dr. Smidt related that appellant was functioning well with his left knee prior to his work-related injury. He noted that when appellant stepped into a hole at work, he experienced a "marked amount of pain" at the time of the injury and had experienced persistent pain. Dr. Smidt referenced his opinion in the August 21, 2017 progress note that the "work-related injury necessitated the need for the total knee at this point in time. It is unlikely he would be requiring a total knee currently without his work-related injury."

In a letter dated April 4, 2018, Dr. Smidt again referenced his August 21, 2017 progress note and his opinion that it was unlikely that appellant would need total left knee replacement surgery without the June 14, 2017 work-related injury. He opined that appellant had preexisting degenerative changes to his knee prior to his work-related injury. Dr. Smidt explained that appellant would require knee replacement surgery at some point in the future, but the work-related injury caused "increased and persistent symptoms in the knee, which have resulted in [appellant] needing to pursue total knee arthroplasty at this point in time."

By decision dated May 3, 2018, an OWCP hearing representative affirmed the October 27, 2017 decision.

On May 24, 2018 appellant, through counsel, requested reconsideration. Counsel resubmitted Dr. Smidt's April 4, 2018 report, as well as his August 21, 2017 treatment notes.

By decision dated August 21, 2018, OWCP denied modification of the May 3, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim including the fact that he or she 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 while in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to that 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

In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.⁷ There are two components involved in establishing fact of injury. 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 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 factors identified by the employee.¹¹ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹²

³ *Supra* note 2.

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); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁸ *D.S.*, Docket No. 18-1348 (issued November 9, 2017); *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

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

¹⁰ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹² *James Mack*, 43 ECAB 321 (1991).

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 left knee condition causally related to the accepted June 14, 2017 employment incident.

Appellant submitted several reports by Dr. Smidt dated August 21, 2017 to April 4, 2018. In an August 21, 2017 narrative report, Dr. Smidt described the June 14, 2017 employment incident and related that an x-ray showed advanced degenerative changes in appellant's left knee. He noted examination findings of marked amount of crepitus with active range of motion and tenderness in the medial and lateral joint line of appellant's left knee. Dr. Smidt diagnosed advanced left knee degenerative joint disease and recommended left total knee arthroplasty. He noted that prior to the injury, appellant had symptoms but was still able to perform his regular duties. Dr. Smidt concluded that the work-related injury caused "increased and persistent symptoms in the knee, which have resulted in [appellant] needing to pursue total knee arthroplasty."

Although Dr. Smidt attributed the worsening of appellant's degenerative left knee condition to the accepted June 24, 2017 employment incident, he did not provide an affirmative opinion explaining how the described employment incident resulted in the diagnosed medical condition. The Board has found that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident caused or contributed to appellant's diagnosed medical condition.¹⁴ The need for a reasoned medical opinion is particularly important due to appellant's preexisting left knee condition, as noted by Dr. Larsen's August 10, 2011 diagnosis of left knee degenerative arthritis.¹⁵ Because Dr. Smidt did not provide a reasoned opinion explaining how the June 14, 2017 employment incident contributed to or aggravated appellant's degenerative left knee condition, his reports are insufficient to establish appellant's claim.

Appellant's June 16, 2017 left knee x-ray revealed moderate medial and patellofemoral osteoarthritis. However, the radiologist who reviewed the x-ray did not specifically address whether there was a causal relationship between the diagnosed osteoarthritis and the accepted June 14, 2017 employment incident. The Board has held that diagnostic studies are of limited probative value as they routinely fail to provide an opinion on causal relationship.¹⁶

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹⁴ See *V.J.*, Docket No. 17-358 (issued July 24, 2018); *John W. Montoya*, 54 ECAB 306 (2003).

¹⁵ *D.H.*, Docket No. 17-1913 (issued December 13, 2018); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁶ See *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

The June 16, 2017 progress note and Form CA-20 by Mr. Kessel, a physician assistant, are also insufficient to establish appellant's traumatic injury claim. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA.¹⁷ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁸

On appeal counsel contends that OWCP failed to apply the proper standard of causation and did not give due deference to the findings of appellant's treating physician. For the reasons set forth above, appellant has not provided well-reasoned medical evidence establishing causal relationship and therefore, he has not met his burden of proof to establish his traumatic injury claim.

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 met his burden of proof to establish a left knee condition causally related to the accepted June 14, 2017 employment incident.

¹⁷ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹⁸ *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

ORDER

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

Issued: June 18, 2019
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board