

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
W.M., Appellant)	
)	
and)	Docket No. 18-1431
)	Issued: March 22, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Youngstown, OH, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 17, 2018 appellant, through counsel, filed a timely appeal from a May 18, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 injury causally related to the accepted September 23, 2016 employment incident.

FACTUAL HISTORY

On July 6, 2017 appellant, then a 54-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that, on September 23, 2016, he sustained a right knee injury when his knee popped and twisted while in the performance of duty. He first notified his supervisor and sought medical treatment on September 23, 2016. In an accompanying narrative statement, appellant related that he continued to work, but his right knee worsened over time. He reported that he was in severe pain and was currently seeking medical attention as his right knee condition had worsened.

In a statement dated September 23, 2016, appellant explained that he was putting mail away that day when he turned, took a step, and felt his right knee pop and twist sideways. He described a burning sensation in his right knee and pain each time he stepped or put weight on it.

An employing establishment accident/incident supervisor worksheet dated September 23, 2016 noted a history of injury. Appellant's supervisor reported that she was advised on the date of the incident.

In a September 23, 2016 medical report, Dr. Renee Rubinstein, Board-certified in family medicine, reported that appellant sustained an injury that morning when he turned and stepped and felt his right knee pop with pain and burning at the medial patella. She diagnosed right knee pain and treated appellant with a lidocaine injection.

In a July 18, 2017 medical report, Dr. James A. Shaer, a Board-certified orthopedic surgeon, reported that appellant presented for evaluation of right knee pain. Appellant reported that last September he was putting mail away and pivoted on his right knee, causing a pop with immediate pain and swelling. Since that time he reported intermittent pain, swelling, trouble weight bearing, and occasional giving away episodes. Appellant reported that he had never fallen, but had a sense that his knee wanted to give out and continued to experience popping. A July 7, 2017 x-ray of the right knee was reviewed which revealed no obvious osseous abnormality. Based on the duration of his problems and his initial complaint back in September, Dr. Shaer suspected a medial meniscal tear. He diagnosed suspect medial meniscal tear and early right knee osteoarthritis. Dr. Shaer further noted that the early osteoarthritis was incidental and not a work-related injury as it was a natural progression of aging. He provided work restrictions and recommended a magnetic resonance imaging (MRI) scan of the right knee. Dr. Shaer also submitted a duty status report (Form CA-17) and attending physician's report (Form CA-20) which noted his findings and work restrictions.

By development letter dated July 21, 2017, OWCP informed appellant that the evidence of record was insufficient to establish his traumatic injury claim. It advised him of the factual and medical evidence needed and afforded him 30 days to respond.

In a July 27, 2017 diagnostic report, Dr. Dennis M. Wilcox, a Board-certified diagnostic radiologist, reported that appellant's right knee MRI scan revealed arthrosis of the medial femorotibial compartment with mild subchondral bone edema. He reported that the study demonstrated no meniscal or ligamentous injury.

In a July 28, 2017 medical report, Dr. Shaer noted review of the July 27, 2017 right knee MRI scan which revealed bone marrow edema and arthritic changes predominantly in the medial compartment. He further reported some cystic changes underneath the anterior cruciate ligament and no evidence of cruciate, collateral, or meniscal damage. Dr. Shaer diagnosed osteoarthritis of the right knee. He indicated that he could not attribute appellant's symptoms, complaints, and physical examination to his work-related injury which occurred approximately 10 months prior. Dr. Shaer concluded that there appeared to be no injury related to appellant's work incident, explaining that his condition appeared to be a normal progression of arthritis.

By decision dated September 27, 2017, OWCP denied appellant's claim, finding that the medical evidence of record did not provide a firm medical diagnosis which could be reasonably attributed to the accepted September 23, 2016 employment incident. It concluded, therefore, that he had not established that he sustained an injury as defined by FECA.

On October 2, 2017 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

A hearing was held on March 8, 2018. Appellant testified that on September 23, 2016 he was putting mail away and turned to take a step when his right knee popped. He immediately notified his supervisor who had him complete an accident report. The following morning he sought medical treatment with Dr. Rubinstein who administered an injection in his knee and released him to return to work. Appellant testified that on July 6, 2017 his knee popped again while working. He explained that he was placing a tray of mail into a cage when his knee popped. Appellant reported that he worked for the employing establishment for over 21 years and had no problems with his right knee prior to September 23, 2016. OWCP's hearing representative advised appellant to file a Form CA-1 for his July 6, 2017 right knee injury. The record was held open for 30 days. No further evidence was received.

By decision dated May 18, 2018, OWCP's hearing representative affirmed the September 27, 2017 decision, finding that the medical evidence of record did not provide a firm medical diagnosis which could be reasonably attributed to the accepted September 23, 2016 employment incident.³

³ On April 10, 2018 appellant filed a Form CA-1 alleging that he sustained a right knee traumatic injury on July 6, 2017 when his knee popped while working. OWCP assigned that claim OWCP File No. xxxxxx139. OWCP File Nos. xxxxxx372 and xxxxxx139 have been administratively combined, with File No. xxxxxx139 serving as the master file.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 are 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 on a traumatic injury or an occupational disease.⁶

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁷ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁸ 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 incident identified by the claimant.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right knee injury causally related to the accepted September 23, 2016 employment incident.

On the date of the employment incident, appellant sought medical treatment with Dr. Rubinstein who diagnosed right knee pain. While Dr. Rubinstein's report documents immediate treatment for his injury, he failed to provide a firm medical diagnosis as she only diagnosed right knee pain. The Board has consistently held that pain is a symptom, not a

⁴ *Supra* note 2.

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *R.A.*, Docket No. 18-1097 (issued January 18, 2019).

⁹ *Id.*; *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

compensable medical diagnosis.¹⁰ As such, her report lacks probative value and is insufficient to meet appellant's burden of proof.¹¹

Appellant also submitted medical reports dated July 18 through 28, 2017 from Dr. Shaer, his treating physician. While Dr. Shaer initially suspected a right knee medial meniscus tear, a July 27, 2017 MRI scan of the right knee demonstrated no meniscal or ligamentous injury to provide support for a September 26, 2013 traumatic injury.¹² He diagnosed unilateral primary osteoarthritis of the right knee which he opined was not related to appellant's work injury. The Board finds that the reports of Dr. Shaer are insufficient to establish appellant's claim as the physician opined that his right knee osteoarthritis was not caused by the September 23, 2016 employment incident.¹³ Rather, Dr. Shaer explained that appellant's injury appeared to be a normal progression of arthritis in the knee. He further explained that he could not attribute appellant's symptoms, complaints, and physical examination to his work-related injury which occurred approximately 10 months prior. Given that Dr. Shaer's reports do not support a work-related traumatic injury on September 26, 2013, they are insufficient to meet appellant's burden of proof.¹⁴

Dr. Wilcox's July 27, 2017 report simply interpreted imaging studies. Diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁵

As the record lacks rationalized medical evidence establishing that appellant's right knee condition was causally related to the accepted September 23, 2016 employment incident, the Board finds that appellant has not met his burden of proof.¹⁶

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's 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 right knee injury causally related to the accepted September 23, 2016 employment incident.

¹⁰ *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

¹¹ *See Michael R. Shaffer*, 55 ECAB 339 (2004).

¹² *J.P.*, Docket No. 14-0087 (issued March 14, 2014).

¹³ *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

¹⁴ *G.M.*, Docket No. 15-1288 (issued September 18, 2015).

¹⁵ *E.R.*, Docket No. 18-0391 (issued August 24, 2018); *see also D.H.*, Docket No. 11-1739 (issued April 18, 2012).

¹⁶ *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

ORDER

IT IS HEREBY ORDERED THAT the May 18, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 22, 2019
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board