United States Department of Labor
Employees' Compensation Appeals Board

F.P., Appellant	)	
and	)	**Docket No. 19-0159**
	)	**Issued: May 7, 2019**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Norfolk, VA, Employer	)	

Appearances:
Appellant, pro se
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 October 29, 2018 appellant filed a timely appeal from an August 21, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury causally related to the accepted May 27, 2018 employment incident.

FACTUAL HISTORY

On July 16, 2018 appellant, then a 53-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, while in the performance of duty on May 27, 2018, he injured his knee and hip when he jumped off the employing establishment dock to assist an employee who had fallen. In an attached statement, he indicated that he got off his forklift, then ran and jumped off the dock to prevent a tractor-trailer operator from backing up to the door and seriously injuring his fallen coworker. Appellant further stated that, over a period of time after the May 27, 2018 incident, he developed knee and hip pain. He stopped work on July 16, 2018.

A July 16, 2018 emergency department visit/discharge summary indicated that appellant received treatment for right knee arthralgia. Appellant was advised to take Tylenol/Motrin for pain and prescribed a nonsteroidal anti-inflammatory topical gel (Voltaren). He was also excused from work for two days. The work excuse note was signed by Debra L. Conway, a licensed practical nurse.

By development letter dated July 20, 2018, OWCP informed appellant that the evidence submitted was insufficient to establish the claim. It advised him of the type of factual and medical evidence needed, and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted two July 24, 2018 statements from his coworkers, R.R. and J.B., who witnessed the May 27, 2018 incident when an employee fell from the loading dock and appellant jumped off the dock, approximately 4½ to 5 feet to the ground to prevent the tractor-trailer operator from backing up onto the fallen employee.

OWCP received additional emergency department treatment records from July 16, 2018, which included a right knee x-ray that revealed mild tri-compartmental osteoarthritis with small joint effusion. There was no significant soft tissue swelling, no acute osseous abnormality, and no evidence of acute fracture or dislocation.

Dr. Martin D. Klinkhammer, a Board-certified emergency medicine specialist, examined appellant on July 16, 2018 for complaints of right knee pain. Appellant reported that, while at work "two weeks ago," he jumped off a dock to try and help a coworker who was close to getting run over by a truck. He thought he may have landed awkwardly injuring his right knee. Appellant reported having experienced pain since then while walking on his right leg, but was able to bear weight on the leg. He was also able to conduct his normal business. Additionally, appellant reported occasional hip pain, but no such pain with walking. On physical examination Dr. Klinkhammer noted slight right knee effusion, tenderness with varus strain, but no laxity, a normal Lochman's posterior drawer, and no definite click with McMurray's testing. He also reviewed the results of appellant's recent right knee x-ray. Dr. Klinkhammer diagnosed right knee arthralgia.

In an August 6, 2018 note, Dr. Tommy T. Osborne, II, a Board-certified orthopedic surgeon, indicated that he had evaluated appellant that day, and appellant would be unable to work for two weeks. He also provided an August 6, 2018 duty status report (Form CA-17) with a May 27, 2018 date of injury when appellant jumped off a dock to stop a trailer from backing up onto an employee. Dr. Osborne diagnosed right knee medial meniscus tear and lumbar paraspinal strain. OWCP also received unsigned August 6, 2018 treatment notes with a May 27, 2018 history of injury of "[patient] jumped off loading dock." The diagnosis was right lumbar paraspinal muscle strain. On August 6, 2018 Dr. Osborne also referred appellant for right knee and lumbar magnetic resonance imaging (MRI) scans. His referring diagnoses included right knee medial meniscus tear and right-sided traumatic lumbar herniated disc with radiculopathy.

By decision dated August 21, 2018, OWCP denied appellant's traumatic injury claim because he failed to establish a medical diagnosis in connection with the accepted May 27, 2018 employment incident as "pain" is a symptom and not a medical diagnosis. It found that appellant had not satisfied the medical component of fact of injury and, thus, did not meet the requirements for establishing an injury as defined by FECA.

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 timely 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 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.[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

[3] *Supra* note 1.

[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); *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).

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 claimed is causally related to the injury.[10]

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 causal relationship between the diagnosed condition and the implicated employment factor(s) 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 appellant's specific employment factor(s).[13]

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP accepted that the May 27, 2018 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim because the record purportedly did not contain a medical diagnosis in connection with the accepted employment incident, noting that "'pain'" was not a diagnosis. OWCP correctly noted pain (arthralgia) is a symptom, not a medical diagnosis, and as such, is insufficient to satisfy the medical component of fact of injury.[14] However, OWCP failed to acknowledge that, on August 6, 2018, Dr. Osborne diagnosed both right knee and lumbar conditions in connection with appellant's May 27, 2018 employment incident. Accordingly, the Board finds that appellant has established the medical component of fact of injury. OWCP's August 28, 2018 decision shall be set aside and remanded. On remand, following any further development as deemed necessary, it shall issue a *de novo* decision on the issue of causal relationship.

CONCLUSION

The Board finds the case not in posture for decision.

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

[10] *D.D.*, Docket No. 18-0648 (issued October 15, 2018); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[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.*

[14] Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012); *E.M.*, Docket No. 18-1599 (issued March 7, 2019).

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: May 7, 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