

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

E.M., Appellant)	
)	
and)	Docket No. 19-0251
)	Issued: May 16, 2019
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Chicago, IL, Employer)	
)	

Appearances:
Appellant, pro se
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 an August 23, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of total disability commencing February 4, 2016 causally related to his accepted left knee condition.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence following OWCP's August 23, 2018 decision 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.*

FACTUAL HISTORY

On February 4, 2016 appellant, then a 49-year-old federal air marshal, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he struck his left knee on a plyometric box while exercising pursuant to the employing establishment's physical fitness plan. He did not stop work. By decision dated May 25, 2016, OWCP accepted the claim for prepatellar bursitis of the left knee.

In a February 2, 2018 report, Dr. Anupam Basu, a Board-certified diagnostic radiologist, reported findings of a magnetic resonance imaging (MRI) scan of appellant's right knee. He noted moderate tricompartmental osteoarthritis, intact cruciates and collaterals, questionable degenerative tear of the posterior horn of the lateral meniscus, and large joint effusion.

In a February 9, 2018 report, Dr. Joshua M. Alpert, Board-certified in sports medicine, provided a follow-up to the MRI scan of appellant's right knee. He assessed right knee lateral meniscus tear and mild-to-moderate arthritic changes in the right knee. Dr. Alpert noted the date of injury was January 20, 2016.

In a February 15, 2018 operative report, Dr. Alpert discussed surgical procedures he performed to treat appellant's right knee lateral meniscus tear. He noted the operation was performed to treat right lateral knee pain that did not respond to conservative measures, although it would not improve any pain appellant experienced from arthritic changes.

On June 26, 2018 appellant filed a notice of recurrence (Form CA-2a) alleging that his left knee condition had worsened. He indicated that his condition had been a continuous problem since the February 4, 2016 injury and the symptoms he experienced included swelling of his left knee when he added continuous pressure. Appellant noted permanent limitations including no running, jogging, or jumping rope, which began following the original injury.

By development letter dated July 23, 2018, OWCP advised appellant of the deficiencies of his claim. It requested additional medical evidence from him and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond. No further evidence was received.

By decision dated August 23, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that he was totally disabled from work due to an objective worsening of his accepted work-related left knee condition.³

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.⁴ This term also means an inability to work because a light-duty assignment made

³ It noted the case had been accepted for a left knee injury, but the medical evidence referred to a right knee injury. OWCP further noted that appellant returned to work in a full-duty capacity on February 5, 2016 and was not losing did not lose any time from work due to this injury.

⁴ 20 C.F.R. § 10.5(x); *see S.F.*, 59 ECAB 525 (2008).

specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations.

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.⁵

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.⁶ Where no such rationale is present, the medical evidence is of diminished probative value.⁷

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish recurrence of total disability commencing February 4, 2016, causally related to his accepted left knee condition.

None of the physicians of record mentioned appellant's accepted left knee condition. As well, Dr. Alpert's February 9, 2018 report indicated a date of injury of January 20, 2016, which predates the February 4, 2016 accepted injury.

Further, Drs. Basu and Alpert did not document a spontaneous worsening of appellant's left knee condition resulting in total disability on or after February 4, 2016.⁸ Rather, they discussed examinations and surgery related to a right knee condition. As Drs. Basu and Alpert did not relate appellant's disability to the accepted left knee injury, their reports fail to establish a work-related recurrence of disability.⁹

For these reasons, the Board finds that appellant has not met his burden of proof.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *J.D.*, Docket No. 18-1533 (issued February 27, 2019); *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

⁶ *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *see C.C.*, Docket No. 18-0719 (issued November 9, 2018); *see also Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁷ *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

⁸ *J.D.*, *supra* note 6; *J.H.*, Docket No. 12-1848 (issued May 15, 2013).

⁹ *Id.*

On appeal appellant argues that he suffered a recurrence of disability because his discomfort worsened since the original February 4, 2016 employment injury. However, the medical evidence of record does not include bridging evidence to show a spontaneous worsening of the accepted conditions, or that the newly diagnosed condition occurred over time as a result of the accepted prepatellar bursitis, left knee.¹⁰ The Board, therefore, finds that appellant has not met his burden of proof.¹¹

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 recurrence of total disability commencing February 4, 2016 causally related to his accepted left knee condition.

ORDER

IT IS HEREBY ORDERED THAT the August 23, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 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

¹⁰ *L.C.*, Docket No. 17-1788 (issued September 19, 2018). *See M.M.*, Docket No. 16-1851 (issued January 19, 2018).

¹¹ *Id.*; *H.T.*, Docket No. 17-0209 (issued February 8, 2018).