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

| | | |
|---|---|---|
| **M.S., Appellant** | ) | |
| **and** | ) | **Docket No. 19-0983** |
| | ) | **Issued: November 14, 2019** |
| **DEFENSE AGENCIES, DEFENSE COMMISSARY AGENCY, Oakdale, PA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

### ***JURISDICTION***

On April 1, 2019 appellant filed a timely appeal from a February 28, 2019 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 over the merits of this case.

### ***ISSUE***

The issue is whether appellant has met his burden of proof to establish a left knee condition causally related to the accepted December 6, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

On December 7, 2017 appellant, then a 51-year-old commissary worker, filed a traumatic injury claim (Form CA-1) alleging that on December 6, 2017 he injured his left knee when he stepped off a step-stool and fell.

In an emergency room report dated December 6, 2017, Dr. Meta R. Haley, an emergency medicine specialist, noted that appellant was seen that day for an evaluation of left knee pain. Appellant reported that he felt a sharp pain in his left knee when he stepped backwards off a ladder causing his knee to give out and since then he has had ongoing pain. Physical examinations findings were detailed. A review of an x-ray report showed minimal left knee degenerative changes.

A December 6, 2017 note signed by a physician assistant noted that appellant was seen in an emergency room that day and was released to return to work on December 9, 2017.

In a December 8, 2017 narrative report, Dr. Joshua Goldman, a Board-certified internist, diagnosed left knee pain. He noted that appellant fell and twisted his left knee at work on December 6, 2017. Appellant complained of continuing left knee pain since the incident at work. Physical examination of appellant's left knee revealed pain on flexion, pinpoint lateral knee pain, no crepitus, and no redness or swelling.

Dr. Goldman, in a December 13, 2017 disability note, requested that appellant be excused from work for the period December 11 to 13, 2017. In a December 13, 2017 note, Dr. Richard J. Egan, a Board-certified family medicine physician, released appellant to return to light-duty work on December 13, 2017. He reported that appellant had left knee pain due to an injury.

An unsigned-duty status report (Form CA-17) dated December 21, 2017 provided work restrictions. It noted that appellant had injured his left knee at work on December 6, 2017 when it gave out while he was stepping off a ladder.

A December 27, 2017 magnetic resonance imaging (MRI) scan of appellant's left knee noted no meniscal or acute ligamentous injury, a slightly extruded medial meniscus which could be indicative of a meniscal tear, a tiny amount of joint fluid, patella plica, and some medial compartment degeneration with chondrosis.

Dr. Egan, in a January 2, 2018 report, diagnosed left knee pain. Physical examination findings and injury history were unchanged from his prior report.

In January 2, 2018 report, Dr. Derrick Fluhme, a Board-certified orthopedic surgeon, noted that appellant was seen for left knee pain complaints. Appellant's physical examination revealed full bilateral hip, ankle, and contralateral knee range of motion; a stable varus and valgus left knee stresses; stable anterior and posterior drawers; and no appreciable left knee effusion. Dr. Fluhme reported mild medial joint space narrowing based on review of x-ray reports and some mild medial compartment degenerative changes based on review of a left knee MRI scan. Diagnoses included likely acute exacerbation of mild underlying chondrosis, status post work injury about a month

prior. Dr. Fluhme found appellant could return to light-duty work on January 8, 2018, but was disabled from work until then.[2]

In a development letter dated January 23, 2018, OWCP informed appellant that the evidence received was insufficient to establish his claim. It advised him regarding the factual and medical evidence required to establish his claim. OWCP afforded appellant 30 days to submit the requested evidence.

In response to OWCP's request, additional evidence was received.

A December 6, 2017 hospital report, signed by two nurses and Paige A. Edwards, a physician assistant, noted that appellant fell from a ladder at work that day and was experiencing left knee pain. The diagnosis was reported as left knee pain.

In a December 8, 2017 report, Dr. Goldman advised that appellant was disabled from work for the period December 8 to 12, 2017 due to a December 6, 2017 fall at work. He noted that appellant had difficulty with prolonged standing or bending the left knee and could return to work on December 13, 2017 with restrictions. Dr. Goldman noted that until appellant was seen by orthopedics on January 2, 2018, the duration of his condition and prognosis were undetermined. In a report dated December 26, 2017, he noted that appellant was seen for continuing left knee pain.

A December 27, 2017 MRI scan of appellant's left knee revealed no meniscal or acute ligamentous injury, patella plica, some medial knee compartment degeneration with chondrosis, and slightly extruded medial meniscus which could be indicative of a degenerative meniscal root tear. A physical examination revealed no left knee swelling, redness, tenosynovitis or ability to flex, but there was some lateral pain on contact.

A January 2, 2018 note from Dr. Fluhme indicated that appellant could to return to light-duty work on January 8, 2018.

A January 9, 2018 Form CA-17 a physician assistant provided work restrictions and noted that on December 6, 2017 appellant's knee gave out while stepping off a ladder.

Dr. Goldman, in a February 5, 2018 report, noted that appellant sustained left knee pain as the result of a December 6, 2017 fall at work. He reported that appellant had difficulty with prolonged standing and bending of the left knee. Appellant was disabled from work for the period December 6 to 12, 2017 and returned to work on December 13, 2017 with restrictions. Dr. Goldman noted that he underwent a work-hardening evaluation on January 8, 2018 and was to be revaluated by orthopedics on March 6, 2018 to determine a prognosis for his condition.

By decision dated February 28, 2018, OWCP found that appellant had established that the employment incident occurred as alleged, but denied the claim finding that the evidence of record

[2] OWCP also received a physical therapy report dated January 8, 2018.

was insufficient to establish a diagnosed medical condition causally related to the accepted December 6, 2017 employment incident.

In a March 6, 2018 report, Kristina F. Gifford, a physician assistant, provided examination findings and diagnosed resolved exacerbation of left knee underlying degenerative changes due to a work injury.

On March 28, 2018 appellant requested a review of the written record by OWCP's Branch of Hearings and Review.

By decision dated August 17, 2018, OWCP's hearing representative affirmed the denial of appellant's claim.

In a November 9, 2018 report, Dr. Goldman related that appellant had been diagnosed with acute exacerbation of chondrosis on January 2, 2018. He summarized appellant's history of injury and medical history. Dr. Goldman opined that it was clear that appellant's December 6, 2017 fall at work aggravated his chondrosis, which may have been preexisting. This aggravation of his chondrosis was the cause of his disability.

On December 3, 2018 appellant requested reconsideration.

By decision dated February 28, 2019, OWCP denied modification of the prior decision.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA 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 period of FECA,[3] 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.[4] 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.[5]

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first

[3] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *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).

component is whether the employee actually experienced the employment incident that allegedly occurred.[6] The second component is whether the employment incident caused a personal injury.[7]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[8] The opinion of the physician must be based on a complete factual and medical background, 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.[9]

## ***ANALYSIS***

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted December 6, 2017 employment incident.

In a November 9, 2018 report, Dr. Goldman opined that it was clear that appellant's chondrosis had been aggravated by his fall at work on December 6, 2017. The Board finds that, although Dr. Goldman provided an opinion that generally supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's left knee chondrosis and the December 6, 2017 employment incident.[10] Dr. Goldman did not explain the process by which the accepted fall would have caused the diagnosed condition and why the conditions would not have been the result of preexisting conditions.[11] A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why an accepted employment incident was sufficient to result in the diagnosed medical condition is insufficient to meet a claimant's burden of proof to establish a claim.[12] As the opinion of appellant's physician regarding causal relationship was conclusory and unexplained, it was of diminished probative value and, therefore, insufficient to establish appellant's claim.[13]

Appellant also submitted additional reports from Dr. Goldman, as well as reports from Drs. Haley, Egan, and Fluhme. However, none of these reports provided an opinion regarding

[6] *J.K.*, Docket No. 19-0462 (issued August 5, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.C.*, Docket No. 19-0920 (issued September 25, 2019).

[9] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[10] *M.O.* Docket No 19-0229 (issued September 23, 2019); *see also T.M.*, Docket No. 08-0975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[11] *C.C.*, Docket No. 17-1981 (issued January 23, 2019); *S.D.*, Docket No. 16-0999 (issued October 16, 2017).

[12] *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

[13] *Supra* note 10.

causal relationship. Medical evidence which does not offer an opinion on causal relationship is of no probative value.[14] Therefore, these reports are insufficient to establish appellant's claim.

OWCP also received notes from physician assistants, nurses, and physical therapists. The Board has held, however, that these health care providers are not considered physicians as defined under FECA.[15] The Board therefore finds that, these notes do not constitute competent medical evidence and have no probative value.[16] As such, this evidence is insufficient to meet appellant's burden of proof.

The record also includes diagnostic reports. However, these reports merely reported findings and did not contain an opinion regarding the cause of the reported condition. Thus, they lack probative value regarding the issue of causal relationship and are insufficient to establish the claim.[17]

As the record before the Board does not contain rationalized medical evidence establishing causal relationship between the accepted December 6, 2017 employment incident and his diagnosed left knee conditions, the Board finds that appellant 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(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 December 6, 2017 employment incident.

[14] *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[15] The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See* 5 U.S.C. § 8102(2); *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *M.M.*, Docket No. 16-1617 (issued January 24, 2017) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

[16] *D.F.*, Docket No. 19-0108 (issued April 16, 2019); *see also T.H.*, Docket No. 18-1736 (issued March 13, 2019).

[17] *R.C.*, Docket No. 19-0376 (issued July 15, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the February 28, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 14, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board