United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 19-1134**
	)	**Issued: November 22, 2019**
DEPARTMENT OF THE NAVY, NAVAL AIR WARFARE CENTER AIRCRAFT DIVISION, Lakehurst, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 25, 2019 appellant, through counsel, filed a timely appeal from a November 20, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 left knee conditions causally related to the accepted August 22, 2017 employment incident.

FACTUAL HISTORY

On August 24, 2017 appellant, then a 54-year-old aircraft engine mechanic, filed a traumatic injury claim (Form CA-1) alleging that on August 22, 2017, he ran into a metal pusher and sustained a left knee contusion while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that appellant stopped work on August 23, 2017.

On August 24, 2017 an employing establishment nurse practitioner indicated that appellant called in the previous day and stated that "he bumped his leg and had a bump." She advised him to come in to get checked out, but he preferred to remain at home and ice his leg. When appellant reported to work on August 24, 2017, the nurse practitioner indicated that he required immediate care, and therefore, referred him for further medical treatment. She further advised that he was to return only with a physician clearance letter. On August 24, 2017 an employing establishment representative executed an authorization for examination and/or treatment (Form CA-16) for appellant's left knee contusion.

In a report dated August 28, 2017, Dr. W. Francis Kennard, a Board-certified orthopedic surgeon, reported that appellant presented with complaints of severe left knee pain. Appellant reported to Dr. Kennard that he struck his knee against a metal upright on a sewing ring that he walked into by accident. He related that he had immediate pain, swelling, and redness around the anterior aspect of the knee. Dr. Kennard noted swelling over the tibial tubercle area and swelling over the prepatellar tendon area, and indicated that appellant reported that he was unable to walk without crutches. His examination revealed that appellant had less than full extension by approximately 10 degrees, and flexion was only to 80 degrees. There was tenderness over the tibial tubercle and over the infrapatellar tendon, as well as over the patella. There was no redness observed, but Dr. Kennard noted mild synovitis and mild effusion. He indicated that x-rays revealed early left knee degenerative joint disease, and some prominence at the tibial tubercle. Dr. Kennard diagnosed left knee contusion, left knee medial meniscus tear, knee synovitis, and juvenile osteochondrosis/Osgood-Schlatter disease. He referred appellant for physical therapy and a left knee magnetic resonance imaging (MRI) scan.

In an August 28, 2018 attending physician's report (Part B of a Form CA-16 Authorization for Examination and/or Treatment), Dr. Kennard diagnosed contusion, traumatic arthropathy, and synovitis. He excused appellant from work through September 10, 2017.

OWCP also received August 31, 2017 physical therapy treatment records.

In a September 7, 2017 follow-up report, Dr. Kennard indicated that appellant reported improvement in his knee from therapy, that range of motion had essentially returned to normal, and that appellant had residual swelling. The examination of appellant's left knee showed minimal varus alignment, a large prominence at the patellar tendon insertion into the proximal tibia, full

range of motion, and minimal synovitis. Dr. Kennard also noted appellant's left knee MRI scan revealed a torn medial meniscus, mild patellar tendinitis, and quadriceps tendinitis. He diagnosed left knee contusion, left medial meniscus tear, synovitis and tenosynovitis. Dr. Kennard indicated that appellant should complete his physical therapy regimen, and that he could return to work the following week. He further indicated that if appellant's knee became symptomatic he should return for knee arthroscopy.

Appellant resumed work on September 11, 2017.

In a development letter dated October 17, 2017, OWCP advised appellant of the need for additional factual information and medical evidence in support of his claim for FECA benefits. It specifically inquired about the circumstances of the alleged causative employment incident, including witnesses and the immediate effect of the injury. The attached factual questionnaire also included queries as to the existence of any related preexisting conditions. OWCP also requested that appellant provide a narrative report from his attending physician, which was required to include a diagnosis and a medical explanation as to how the reported work incident either caused or aggravated a medical condition. It afforded him 30 days to submit the requested information. No additional evidence was received.

By decision dated November 24, 2017, OWCP denied appellant's claim. It accepted that the August 22, 2017 incident occurred as alleged, but denied the claim as causal relationship had not been established between his diagnosed condition(s) and the accepted August 22, 2017 employment incident.

Subsequent to the decision, OWCP received additional physical therapy treatment records.

In a December 28, 2017 subsequent follow-up report, Dr. Kennard indicated that appellant stated his symptoms occurred after he struck a metal object at work with his knee, and that appellant "denied any problems with his knee prior to that time … indicating that [there is] a direct causal relationship between the injury to his [left] knee … and his present symptoms." His examination revealed acute findings of synovitis, effusion, and tenderness.

In a February 21, 2018 follow-up report, Dr. Kennard noted that appellant presented with a new episode of pain, swelling, and "giving way" of his left knee.[3] He reported that appellant stated that he was walking when his knee "gave way." Dr. Kennard related that appellant had a known tear of the medial meniscus, as documented by the MRI scan, and stated, "[t]he medical evidence establishes that the diagnosis condition-torn left medial meniscus is causally related to this injury resulting in the symptoms." The objective examination revealed mild synovitis in the knee and palpable ballotable effusion of the left knee. Dr. Kennard ordered that appellant receive a repeat MRI scan of his left knee due to the new injury.

[3] On February 22, 2018 appellant filed a traumatic injury claim for a February 15, 2018 injury to his left knee when he stepped down after hooking up a fuel fitting and he felt his knee pop and give way. OWCP assigned that claim File No. xxxxxx622 and accepted a tear of the left medial meniscus. Appellant's claims have not been administratively combined and File No. xxxxxx622 is not presently before the Board.

In a March 13, 2018 follow-up report, Dr. Kennard noted that appellant indicated that he was having less pain, but continued to have difficulty with stairs and walking on flat surfaces. The examination revealed moderate effusion of the left knee, with tenderness over the medial and lateral joint line of the knee. Dr. Kennard noted that appellant lacked full extension by about five degrees. An MRI scan of the left knee showed a large tear of the medial meniscus, which extended from the mid-portion of the meniscus posteriorly to the posterior rim. It also showed large effusion of the knee joint. Dr. Kennard further noted, "establishment of injury is that the patient was stepping off a brake apron when his left knee gave out and he twisted the knee resulting in severe swelling and pain. To evaluate this injury MRI [scan] was obtained and has confirmed the presence of the tear of the medial meniscus of the left knee. [T]his injury is consistent with the mechanism of giving way that the claimant espouses." He continued, "[t]he causal relationship is direct in that [appellant] twisted his knee had pain and swelling and inability to function and MRI [scan] was obtained to investigate those symptoms and findings and confirmed the presence of a tear of the left knee medial meniscus. These mechanical symptoms are well-known symptoms from medial meniscal injury and are well documented in his chart. [T]he MRI [scan] findings are likewise well-known MRI [scan] findings related to this mechanical type of injury to the knee/meniscus complex."

In an April 18, 2018 follow-up report, Dr. Kennard added, "The original injury occurred while working and this is a reactivation of that same injury ... the medical evidence support with Level One clarity that this injury is related to the claimant's underlying torn left medial meniscus. [T]here can be no other cause."

In a June 29, 2018 letter, Dr. Kennard recounted that on August 22, 2017 appellant was arising from his position of checking the equipment, when he turned to his left to check the equipment at the rear of the test mechanism and impacted a metal pusher with his left knee and leg. Appellant was approximately two feet off the ground at that time, and fell those two feet, twisting his knee, but catching himself with his right hand and arm on the front of the test mechanism, which was described as a dead-load vehicle used to replicate the weight of aircraft. Dr. Kennard noted that appellant had immediate pain, swelling and discomfort in his left knee, but finished his workday. The examination at the initial office visit of August 28, 2017 revealed that appellant had 10 degree loss of extension, flexion was to 80 degrees, and rotation was localized to medial joint line. Dr. Kennard related that he observed tenderness over the tibial tubercle, and above the infrapatellar tendon as well as over the patella. He observed synovitis and effusion in the knee. Dr. Kennard related that his diagnostic impression at the time was: (1) contusion left knee; (2) tear of the left medial meniscus, and (3) synovitis left knee. A left knee MRI scan revealed a tear of the medial meniscus. Appellant finished out his physical therapy and was asymptomatic and subsequently resumed his regular employment duties. Dr. Kennard next described a second injury occurring on February 15, 2018, when appellant stepped down from a break train apron and felt his left knee "pop," and experienced severe pain in his left knee. He stated, "[the] etiology of this torn left medial meniscus is clear-cut. [Appellant] has suffered two twisting injuries to his affected left knee. This is a typical type of mechanism for tearing a medial or lateral meniscus in the knee. In these particular instances with the left foot planted[,] a twisting force was applied resulting in damage to the medial meniscus. The subsequent synovitis and effusion are typical of the pathology local that develops." He added, "[t]he causal relationship is a direct one.... Tearing of the meniscus is a direct result of twisting moments with a loaded knee joint as is the case in both knee occurrences with [appellant]. This is a straightforward injury

related to twisting with a loaded knee joint[,] *i.e.* weight-bearing joint[,] resulting in tearing of the meniscus in the left knee." Dr. Kennard concluded his letter by advising that arthroscopic surgery would be necessary, and that the prognosis was guarded as a prolonged wait for definitive treatment would result in the aggravation of the synovitis and effusion in the knee, resulting in direct articular surface damage and the development of significant post-traumatic arthritis.

On June 29, 2018 appellant, through counsel, requested reconsideration.

By decision dated November 20, 2018, OWCP denied modification of its November 24, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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,[5] 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.[6] 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.[7]

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.[8] 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.[9] The second component is whether the employment incident caused a personal injury.[10] 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 being claimed is causally related to the injury.[11]

[4] *Id.*

[5] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[7] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[9] *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[11] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[12] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[13] 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).[14]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish left knee conditions causally related to the accepted August 22, 2017 employment incident.

In his August 28, 2017 report, Dr. Kennard indicated that appellant reported that he struck his knee against a metal upright on a sewing ring that he walked into by accident. He indicated that x-rays taken revealed early degenerative joint disease, and some prominence at the tibial tubercle. Dr. Kennard diagnosed a contusion of the left knee, a medial meniscus tear of the left knee, synovitis of the knee, and Osgood Schlatter disease. While he reported appellant's account of the incident, Dr. Kennard offered no opinion on the issue of causal relationship between the reported incident and the diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[15] This report, therefore, is insufficient to establish appellant's claim.

In his September 7, 2017 report, Dr. Kennard indicated that appellant reported improvement in his knee condition. The examination of his left knee showed minimal varus alignment, a large prominence at the patellar tendon insertion into the proximal tibia, full range of motion, and minimal synovitis. However, Dr. Kennard did not offer an opinion on causal relationship, and therefore, this report is of no probative value on the issue.[16]

In his December 28, 2017 follow-up report, Dr. Kennard indicated that appellant's symptoms occurred after he struck a metal object at work with his knee, and that appellant "denied any problems with his knee prior to that time [thus] indicating … a direct causal relationship between the injury to his knee left and his present symptoms." While Dr. Kennard addressed the cause of appellant's left knee condition, temporal relationship alone will not suffice for purposes

[12] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[13] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[14] *Id.*

[15] *A.C.*, Docket No. 19-0266 (issued May 28, 2019).

[16] *Id.*

of establishing causal relationship.[17] Therefore, this report is insufficient to establish causal relationship.

Dr. Kennard related, in the February 21, 2018 report, that appellant stated that he was walking when his knee gave way on February 15, 2018. He indicated that appellant had a known tear of the medial meniscus, as documented by the MRI scan, and stated, "[t]he medical evidence establishes that the diagnosis condition -- torn left medial meniscus -- is causally related to this injury resulting in the symptoms." While Dr. Kennard's February 21, 2018 report offers an opinion on causal relationship, it is unclear whether he is referring to the original August 22, 2017 incident or the subsequent February 15, 2018 incident in this report. As Dr. Kennard did not provide a rationalized opinion explaining how the August 22, 2017 employment incident caused appellant's left knee conditions, this report is of diminished probative value.[18]

In a March 13, 2018 follow-up report, Dr. Kennard noted, "establishment of injury is that the patient was stepping off a brake apron when his left knee gave out and he twisted the knee resulting in severe swelling and pain. To evaluate this injury [an] MRI [scan] was obtained and has confirmed the presence of the tear of the medial meniscus of the left knee. [T]his injury is consistent with the mechanism of giving way that the claimant espouses." He continued, "[t]he causal relationship is direct in that [appellant] twisted his knee had pain and swelling and inability to function and [an] MRI [scan] was obtained to investigate those symptoms and findings and confirmed the presence of a tear of the left knee medial meniscus. These mechanical symptoms are well known symptoms from medial meniscal injury and are well documented in his chart. [T]he MRI [scan] findings are likewise well-known MRI [scan] findings related to this mechanical type of injury to the knee/meniscus complex." In an April 18, 2018 follow-up report, Dr. Kennard added, "The original injury occurred while working and this is a reactivation of that same injury ... the medical evidence support with Level One clarity that this injury is related to the claimant's underlying torn left medial meniscus. [T]here can be no other cause." While Dr. Kennard offered an opinion on causal relationship, these reports are of reduced probative value because they do not contain a physiological explanation as to how running into a metal pusher on August 22, 2017 caused his diagnosed knee conditions.[19]

In his June 29, 2018 report, Dr. Kennard recounted that on August 22, 2017 appellant turned to his left to check the equipment at the rear of the test mechanism and ran into a metal pusher. He stated that appellant fell two feet, twisting his knee. Appellant had immediate pain, swelling and discomfort in his left knee, but finished his workday. Dr. Kennard initially diagnosed left knee contusion, left knee synovitis, and acute medial meniscus tear, which latter diagnosis was confirmed by an MRI scan. He then described a second injury occurring on February 15, 2018, when appellant stepped down from a break train apron and felt his left knee "pop," and experienced severe pain. Dr. Kennard stated, "[the] etiology of this torn left medial meniscus is clear-cut. [Appellant] has suffered two twisting injuries to his affected left knee. This is a typical type of mechanism for tearing a medial or lateral meniscus in the knee. In these particular instances with

[17] *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[18] *M.S.*, Docket No. 19-0189 (issued May 14, 2019).

[19] *See S.H.*, Docket No. 19-0631 (issued September 5, 2019).

the left foot planted[,] a twisting force was applied resulting in damage to the medial meniscus. The subsequent synovitis and effusion are typical of the pathology local that develops." He added, "[t]he causal relationship is a direct one.... Tearing of the meniscus is a direct result of twisting moments with a loaded knee joint as is the case in both knee occurrences with [appellant]. This is a straightforward injury related to twisting with a loaded knee joint[,] *i.e.*, weight-bearing joint[,] resulting in tearing of the meniscus in the left knee." The Board finds the June 29, 2018 report of Dr. Kennard to be of reduced probative value because Dr. Kennard's June 29, 2018 description of the incident is inconsistent with the report of appellant to OWCP on his Form CA-1, with the employing establishment nurse practitioner's contemporaneous account of the August 22, 2017 incident, and with Dr. Kennard's description from August 28, 2017. Neither the Form CA-1 nor the employing establishment nurse practitioner's report mention the accepted August 22, 2017 employment incident. Dr. Kennard's report of August 28, 2017 stated that appellant walked into a metal upright on a sewing ring, but did not mention a fall or twisting motion. Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.[20] A medical report with key factual inconsistencies as to what actually happened cannot form the basis of a rationalized opinion on causal relationship.[21]

Finally, the Board notes that in addition to the reports from Dr. Kennard, OWCP received various treatment records authored by physical therapists. However, these providers are not considered "physician[s]" as defined by FECA, and their respective reports are insufficient for purposes of establishing entitlement to FECA benefits.[22]

As appellant has not submitted rationalized medical evidence on the issue of causal relationship, the Board finds that he has not met his burden of proof to establish his claim.

Appellant may submit new evidence and/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 that his diagnosed left knee conditions are causally related to the accepted August 22, 2017 employment incident.

[20] *D.V.*, Docket No. 17-0195 (issued August 7, 2018).

[21] *Id.*

[22] 5 U.S.C. § 8101(2) provides that a 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.M.*, Docket No. 16-1617 (issued January 24, 2017); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, 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).

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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