

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

M.F., Appellant	)	
	)	
and	)	<b>Docket No. 19-0927</b>
	)	<b>Issued: September 11, 2019</b>
	)	
U.S. POSTAL SERVICE, CAPITAL	)	
PERFORMANCE CLUSTER, Washington, DC,	)	
Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 27, 2019 appellant, through counsel, filed a timely appeal from a December 19, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish a left knee condition causally related to the accepted January 28, 2016 employment incident.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts and circumstances of the case as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 19, 2016 appellant, then a 48-year-old data collector, filed a traumatic injury claim (Form CA-1) alleging that on January 28, 2016 he slipped and fell on black ice when walking from his car while in the performance of duty. He alleged that he fractured his left knee and left upper leg above the left knee, and incurred a small bruise on his right arm. Appellant stopped work on the date of the claimed injury and returned to work on February 12, 2016.

Appellant submitted a sick/disability certification dated February 9, 2016 from Corey D. Brown, a certified physician assistant. Mr. Brown noted that appellant had a left knee and suprapatellar effusion and hematoma status post fall. He indicated that appellant could return to work on February 12, 2016.

OWCP subsequently received a letter dated February 1, 2016 by Dr. David M. Luse, an internist. Dr. Luse advised that appellant may return to work on February 8, 2016.

In a development letter dated July 6, 2016, OWCP informed appellant that, when his claim was received it appeared to be for a minor injury that resulted in minimal medical bills and minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It reopened the claim for formal consideration of the merits because his medical bills had exceeded \$1,500.00. OWCP requested that appellant submit a narrative medical report from his physician, which contained a detailed description of findings and diagnoses, explaining how the reported incident caused or aggravated his medical condition. It also provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In response to OWCP's development letter, appellant submitted a progress note dated May 16, 2016 from Dr. Craig M. Thomas, a Board-certified orthopedic surgeon. Dr. Thomas noted that appellant related that he fell on black ice in January 2016. He diagnosed quadriceps tendon rupture (primary) and noted that appellant consented to surgery.

By decision dated August 11, 2016, OWCP denied appellant's traumatic injury claim, finding that he had not established fact of injury as he failed to respond to the questionnaire and clarify the circumstances surrounding the alleged January 28, 2016 employment incident. It further found that he had not provided medical evidence establishing a diagnosed medical

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<sup>3</sup> Docket No. 18-0602 (issued October 11, 2018).

condition causally related to the January 28, 2016 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 25, 2016 appellant, through counsel, requested reconsideration. Counsel resubmitted Dr. Thomas' May 16, 2016 progress note. He also submitted a report of work status and restrictions dated September 22, 2016 in which Dr. Thomas diagnosed left knee quadriceps tendon rupture and noted that appellant would be incapacitated from October 7 to 25, 2016. Dr. Thomas listed appellant's left knee surgery date as October 11, 2016.

By decision dated January 12, 2017, OWCP affirmed the August 11, 2016 decision, as modified. It found that the factual evidence of record was sufficient to establish that the claimed January 28, 2016 employment incident occurred as alleged. However, the claim remained denied as the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted employment incident.

On February 7, 2017 counsel, on behalf of appellant, requested reconsideration.

OWCP subsequently received an additional report dated January 23, 2017 by Dr. Thomas who opined that appellant's fall on January 28, 2016 was the direct and proximate cause of his left quadriceps tendon rupture. Dr. Thomas also noted that there may be other causes for his medical problem, but one of the causes was clearly the described incident.

By decision dated February 14, 2017, OWCP denied modification of its January 12, 2017 decision. It determined that the report of Dr. Thomas lacked probative value as he failed to adequately explain his opinion on causal relationship based on a proper factual and medical background.

Appellant, through counsel, again requested reconsideration on November 27, 2017 and submitted additional medical evidence from Dr. Thomas. In a letter dated November 20, 2017, Dr. Thomas explained that quadriceps tendon ruptures usually occur during a rapid, eccentric contraction of the quadriceps muscle with the foot planted and the knee partially flexed, such as caused by a fall on snow or ice. Additionally, he noted that a quadriceps tendon rupture was a pathologic process that occurred as a direct result of a tendon load that exceeded its failure point.

OWCP, by decision dated December 8, 2017, denied modification of its February 14, 2017 decision, finding that appellant had not established causal relationship. In evaluating Dr. Thomas' November 20, 2017 opinion, it again noted that he failed to sufficiently explain how the accepted January 28, 2016 employment incident caused appellant's diagnosed left knee condition based on a proper factual and medical background.

Appellant, through counsel, appealed to the Board on January 29, 2018. By decision dated October 11, 2018,<sup>4</sup> the Board set aside the December 8, 2017 merit decision. The Board found that, although Dr. Thomas' November 20, 2017 report was not fully rationalized to establish a left knee condition causally related to the accepted January 28, 2016 employment incident, it raised an uncontroverted inference of causal relationship sufficient to require further development of the

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<sup>4</sup> *Id.*

medical evidence by OWCP. The Board remanded the case to OWCP to obtain a rationalized medical opinion regarding whether appellant's diagnosed quadriceps tendon rupture of the left knee was causally related to the accepted employment incident.

In a development letter dated October 30, 2018, OWCP requested that appellant submit a rationalized medical opinion from his physician, based on a complete factual and medical history, explaining how the accepted January 28, 2016 employment incident caused or contributed to his diagnosed left knee condition. It afforded him 30 days to respond.

In response, appellant resubmitted Dr. Thomas' November 20, 2017 report.

By decision dated December 19, 2018, OWCP denied modification of its denial of appellant's claim for a work-related traumatic injury. It found that Dr. Thomas' November 20, 2017 report, which had been previously considered, did not contain a rationalized opinion on causal relationship.

### **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,<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.<sup>8</sup>

The evidence required to establish causal relationship is rationalized medical opinion evidence. 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

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<sup>5</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

<sup>7</sup> *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).

<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup> The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relationship.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted January 28, 2016 employment incident.

In its October 11, 2018 decision, the Board reviewed all evidence submitted prior to OWCP's December 8, 2017 decision and found the case not in posture for decision because Dr. Thomas' November 20, 2017 report raised an uncontroverted inference of causal relationship between the accepted January 28, 2016 employment incident and appellant's quadriceps tendon rupture of the left knee. The Board, therefore, remanded the case for OWCP to obtain a rationalized medical opinion as to whether appellant's diagnosed condition was causally related to the accepted employment incident. With respect to the findings made in the Board's October 11, 2018 decision, those matters are *res judicata* absent any further review by OWCP under section 8128(a) of FECA and; therefore, the prior evidence need not be addressed again in this decision.<sup>11</sup>

Following the Board's review of the case, on October 30, 2018, OWCP requested that appellant submit a rationalized medical opinion from his physician, based on an accurate factual background, explaining how the January 28, 2016 employment incident caused or contributed to his diagnosed left knee condition.

In response, appellant only submitted a duplicate copy of Dr. Thomas' November 20, 2017 report, which was previously of record and considered by OWCP and this Board. He opined that the January 28, 2016 employment incident caused appellant's left knee quadriceps tendon rupture. As Dr. Thomas' report is duplicative of evidence already of record and previously considered, it has no new evidentiary value.<sup>12</sup>

As appellant has not submitted rationalized medical evidence to establish that his left knee condition was causally related to the accepted January 28, 2016 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

On appeal counsel contends that OWCP's December 19, 2018 decision is contrary to fact and law. For the reasons set forth above, the Board finds that appellant has not met his burden of proof.

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<sup>9</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 45 ECAB 345(1989).

<sup>10</sup> *See M.J.*, Docket No. 17-0725 (issued May 17, 2018); *see also Lee R. Haywood*, 48 ECAB 145 (1996); *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

<sup>11</sup> *See K.K.*, Docket No. 17-1061 (issued July 25, 2018); *S.S.*, Docket No. 17-1106 (issued June 5, 2018); *E.L.*, Docket No. 16-0635 (issued November 7, 2016).

<sup>12</sup> *See S.S., id.*; *Daniel Deparini*, 44 ECAB 657, 659 (1993).

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 January 28, 2016 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 19, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 2019  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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