United States Department of Labor
Employees' Compensation Appeals Board

O.M., Appellant	)	
and	)	**Docket No. 18-1055**
	)	**Issued: April 15, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 30, 2018 appellant, through counsel, filed a timely appeal from a March 26, 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.[3]

[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.*

[3] The Board notes that, following the March 26, 2018 decision, OWCP received additional evidence. 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 expand the acceptance of his claim to include the additional conditions causally related to or as a consequence of his April 21, 2017 employment injury.

FACTUAL HISTORY

On May 2, 2017 appellant, then a 36-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 21, 2017 he twisted his left knee when he tripped on a slippery stoop while in the performance of duty. He stopped work on April 22, 2017.

In Part B of an authorization for examination and/or treatment (Form CA-16) dated May 16, 2017, Dr. Matthew Grunwald, an internist, provided a history of appellant twisting his left knee on a stoop during a delivery. He diagnosed left knee sprain and the development of septic arthritis. Dr. Grunwald checked a box marked "yes" that the condition was caused or aggravated by the described employment activity. He advised that appellant had undergone an arthroscopic irrigation and debridement of the left knee on May 9, 2017.

In an undated report, Dr. Grunwald indicated that appellant had been hospitalized under his care from May 9 and 19, 2017.

On June 23, 2017 appellant filed a claim for wage-loss compensation (Form CA-7) for the period June 6 to 23, 2017.

In a June 29, 2017 development letter, OWCP informed appellant that when his claim was first received it appeared to be a minor injury that resulted in minimal or no lost time from work and payment of a limited amount of medical expenses had been administratively approved. It noted that it had reopened the claim for formal consideration of the merits because he had now filed a claim for wage-loss compensation. OWCP notified appellant of the deficiencies of his claim and advised him of the type of factual and medical evidence needed. It afforded him 30 days to provide the necessary evidence.

OWCP subsequently received an April 24, 2017 report, wherein Dr. Ernst Gustave, an emergency medicine specialist, diagnosed sprain of the left lateral collateral ligament and instructed appellant to use crutches and wear a knee immobilizer.

Also received was an x-ray of appellant's left knee obtained on May 9, 2017, which was noted as unremarkable.

In a May 19, 2017 hospital admission note, Dr. Grunwald advised that appellant had presented with progressively worsening left knee pain over the past three weeks after twisting his left knee on April 21, 2017 when he slipped walking up steps. He noted that a knee aspirate had shown infectious arthritis, but that diagnostic testing had revealed likely septic arthritis and a kidney injury. Dr. Grunwald diagnosed sepsis due to septic arthritis, uncontrolled diabetes mellitus, uncontrolled hypertension, hyperkalemia, and a possible acute kidney injury.

On May 26, 2017 Dr. William P. Urban, a Board-certified orthopedic surgeon, indicated that appellant had undergone a scope of his left knee on May 19, 2017 and was also "being treated

simultaneously for septic arthritis." He noted that appellant had sustained a prior twisting injury. Dr. Urban diagnosed pyogenic arthritis and staphylococcal arthritis of the left knee.

In a narrative statement dated July 3, 2017, appellant described the claimed April 21, 2017 employment incident and his subsequent medical treatment. He advised that his pain had increased over time. Appellant noted that he had undergone emergency surgery on his knee and was hospitalized for septic arthritis of the knee and methicillin-resistant staphylococcus aureua, as well as acute renal failure due to medication. He indicated that he had no problems with his left knee prior to April 21, 2017.

In a July 27, 2017 activity limitation certificate, Dr. Yura Stoly, a physiatrist, diagnosed a left knee contusion due to a work injury on April 21, 2017, opined that appellant had a moderate, temporary impairment, and released him to return to "transitional-duty" work effective July 31, 2017.[4]

On August 10, 2017 OWCP accepted the claim for a left knee contusion.

By decision dated August 11, 2017, OWCP denied expansion of appellant's claim to include the additional conditions of a left lateral collateral ligament sprain/strain, septic joint/pyogenic arthritis, staphylococcal arthritis, and a left knee sprain with septic arthritis. It found that the medical evidence of record was insufficient to establish causal relationship between the claimed conditions and the accepted April 21, 2017 employment injury.

In an attending physician's report (Form CA-20) dated August 3, 2017, Dr. Stoly diagnosed status post left knee arthroscopy, status post septic knee arthritis, traumatic arthritis, and left knee contusion. He noted the history of injury as appellant twisting his left knee on April 21, 2017 when he slipped going up a stoop. Dr. Stoly checked a box marked "Yes" indicating that the condition was caused or aggravated by an employment activity. In a duty status report (Form CA-17) of even date, he diagnosed septic left knee arthritis and provided work restrictions.

On August 31, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review of the August 11, 2017 decision.[5]

OWCP subsequently received a September 14, 2017 activity limitation certificate, wherein Dr. Stoly diagnosed a left knee contusion and noted that appellant had resumed work.

A telephonic hearing was held before an OWCP hearing representative on February 13, 2018. Appellant described his employment injury and testified that he had no prior knee condition before April 21, 2017. He noted that appellant initially received treatment at the emergency room, but continued to experience pain and was subsequently diagnosed with an

[4] Appellant returned to part-time, light-duty work on July 31, 2017.

[5] By decision dated August 23, 2017, OWCP determined that appellant was not entitled to continuation of pay (COP) during his absence from work for the period April 22 to June 5, 2017. By decision dated June 18, 2018, an OWCP hearing representative affirmed this decision finding that appellant failed to file a timely notice of injury for entitlement to COP. By decision dated September 29, 2017, OWCP denied appellant's claim for wage-loss compensation beginning June 6, 2017 because the medical evidence of record failed to establish disability for the period claimed causally related to his accepted left knee contusion.

infection. The hearing representative advised her to submit evidence from a physician explaining how the accepted April 21, 2017 employment injury resulted in the diagnosed condition of septic arthritis, and held the case record open for 30 days for the submission of additional evidence. OWCP did not receive additional evidence.

By decision dated March 26, 2018, OWCP's hearing representative affirmed the August 11, 2017 decision.

LEGAL PRECEDENT

Where an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[7] 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.[8] 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 the accepted employment incident.[9]

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that, a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include the additional conditions causally related to or as a consequence of his April 21, 2017 employment injury.

On May 19, 2017 Dr. Grunwald discussed appellant's history of increasing left knee pain for three weeks after he twisted his left knee on April 21, 2017 when he slipped going up steps. He diagnosed sepsis due to septic arthritis, uncontrolled diabetes mellitus, uncontrolled

[6] *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

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

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

[9] *Id*.

[10] *K.S.*, Docket No. 17-1583 (issued May 10, 2018); Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* § 3.05 (2014).

hypertension, hyperkalemia, and a possible acute kidney injury. However, while Dr. Grunwald provided the history of the April 21, 2017 employment injury, accepted by OWCP for a left knee contusion, he failed to specifically address causal relationship of any claimed left knee condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of a diagnosed condition is of no probative value on the issue of causal relationship.[11] Therefore, Dr. Grunwald's report is insufficient to meet appellant's burden of proof.

In a report dated May 5, 2017, Dr. Urban obtained a history of appellant experiencing pain in his left knee for two weeks after a twisting injury. He noted that appellant's job required walking and diagnosed left knee pain.

On May 26, 2017 Dr. Urban advised that appellant had undergone a left knee scope on May 19, 2017 and had also been treated for septic arthritis. He indicated that appellant had previously sustained a twisting injury. Dr. Urban diagnosed left knee staphylococcal arthritis and pyogenic arthritis. As he failed to address the relevant issue of whether appellant's accepted injury caused or aggravated additional diagnosed conditions, his report is of no probative value.[12] Consequently, Dr. Urban's report is insufficient to meet appellant's burden of proof.

In Part B of a May 16, 2017 Form CA-16, Dr. Grunwald, diagnosed knee sprain and the development of septic arthritis. He checked a box marked "yes" indicating that the condition was caused or aggravated by the described employment activity of appellant twisting his knee while on a stoop during a delivery. In an August 3, 2017 attending physician's report (Form CA-20), Dr. Stoly diagnosed status post left knee arthroscopy, status post septic knee arthritis, traumatic arthritis, and a left knee contusion and a checked box marked "yes" indicating that the diagnosed conditions were caused or aggravated by an employment activity. The Board has held, however, that when a physician's opinion on causal relationship consists only of a checkmark on a form, without further explanation by way of rationale, is of diminished probative value.[13]

On July 27 2017 Dr. Stoly diagnosed a left knee contusion due to the April 21, 2017 employment injury and provided work restrictions. As he did not address the relevant issue of whether appellant's claim should be expanded to include additional conditions or a consequential injury, his report is of no probative value.[14]

The remaining medical evidence fails to address causal relationship. On April 24, 2017 Dr. Ernst diagnosed sprain of the left lateral collateral ligament. In an undated report, Dr. Grunwald advised that he had treated appellant in the hospital from May 9 to 19, 2017. In a Form CA-17 report, Dr. Stoly diagnosed septic arthritis of the left knee and provided work restrictions. On September 14, 2017 he noted that appellant had resumed work. None of the physicians, however, offered a medical opinion finding that a diagnosed condition was causally related to the accepted employment injury. As discussed, medical evidence that does not offer an

[11] *J.M.*, Docket No. 18-0853 (issued March 9, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *A.D.*, 58 ECAB 149 (2006).

[12] *Id*.

[13] *S.O.*, Docket No. 19-0307 (issued June 18, 2019); *T.D.*, Docket No. 18-1157 (issued March 26, 2019).

[14] *See supra* note 11.

opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[15] Thus, this evidence is also insufficient to meet appellant's burden of proof.

Appellant also submitted a May 9, 2017 left knee x-ray. Diagnostic studies, however, standing alone lack probative value on the issue of causal relationship as they do not address whether employment caused any of the diagnosed conditions.[16] Therefore, this report is also insufficient to establish appellant's claim.

The Board finds that appellant has not submitted sufficient rationalized medical evidence sufficient to establish causal relationship between the accepted April 21, 2017 employment injury and the claimed additional right knee conditions. As such, appellant has not met his burden of proof to expand acceptance of his claim.[17]

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 expand acceptance of his claim to include the additional conditions causally related to or as a consequence of the April 21, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

[15] *See G.M.*, Docket No. 19-0933 (issued October 1, 2019); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[16] *See R.J., supra* note 6; *E.G.*, Docket No. 17-1955 (issued September 10, 2018).

[17] *See T.G.*, Docket No. 17-0645 (issued August 15, 2018) (medical opinions based on an incomplete or inaccurate history are of little probative value).