United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
and	)	**Docket No. 19-1955**
	)	**Issued: April 9, 2020**
DEPARTMENT OF THE ARMY, PINE BLUFF ARSENAL, Pine Bluff, AR, 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 September 24, 2019 appellant, through counsel, filed a timely appeal from a July 3, 2019 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 a left knee condition causally related to the accepted April 24, 2018 employment incident.

FACTUAL HISTORY

On May 3, 2018 appellant, then a 55-year-old industrial worker, filed a traumatic injury claim (Form CA-1) alleging that on April 24, 2018 he felt his left knee pop when walking up a step while in the performance of duty. On the reverse side of the claim form, the employing establishment acknowledged that appellant was injured in the performance of duty. Appellant did not stop work.

In a May 15, 2018 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional medical evidence needed to establish his claim. OWCP afforded appellant 30 days to respond.

OWCP subsequently received reports dated April 24 and 25, and May 16, 2018 from Dr. Craig P. Anderson, an osteopath Board-certified in occupational medicine. Dr. Anderson noted that appellant had a history of bilateral knee pain and reported that he experienced severe pain in the left knee when he felt a pop while walking up stairs at work. On physical examination, he noted an effusion in appellant's knee and pain on palpitation. Dr. Anderson further noted that there was possible meniscal involvement based on appellant's medical history and the appearance of his knee.

In a May 2, 2018 report, Dr. Stephen E. Williamson, a Board-certified occupational medicine specialist, indicated that appellant was seen for a follow-up for continued left knee pain that he had first experienced while climbing stairs at work on April 24, 2018. He noted that while the symptoms appellant described occurred while at work, this did not prove that his condition arose from work activity. Dr. Williamson opined that his condition was most likely a result of a degenerative disease that manifested at work, but which could have just as easily arose anywhere.

In an attending physician's report (Form CA-20) dated May 21, 2018, Dr. Anderson indicated that appellant was injured at work on April 24, 2018 when he was traversing stairs and felt a pop in his left knee, noting that he had reported a history of chronic bilateral knee pain. He diagnosed left knee pain and checked a box marked "yes" indicating that appellant's condition had been caused or aggravated by an employment activity. Dr. Anderson noted that appellant should perform no lifting or carrying in excess of 10 pounds, and that he should neither climb into nor drive a government vehicle.

In a separate report dated May 21, 2018, Dr. Anderson indicated that appellant had a long history of chronic bilateral knee pain, "secondary to nonoccupational osteoarthritis," for which he had multiple exacerbations through his career at the employing establishment. He opined, however, that no causal relationship existed between his federal work position and his left knee pain. Dr. Anderson found no instability or ligament/tendon laxity upon examination to suggest that appellant had a torn ligament or tendon, or a fractured bone. He further opined that the

described mechanism of the current injury did not support an injury of greater significance than an exacerbation of his typical osteoarthritis.

By decision dated June 18, 2018, OWCP denied the claim finding that the April 24, 2018 employment incident occurred as alleged, but the medical evidence of record was insufficient to establish a medical diagnosis in connection with the injury. Thus, it found that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received a June 5, 2018 report, wherein Dr. Larry L. Nguyen, a Board-certified orthopedic surgeon, noted that appellant sustained a left knee twisting injury when walking up stairs on April 28, 2018. Dr. Nguyen diagnosed left knee degenerative joint disease (DJD) and sprain. He noted that appellant also had mild patellofemoral arthrosis based on x-rays.

Appellant requested reconsideration on July 5, 2018.

With his request for reconsideration, appellant submitted two physician's status reports dated June 5 and July 3, 2018 from Dr. Nguyen, advising that appellant was capable of light-duty work with restrictions of no pushing, pulling, or lifting more than 10 to 15 pounds; no standing or walking more than four to six hours per day; and no crawling.

In a July 3, 2018 narrative report, Dr. Nguyen noted that he had seen appellant for follow-up for his left knee condition. He noted that appellant still had pain and swelling and reported that his right knee was beginning to hurt because he was favoring the left knee. Dr. Nguyen ordered a magnetic resonance imaging (MRI) scan of the left knee to evaluate for internal derangement.

By decision dated August 6, 2018, OWCP modified its June 18, 2018 decision finding that the evidence of record was sufficient to establish a medical diagnosis, but further found that the claim remained denied as the evidence of record was insufficient to establish causal relationship between the diagnosed left knee conditions and the accepted April 24, 2018 employment incident.

Appellant subsequently submitted progress reports dated July 24 and August 14, 2018 from Dr. Nguyen who reiterated his diagnoses and clarified that the date of injury was April 24, 2018.

On September 17, 2018 appellant requested reconsideration of the August 6, 2018 decision.

By decision dated December 14, 2018, OWCP denied modification of its prior August 6, 2018 decision.

On January 10, 2019 Dr. Nguyen performed a left knee arthroscopy, medial and lateral meniscus debridement, and abrasion chondroplasty.

In reports dated November 14, 2018 and January 18 and 30, 2019, Dr. Nguyen diagnosed left knee medial and lateral meniscus tears with DJD due to a left knee twisting injury on April 24, 2018 while walking up stairs at work. He found that, upon review of a left knee MRI scan dated November 2, 2018, appellant had some undersurface tearing of the lateral meniscus, oblique superior surface tearing of the posterior horn of the medial meniscus, and a complex macerated tear of the medial meniscus with severe chondral surface medial compartment thinning and bony

contusion. Dr. Nguyen opined on November 14, 2018 that the identified diagnoses were consistent with his work injury and progressive arthrosis.

Appellant requested reconsideration on February 4, 2019.

OWCP subsequently received a February 22, 2019 report from Dr. Nguyen who included in the subjective portion of his report that appellant had sprained his left knee while walking up stairs on April 24, 2018 while at work. Dr. Nguyen noted that a subsequent MRI scan on November 2, 2018 showed a tear of the medial and lateral meniscus with severe chondral surface thinning in the medial compartment. He advised that appellant was at high risk for requiring future total knee arthroplasty and highly recommended job reeducation for a more sedentary position, indicating that appellant was looking at disability retirement.

By decision dated July 3, 2019, OWCP denied modification of its December 14, 2018 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 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]

Rationalized medical opinion evidence is required to establish causal relationship. 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

[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).

[6] *T.M.*, Docket No. 19-0380 (issued June 26, 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).

nature of the relationship between the diagnosed condition and the accepted employment incident.[8] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[9]

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted April 24, 2018 employment incident.

In support of his claim, appellant submitted a series of medical reports from Dr. Nguyen who repeated appellant's history of injury and diagnosed left knee sprain, medial and lateral meniscus tears, and DJD due to a left knee injury on April 24, 2018 while walking up stairs at work. Dr. Nguyen noted that appellant also had preexisting and progressive arthrosis in the left knee. The mere recitation of patient history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.[11] Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's reports are of limited probative value.[12]

In a May 21, 2018 Form CA-20 report, Dr. Nguyen indicated by checking a box marked "yes" indicating that appellant's left knee pain was causally related to the accepted April 24, 2018 employment incident. However, the Board has held that an opinion on causal relationship with an affirmative check mark, without more by way of medical rationale, is insufficient to establish the claim.[13] Moreover, pain is a symptom and not a clear diagnosis of a medical condition.[14] As such, this report is insufficient to establish appellant's claim.

Additionally, Dr. Nguyen opined on November 14, 2018 that appellant's current condition was consistent with his work injury and progressive arthrosis, but he did not explain how

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

[9] *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

[10] *M.O.*, Docket No. 18-0229 (issued September 23, 2019); *J.F.*, Docket No. 19-0456 (issued July 12, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[11] *N.S.*, Docket No. 19-0167 (issued June 21, 2019); *J.G.*, Docket No. 17-1382 (issued October 18, 2017).

[12] *M.N.*, Docket No. 19-0694 (issued September 3, 2019); *A.B.*, Docket No. 16-1163 (issued September 8, 2017).

[13] *See C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018).

[14] *D.S.*, *id.*; *see also P.S.*, Docket No. 12-1601 (issued January 2, 2013).

appellant's prior knee conditions related to his current left knee condition.[15] A well-rationalized opinion is particularly warranted when there is a history off preexisting conditions.[16] While the opinion supporting causal relationship does not have to reduce the cause or etiology of a disease or a condition to an absolute certainty, the opinion must be one of reasonable medical certainty and not speculative or equivocal in character.[17] As Dr. Nguyen's opinion regarding causal relationship was conclusory and unexplained, it is insufficient to meet appellant's burden of proof to establish his claim.[18]

Appellant also submitted reports by Drs. Williamson and Anderson. In his May 2, 2018 report, Dr. Williamson opined that although appellant sustained a work incident and his symptoms occurred following this incident, that fact did not establish that the employment incident caused his condition. He further opined that this was most likely a degenerative disease that manifested at work, but could have just as easily arose anywhere. In his report dated May 21, 2018, Dr. Anderson opined that no causal relationship between appellant's federal work position and his left knee pain could be confirmed. He further opined that the described mechanism of the current injury did not support an injury of greater significance than an exacerbation of his typical osteoarthritis. The Board finds that the opinions of Drs. Williamson and Anderson negate causal relationship between appellant's diagnosed conditions and the accepted employment incident.[19] Therefore, these reports are insufficient to meet his burden of proof.

As the record lacks rationalized medical evidence establishing causal relationship between appellant's claimed conditions and the accepted April 24, 2018 employment incident, the Board finds that he 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 April 24, 2018 employment incident.

[15] *P.S.*, Docket No. 17-1013 (issued November 1, 2017).

[16] *D.M.*, Docket No. 16-0346 (issued June 15, 2017).

[17] *C.H.*, Docket No 19-0409 (issued August 5, 2019).

[18] *P.A.*, Docket No. 18-0559 (issued January 29, 2020).

[19] *See T.W.*, Docket No. 19-0677 (issued August 16, 2019).

ORDER

IT IS HEREBY ORDERED THAT the July 3, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 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