

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

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**L.F., Appellant**

**and**

**DEPARTMENT OF JUSTICE, DRUG  
ENFORCEMENT ADMINISTRATION,  
Springfield, VA, Employer**

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**Docket No. 18-0530  
Issued: February 24, 2020**

*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:

ALEC J. KOROMILAS, Chief Judge  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On January 18, 2018 appellant, through counsel, filed a timely appeal from a November 15, 2017 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 to consider the merits of this case.<sup>3</sup>

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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.*

<sup>3</sup> The Board notes that following the November 15, 2017 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 evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish a right knee injury causally related to the accepted December 5, 2016 employment incident.

## **FACTUAL HISTORY**

On December 19, 2016 appellant, then a 57-year-old investigative assistant, filed a traumatic injury claim (Form CA-1) alleging that on December 5, 2016 she heard a click and felt a sharp pain in her right knee when she bent down to place a file in a bottom drawer while in the performance of duty. She stopped work that same date.

Appellant came under the treatment of Dr. Stephen G. Silver, a Board-certified orthopedic surgeon, on December 12, 2016, for right knee pain. She reported that on December 5, 2016, while at work, she bent down and felt a pop in her right knee followed by a sharp pain. Appellant indicated that the next morning her right knee was swollen and she treated it with rest, ice, and anti-inflammatories. She attempted to return to work, but she could not bear weight on her knee. Dr. Silver noted findings of swelling on the back of the right knee consistent with a Baker's cyst and severe tenderness to palpation on the medial and lateral joint line. He diagnosed possible internal derangement of the right knee. Dr. Silver recommended a magnetic resonance imaging (MRI) scan of the right knee.

On a form report dated December 23, 2016 Dr. Silver noted treatment of appellant and recommended a right knee MRI scan. On a form report dated January 18, 2017 he noted that appellant was scheduled for surgery on February 9, 2017 for a torn meniscus of the right knee and he recommended that appellant avoid all lifting, pushing, and pulling.

In a development letter dated February 3, 2017, OWCP advised appellant of the factual and medical deficiencies of her claim. It informed her of the evidence necessary to establish her claim and provided a questionnaire for her completion regarding the circumstances of the injury. OWCP afforded appellant 30 days to respond.

A December 23, 2016 MRI scan of the right knee revealed a horizontal tear of the posterior horn of the medial meniscus, fraying of the free edge body of lateral meniscus, mild lateral patellar tilt, mild tricompartmental osteoarthritis, small effusion, and tiny popliteal cyst.

In a report dated February 2, 2017, Dr. Peter J. Bruno, Board-certified in internal medicine, noted that appellant sustained an injury on December 5, 2016 while she was filing items at work. He diagnosed right knee torn medial meniscus.

Appellant was treated by Dr. Elizabeth P. Mathew, Board-certified in physical medicine and rehabilitation, on March 6, 2017 following her right knee arthroscopic surgery. Dr. Mathew noted findings of well-healed right knee arthroscopic portals, restricted range of motion, and tenderness in the right knee. She diagnosed right knee pain.

In statements dated March 8 and 9, 2017, appellant reiterated the factual elements of her claim.

By decision dated April 3, 2017, OWCP denied appellant's claim finding that she had not met her burden of proof to establish a medical condition causally related to the accepted employment incident.

On April 17, 2017 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, which was held on October 2, 2017.

In a report dated December 5, 2016, Dr. Jeramie R. Rachunow, a Board-certified family practitioner, noted appellant's treatment for right knee pain after physical therapy.<sup>4</sup> She was advised not to return to work.

In a report dated April 10, 2017, Dr. Mathew noted her treatment of appellant for continued right knee pain. She noted well-healed right arthroscopic portals, restricted range of motion, and tenderness of the right knee. Dr. Mathew diagnosed right knee pain and continued physical therapy.

In June 5 and 15, 2017 reports, Dr. Silver noted his treatment of appellant for an injury that occurred at work on December 5, 2016 and that she had tried to return to work, but she could not bear weight. He indicated that she continued to make slow and steady improvement, but still required the use of a cane. Dr. Silver released appellant to return to light-duty work. In his July 31, 2017 report, he diagnosed degenerative joint disease of the bilateral knees and referred her for physical therapy. In a September 29, 2017 report, Dr. Silver noted treating appellant and opined that her conditions were causally related to a work injury which required her to undergo surgery.

By decision dated November 15, 2017, the hearing representative affirmed OWCP's April 3, 2017 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> 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>6</sup> and 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>7</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>8</sup>

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<sup>4</sup> Appellant submitted physical therapy notes from March 23 to May 19, 2017.

<sup>5</sup> *Supra* note 2.

<sup>6</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *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>8</sup> *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *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).

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.<sup>9</sup> There are 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.<sup>10</sup> The second component is whether the employment incident caused a personal injury.<sup>11</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>12</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.<sup>13</sup> 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 incident.<sup>14</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right knee injury causally related the accepted December 5, 2016 employment incident.

In support of her claim appellant submitted a series of medical reports from Dr. Silver. In his report dated September 29, 2017, Dr. Silver noted his treatment and history of a knee on February 9, 2017. He opined that appellant's injury was causally related to a work injury which required her to undergo surgery. The Board finds that, although Dr. Silver provided an opinion supportive of a causal relationship, he did not provide medical rationale explaining the basis of his conclusion. The Board has held that 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.<sup>15</sup> Dr. Silver failed to sufficiently explain the process by which bending down at work would cause or aggravate the diagnosed conditions. This report is thus insufficient to establish appellant's claim.

Reports from Dr. Silver dated December 12, 2016 and June 5, 2017 noted appellant's treatment for an injury occurring on December 5, 2016 while at work. He noted that she had reported bending down when she felt a pop in her right knee and experienced pain and swelling. However, Dr. Silver merely repeated the history of injury as reported by appellant without providing his own opinion regarding whether her condition was work related. The mere recitation of patient history does not suffice for purposes of establishing causal relationship between a

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<sup>9</sup> S.S., Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

<sup>10</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>11</sup> *E.M.*, *id.*; *John J. Carlone*, 41 ECAB 354 (1989).

<sup>12</sup> S.S., *supra* note 9; *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>13</sup> *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>14</sup> *Id.*

<sup>15</sup> See *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

diagnosed condition and the employment incident.<sup>16</sup> Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's reports are of limited probative value.<sup>17</sup> These reports are also insufficient to establish appellant's claim.

Appellant submitted a June 15, 2017 report from Dr. Silver who noted a history of injury and diagnosed medial and lateral meniscus tear based upon MRI scan findings. In his report of July 31, 2017, Dr. Silver diagnosed degenerative joint disease of the left and right knee and referred appellant to physical therapy. Similarly, in form reports dated December 23, 2016 and January 18, 2017, he noted a right knee MRI scan revealed a torn meniscus of the right knee and indicated that appellant underwent arthroscopic surgery. These reports do not contain a medical opinion on the issue of causal relationship. 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.<sup>18</sup> These reports, therefore, are insufficient to establish appellant's claim.

Appellant also submitted a February 2, 2017 report from Dr. Bruno. Dr. Bruno noted that he performed a presurgical history and physical examination and diagnosed right knee torn medial meniscus. This report is also insufficient to establish appellant's claim as it does not provide an opinion on the issue of causal relationship.<sup>19</sup>

In reports dated March 6 and April 10, 2017, Dr. Mathew diagnosed right knee pain and noted appellant's history of bending to pick up a file at work when she injured her right knee. She noted that appellant was status post right knee arthroscopic repair and was referred for physical therapy. However, Dr. Mathew's reports fail to address causal relationship and are insufficient to establish appellant's claim.<sup>20</sup>

In a report dated December 5, 2016, Dr. Rachunow noted appellant's treatment for right knee pain after physical therapy and advised that she not return to work. As he failed to address causal relationship, his report is insufficient to establish appellant's claim.

The record also contains records regarding appellant's physical therapy. The Board has held that notes signed by physical therapists are not considered medical evidence as they are not considered "physicians" as defined under FECA.<sup>21</sup> Thus, these treatment records are of no probative medical value in establishing appellant's claim.

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<sup>16</sup> *N.S.*, Docket No. 19-0167 (issued June 21, 2019); *J.G.*, Docket No. 17-1382 (issued October 18, 2017).

<sup>17</sup> *M.N.*, Docket No. 19-0694 (issued September 3, 2019); *A.B.*, Docket No. 16-1163 (issued September 8, 2017).

<sup>18</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law). *See also M.O.*, Docket No. 18-0229 (issued September 23, 2019) (physical therapists are not considered physicians under FECA).

The diagnostic scans and reports submitted by appellant are also insufficient to establish the claim as the Board has long held that diagnostic studies are of no probative value on the issue of causal relationship as they do not address whether the employment incident caused a diagnosed condition.<sup>22</sup>

As appellant has not submitted medical evidence sufficient to establish causal relationship, the Board finds that she has not met her 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 her burden of proof to establish a right knee injury causally related to the accepted December 5, 2016 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 15, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2020  
Washington, DC

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

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

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

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<sup>22</sup> *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).