

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

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<b>W.J., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-1438</b>
	)	<b>Issued: February 6, 2020</b>
<b>DEPARTMENT OF TRANSPORTATION,</b>	)	
<b>FEDERAL AVIATION ADMINISTRATION,</b>	)	
<b>Washington, DC, Employer</b>	)	
_____	)	

*Appearances:*  
*Thomas S. Harkins, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JJANICE B. ASKIN, Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 17, 2019 appellant, through counsel, filed a timely appeal from a January 31, 2019 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 or right knee condition causally related to the accepted April 11, 2017 employment incident.

## FACTUAL HISTORY

On April 11, 2017 appellant, then a 54-year-old air traffic controller, filed a traumatic injury claim (Form CA-1) alleging that he sustained injuries to both his left and right knees while in the performance of duty that day. He related that the elevator at work had been out of service for several days, forcing the air traffic controllers to use the stairs to access the tower. After three days of ascending and descending the stairs, appellant's right knee gave out and made him place excess pressure on his left knee, which caused a "snap sound." He then spent the remainder of the shift in the "cab" to avoid further impact on the knees. Appellant noted that the pain in his left knee made him think that he may have injured his meniscus or pulled a ligament and he indicated that his right knee may have had the same injury. He also indicated that his right knee had a history of a prior employment injury to the meniscus. Appellant did not stop working.

In a report dated April 12, 2017, Dr. Shyam K. Vekaria, a Board-certified orthopedic surgeon, diagnosed acute pain of right knee and left knee, internal derangement of right knee and left knee, and primary osteoarthritis of the right knee and left knee. He reiterated appellant's description of the injury as going up and down tower stairs since the elevator had been out. Dr. Vekaria stated that when appellant was coming down the stairs, his right knee gave out, he heard a "pop" in the left knee, and heard clicking noises in both knees. Appellant also noted some swelling and also felt bilateral low back pain, which worsened since the knees started hurting on April 11, 2017. Dr. Vekaria noted that appellant had a preexisting right knee condition and a history of right knee arthroscopies.

A magnetic resonance imaging (MRI) scan of the right knee dated May 5, 2017 demonstrated no evidence of recurrent medial meniscal tear on post contrast imaging and an MRI scan of the left knee dated May 5, 2017 that revealed complex tearing of the lateral meniscus.

On May 10, 2017 Dr. Vekaria reviewed the May 5, 2017 MRIs and diagnosed tear of lateral meniscus of the left knee.

In a May 23, 2017 development letter, OWCP indicated that when appellant's claim was received it appeared to be a minor injury that resulted in 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 stated that it had reopened the claim for formal consideration of the merits and afforded appellant 30 days to submit additional evidence and respond to its inquiries.

A memorandum dated March 3, 2017 from the employing establishment confirmed that the elevator was out of service from April 6 to 14, 2017 due to an electrical outage that was caused by a lightning strike to the air traffic control tower.

Appellant submitted a narrative statement dated June 6, 2017 indicating that, prior to the April 11, 2017 incident, he had injuries to his right knee, and he had undergone three surgical procedures. He indicated that his claim could be viewed as an occupational disease; however, his right knee condition began following a traumatic injury that occurred nearly 15 years ago at the same tower.

In a progress report dated May 31, 2017, Dr. Vekaria indicated that appellant's right knee condition had improved and he had returned to work. He also noted that physical therapy had been beneficial, but the left knee continued to be bothersome.

By decision dated June 28, 2017, OWCP found that appellant had established the occurrence of the April 11, 2017 employment incident. It determined, however, that the medical evidence of record was insufficient to establish that he sustained a diagnosed condition causally related to the accepted work incident.

On July 12, 2017 appellant requested an oral hearing before a hearing representative of OWCP's Branch of Hearings and Review.

A hearing was held before an OWCP hearing representative on October 24, 2017. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence.

Appellant subsequently submitted progress reports dated June 28, August 3, and November 8, 2017 from Dr. Vekaria who reiterated his diagnoses and stated that appellant's left knee continued to be problematic, but he was working full duty.

In a report dated November 2, 2017, Dr. Jeffrey Mait, a Board-certified orthopedic surgeon, diagnosed primary osteoarthritis of the left knee and right knee and noted that appellant also suffered from back pain and joint pain. He noted that appellant's injury occurred when he was walking.

By decision dated November 28, 2017, OWCP's hearing representative affirmed the prior decision, finding that the medical evidence of record was insufficient to establish causal relationship, particularly given the extensive preexisting conditions of both knees and the diagnosed osteoarthritis.

Counsel requested reconsideration on November 20, 2018 and argued that when factors of federal employment cause an aggravation of an underlying preexisting condition, the aggravation or exacerbation of the preexisting condition is compensable.

Counsel also submitted a November 16, 2018 report from Dr. Vekaria who diagnosed primary osteoarthritis of the right knee and left knee, bilateral knee internal derangement, left knee complex lateral meniscus tear, and acute pain of bilateral knees. Dr. Vekaria opined that appellant's bilateral knee conditions were causally related to his April 11, 2017 employment injury. He indicated that appellant reported a remote history of arthroscopic right knee surgery, but had been functioning well with regard to his knees for many years and was working full duty. Dr. Vekaria concluded that the April 11, 2017 employment injury exacerbated appellant's underlying osteoarthritis conditions.

By decision dated January 31, 2019, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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 of FECA,<sup>3</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>4</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>5</sup>

In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.<sup>6</sup> 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.<sup>7</sup> Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>10</sup> The weight of the medical evidence

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<sup>3</sup> *Id.*

<sup>4</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>5</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>6</sup> *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

<sup>7</sup> *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>8</sup> *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *See S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

<sup>10</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left or right knee condition causally related to the accepted April 11, 2017 employment incident.

OWCP received several reports from Dr. Vekaria in support of appellant's claim. In his initial report dated April 12, 2017, Dr. Vekaria noted appellant's history of injury and diagnosed internal derangement and osteoarthritis of both knees. He, however, failed to provide a detailed explanation on causal relationship. While he identified the specific employment incident alleged by appellant, Dr. Vekaria did not provide a pathophysiological explanation as to how ascending and descending stairs either caused or contributed to the diagnosed conditions.<sup>12</sup> This report is therefore insufficient to establish causal relationship.

In subsequent progress reports dated May 31, June 28, August 3, and November 8, 2017, Dr. Vekaria related appellant's current complaints and diagnoses, but offered no opinion regarding 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>13</sup> Therefore, these reports from Dr. Vekaria are insufficient to establish appellant's claim.

In his November 16, 2018 report, Dr. Vekaria opined that appellant's bilateral knee conditions were causally related to his April 11, 2017 employment incident. While Dr. Vekaria noted that appellant had prior right knee conditions, but had been functioning well prior to the employment incident, he provided no additional rationale. The Board has held that the fact that a claimant was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.<sup>14</sup> Moreover, the Board finds that Dr. Vekaria did not provide sufficient medical rationale explaining how appellant's preexisting conditions were aggravated by climbing and descending stairs at work on April 11, 2017. The need for rationale is particularly important as the evidence indicates that appellant had a number of preexisting medical conditions, including three right knee surgeries. Therefore, as Dr. Vekaria did not provide a rationalized medical opinion explaining how the accepted April 11, 2017 employment incident caused appellant's diagnosed knee conditions, the Board finds that the reports from Dr. Vekaria are insufficient to establish causal relationship.

Appellant was also followed by Dr. Mait who diagnosed primary osteoarthritis of the left and right knee on November 2, 2017. As he did not address causal relationship to the accepted

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<sup>11</sup> *R.T.*, Docket No. 19-1346 (issued December 4, 2019); *James Mack*, 43 ECAB 321 (1991).

<sup>12</sup> *Id.*

<sup>13</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>14</sup> *M.B.*, Docket No. 19-0840 (issued October 2, 2019).

April 11, 2017 employment incident, Dr. Mait's report is of no probative value and, thus, insufficient to meet appellant's burden of proof.<sup>15</sup>

As appellant has not submitted rationalized medical evidence sufficient to establish that his diagnosed knee conditions were causally related to the accepted employment incident, 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 or right knee condition causally related to the accepted April 11, 2017 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 31, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>15</sup> *Supra* note 13.