

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

_____)	
G.D., Appellant)	
)	
and)	Docket No. 19-1681
)	Issued: February 20, 2020
DEPARTMENT OF THE ARMY, U.S. ARMY)	
CORPS OF ENGINEERS, Lake Isabella, CA,)	
Employer)	
_____)	

Appearances:
Appellant, pro se
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 July 31, 2019 appellant, filed a timely appeal from a July 16, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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 establish a left knee injury causally related to the accepted December 18, 2018 employment incident.

FACTUAL HISTORY

On January 10, 2019 appellant, then a 56-year-old construction control representative, filed a traumatic injury claim (Form CA-1) alleging that on December 18, 2018 he injured his left knee while in the performance of duty. He explained that the loose footing down a steep dirt grade aggravated a previous work-related injury he sustained to his left knee. Appellant did not stop work.

In a February 7, 2019 medical report, Dr. Healthy Desai, a Board-certified orthopedic surgeon, evaluated appellant for left knee pain. He noted that appellant previously injured his left knee in a December 2017 workers' compensation injury where he twisted his knee. Dr. Desai provided that on December 18, 2018 appellant slid down a hillside while on the job site. Appellant described the pain as dull, chronic and constant and noted occasional popping in his knee. An x-ray of appellant's left knee revealed osteoarthritis in the lateral compartment and a left knee effusion. Dr. Desai explained that appellant's arthritic pain was most likely an aggravation of his underlying condition. In a medical note of even date, he provided that appellant could return to work on February 8, 2019 with work restrictions of no prolonged walking or standing and no kneeling or climbing of ladders for four weeks.

In a development letter dated June 14, 2019, OWCP informed appellant that his claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that continuation of pay was not controverted by the employing establishment, and thus, limited expenses had therefore been authorized. However, formal adjudication was now required. OWCP explained that it did not have any record of a claim with a December 2017 date of injury related to appellant's left knee and that it only had records of a claim for a left ankle injury related to an August 25, 2017 date of injury. It requested a narrative medical report from his physician which provided the physician's rationalized medical explanation as to how the alleged employment incident caused or aggravated the diagnosed condition. OWCP afforded appellant 30 days to respond.

OWCP received additional evidence. In a May 2, 2019 medical report, Dr. Desai indicated that he had administered a cortisone injection to appellant's left knee in order to treat his degenerative arthritis and effusion of the left knee.

In a June 13, 2019 x-ray report of appellant's left knee, Dr. Lawrence McNutt, a Board-certified radiologist, noted no evidence of a fracture or dislocation in appellant's left knee and diagnosed a small suprapatellar effusion and moderate osteoarthritis of the left knee joint with moderate joint space narrowing laterally and mild joint space narrowing medially. In a medical report of even date, Dr. Desai noted the May 2, 2019 cortisone shot was only effective for two weeks, but appellant's left knee pain still remained. He again noted appellant's left knee osteoarthritis and provided that there was a possible lateral meniscus tear.

By decision dated July 16, 2019, OWCP denied appellant's claim. It found that the medical evidence of record was insufficient to establish an injury or condition causally related to the accepted work incident.

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 whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁶ 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.⁷ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury⁸.

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 sufficient to establish such causal relationship.⁹ 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 nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

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 *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁷ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

¹⁰ *I.J.*, 59 ECAB 408 (2008).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted December 18, 2018 employment incident.

In his February 7, 2019 medical report, Dr. Desai related that appellant injured his left knee when he slid down a hillside while on the job site. Based on an x-ray of even date, he diagnosed appellant with left knee osteoarthritis in the lateral compartment and a left knee effusion. Dr. Desai noted that appellant previously injured his left knee in a December 2017 workers' compensation injury where he twisted his knee and explained that his arthritis pain was "most likely" an aggravation of his underlying conditions. While he provided an affirmative opinion on causal relationship, Dr. Desai's opinion is insufficiently rationalized as he failed to explain the pathophysiologic mechanism by which the accepted employment activity caused, aggravated or accelerated appellant's injuries.¹¹ Moreover, he opined that appellant's injury "most likely" was an aggravation of his underlying conditions. The Board has held that opinions that are speculative or equivocal in character are of diminished probative value.¹² For these reasons, Dr. Desai's February 7, 2019 medical report is insufficient to meet appellant's burden of proof.

In medical reports dated May 6 and June 13, 2019, Dr. Desai described his administration of a cortisone injection to appellant's left knee in order to treat his degenerative arthritis and effusion of the left knee. He provided that the cortisone shot was effective for two weeks and noted appellant's left knee osteoarthritis, effusion and possible lateral meniscus tear. However, Dr. Desai offered no opinion regarding the cause of appellant's medical conditions. 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.¹³ For this reason, Dr. Desai's medical reports are insufficient to establish the claim.

Appellant also submitted a diagnostic report from Dr. McNutt. The Board has held that diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and the diagnosed conditions.¹⁴ Accordingly, this diagnostic report is also insufficient to establish the claim. As appellant has not submitted rationalized medical evidence establishing that his left knee condition is causally related to the accepted December 18, 2018 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

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.

¹¹ See *A.P.*, Docket No. 19-0224 (issued July 11, 2019).

¹² See *D.D.*, 57 ECAB 734 (2006).

¹³ *R.Z.*, Docket No. 19-0408 (issued June 26 2019); *P.S.*, Docket No. 18-1222 (issued January 8, 2019).

¹⁴ See *J.M.*, Docket No. 17-1688 (issued December 13, 2018).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted December 18, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 20, 2020
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