

ISSUE

The issue is whether appellant has met his burden of proof to establish a bilateral knee condition causally related to the accepted July 23, 2018 employment incident.

FACTUAL HISTORY

On July 24, 2018 appellant, then a 44-year-old correctional counselor, filed a traumatic injury claim (Form CA-1) alleging that on July 23, 2018 he injured both knees when responding to a prison riot while in the performance of duty. He stopped work on July 23, 2018.

In a development letter dated July 30, 2018, OWCP advised appellant of the deficiencies of his claim and instructed him as to the factual and medical evidence necessary to establish his claim. It also noted that no firm diagnosis of a work-related condition had been provided by a physician. OWCP asked appellant to complete a questionnaire to provide further details regarding the circumstances of the claimed July 23, 2018 employment incident. It afforded him 30 days to submit the necessary evidence.

An August 20, 2018 memorandum from Lieutenant J.G. noted that appellant was injured on July 23, 2018 while in the performance of duty. An undated memorandum from Senior Officer Specialist M.H. explained that on July 23, 2018 appellant, along with other staff members, responded to a fight involving multiple inmates and appellant was observed on camera having difficulty walking and in pain following the inmate altercation.

A magnetic resonance imaging (MRI) scan of the right knee dated August 20, 2018 demonstrated sequela of prior anterior cruciate ligament (ACL) reconstruction with chronic complete graft tear, chronic low-grade medial cruciate ligament, and posterior cruciate ligament sprains, free edge fraying of the posterior horn of the lateral meniscus, mild tendinosis, mild patchy subchondral bone marrow edema, patellofemoral/medial tibiofemoral and lateral tibial femoral chondrosis, and medial gastrocnemius muscular strain. An MRI scan of the left knee demonstrated sequela of prior ACL reconstruction with chronic complete graft tear, suspected myxoid degeneration of the anterior horn of the medial meniscus, small tear of the posterior horn and radial tear of the lateral meniscus, mild patchy subchondral bone marrow edema, and severe patellofemoral chondrosis.

In an undated state workers' compensation form, Yulisa Astudillo, a nurse practitioner, diagnosed exacerbation of knee pain, history of osteoarthritis, and sprain of ACL of both knees. She noted the injury was work related.

OWCP received treatment notes from Dr. Zaher Elmir, a Board-certified family practitioner, dated from August 3 to September 26, 2017, noting that appellant was treated for osteoarthritis of both knees.

On August 21, 2018 Dr. Raymond D. Dominick, a Board-certified internist, diagnosed sprain of ACL joint of both knees, history of osteoarthritis, and exacerbation of knee pain. He noted appellant's work status of walking to tolerance and no standing longer than 30 minutes.

In an August 27, 2018 narrative response to OWCP's questionnaire, appellant indicated that he experienced extreme pain in his knees that subsided for about four to five hours before returning again. He noted that he had prior injuries of his knees, but was able to maintain his position as a corrections officer with treatment of his knee conditions.

In an August 28, 2018 report, Dr. Elmir noted that appellant presented with bilateral knee pain which began on July 23, 2018 after a running and jumping incident at work. Appellant's history was significant for bilateral knee reconstruction/ACL repair and findings on examination revealed bilateral knee joint effusion, pain on palpation of the medical aspect of the joint bilaterally, and positive anterior and posterior drawer signs. Dr. Elmir diagnosed complete chronic ACL graft rupture, osteoarthritis, and exacerbation of knee pain.

By decision dated September 7, 2018, OWCP denied appellant's traumatic injury claim finding that the medical evidence of record failed to establish causal relationship between appellant's diagnosed bilateral knee condition and the accepted July 23, 2018 employment incident.

Reports from Dr. Dominick dated July 23, 2018 to January 15, 2019, related treatment for a bilateral knee injury which occurred on July 23, 2018. Appellant reported that a riot occurred at the correctional facility where he worked and he jumped on a desk to get to safety. His history was significant for bilateral knee reconstruction and ACL repair. Dr. Dominick diagnosed bilateral knee pain, sprain of the ACL joint of the both knees, chronic ACL graft rupture, history of osteoarthritis, and exacerbation of knee pain. He noted work restrictions and recommended physical therapy. In a September 25, 2018 state workers' compensation form, Dr. Dominick diagnosed exacerbation of knee pain, history of osteoarthritis, and tibial plateau bone bruise. He noted that the injury was work related and again provided work restrictions and a referral for physical therapy.

In a follow-up report dated September 25, 2018, Dr. Dominick indicated that appellant was treated for a July 23, 2018 work-related injury to both knees. He noted a treatment history significant for multiple reconstructive surgeries on both knees. Appellant reported undergoing left knee surgery in 2016, but noted that he returned to full function with only intermittent knee pain. Dr. Dominick diagnosed exacerbation of knee pain, tibial plateau bone bruise, history of osteoarthritis, reconstruction of ACL joint bilaterally, and patella femoral arthralgias. He returned appellant to work with restrictions.

On September 26, 2018 appellant, through counsel, requested an oral hearing before an OWCP hearing representative, which was held on February 8, 2019.

By decision dated April 17, 2019, an OWCP hearing representative affirmed the decision dated September 7, 2018.³

³ On May 29, 2019 appellant, through counsel, appealed to the Board. In a letter dated July 15, 2019, counsel requested that the appeal be dismissed. By order dated August 6, 2019, the Board dismissed the appeal. *Order Dismissing Appeal*, Docket No. 19-1323 (issued August 6, 2019).

On August 9, 2019 appellant requested reconsideration. He submitted a report from Dr. Dominick dated July 23, 2019 who noted a history of injury on July 23, 2018 and diagnosed exacerbation of knee pain, tibial plateau bone bruise, history of osteoarthritis, reconstruction of ACL joint bilaterally, and patella femoral arthralgias. Dr. Dominick found appellant disabled from work until he underwent an MRI scan.

By decision dated August 28, 2019, OWCP denied modification of the decision dated September 7, 2018.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

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.⁸ 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.⁹ The second component is whether the employment incident caused a personal injury.¹⁰

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹¹ 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.¹² Additionally, the physician's opinion must be

⁴ *Supra* note 2.

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁹ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *E.M.*, *id.*; *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *S.S.*, *supra* note 8; *Robert G. Morris*, 48 ECAB 238 (1996).

¹² *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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.¹³

In any 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.¹⁴

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a bilateral knee condition causally related to the accepted July 23, 2018 employment incident.

In an August 28, 2018 medical report, Dr. Elmir noted treatment of appellant for bilateral knee pain which began on July 23, 2018 after a running and jumping incident at work. He indicated that appellant sustained injuries to the knees as a result of this incident and diagnosed complete chronic ACL graft rupture, osteoarthritis, and exacerbation of knee pain. The Board notes that the mere fact that symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between a diagnosed condition and employment factors.¹⁵ A medical opinion must explain how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions.¹⁶ Without this explanation, Dr. Elmir's report is insufficient to meet appellant's burden of proof to establish his claim.¹⁷

In reports from Dr. Dominick dated July 23, 2018 to January 15, 2019, he related treatment for a bilateral knee injury which occurred on July 23, 2018 when appellant jumped on a desk to get to safety during a riot at a correctional facility where he worked. However, such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how this physical activity actually caused the diagnosed conditions to the bilateral knees.¹⁸ As such, these reports are insufficient to establish appellant's claim.

State workers' compensation forms from Dr. Elmir dated August 28, 2018 and Dr. Dominick dated September 25, 2018, diagnosed work-related exacerbation of knee pain, history of osteoarthritis, and tibial plateau bone bruise. These reports are insufficient to establish

¹³ *Id.*

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹⁵ *A.S.*, Docket No. 19-1955 (issued April 9, 2020).

¹⁶ *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *A.B.*, Docket No. 16-1163 (issued September 8, 2017).

¹⁷ *Id.*

¹⁸ See *K.W.*, 59 ECAB 271, 279 (2007).

the claim as the physicians did not provide a history of injury¹⁹ or offer an opinion as to the cause of these diagnosed conditions. Medical evidence which does not offer an opinion regarding the cause of an employee's conditions are of no probative value on the issue of causal relationship.²⁰

On September 25, 2018 Dr. Dominick noted a history of the July 23, 2018 employment incident and appellant's subsequent complaints of bilateral knee pain. He related appellant's history of multiple reconstructive surgeries on his knees and diagnosed exacerbation of knee pain, tibial plateau bone bruise, history of osteoarthritis and reconstruction of ACL bilaterally, and patella femoral arthralgias, noting that appellant's injuries were work related. While Dr. Dominick provided affirmative opinions which supported causal relationship, he did not provide a pathophysiological explanation as to how the accepted incident either caused or contributed to his diagnosed conditions.²¹ Further, the Board has consistently held that complete medical rationalization is particularly necessary when there are preexisting conditions involving the same body part²² and has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.²³ Thus, the Board finds that these reports from Dr. Dominick are also insufficient to establish causal relationship.

The August 20, 2018 MRI's scan of the bilateral knees are of limited probative value. The Board has held that reports of diagnostic tests standing alone lack probative value, as they do not provide an opinion on causal relationship between the employment incident and a diagnosed condition.²⁴

The undated state workers' compensation form from Ms. Astudillo, a nurse practitioner, is not considered medical evidence as nurse practitioners are not physicians under FECA²⁵ and are

¹⁹ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

²⁰ *T.K.*, 19-0055 (issued May 2, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

²¹ See *R.D.*, *supra* note 14; *Victor J. Woodhams*, 41 ECAB 345 (1989). *Supra* note 14 at Chapter 2.805.3e (January 2013).

²² *K.R.*, Docket No. 18-1388 (issued January 9, 2019).

²³ See *e.g.*, *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *J.B.*, Docket No. 17-1870 (issued April 11, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *P.O.*, Docket No. 14-1675 (issued December 3, 2015).

²⁴ *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

²⁵ Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See also *supra* note 14 at Chapter 2.805.3a(1) (January 2013); *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); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA).

not competent to render a medical opinion under FECA. Thus, this evidence is of no probative value and is insufficient to establish appellant's claim.²⁶

As appellant has not submitted rationalized medical evidence to support his claim that he sustained a bilateral knee injury causally related to the July 23, 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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a bilateral knee condition causally related to the accepted July 23, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²⁶ See *A.H.*, Docket No. 19-1731 (issued March 23, 2020).