

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

<b>B.C., Appellant</b>	)	
	)	
<b>and</b>	)	
	)	<b>Docket No. 20-0242</b>
<b>DEPARTMENT OF JUSTICE, FEDERAL</b>	)	<b>Issued: June 22, 2020</b>
<b>BUREAU OF PRISONS, BERLIN FEDERAL</b>	)	
<b>CORRECTIONAL INSTITUTION, Berlin, NH,</b>	)	
<b>Employer</b>	)	
	)	

*Appearances:*  
*Jason Chappell*, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 13, 2019 appellant, through his representative filed a timely appeal from a July 17, 2019 merit decision of the Office of Workers’ Compensation Programs (OWCP).<sup>2</sup>

---

<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> Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). By order dated June 15, 2020, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 20-0242 (issued June 15, 2020).

Pursuant to the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>4</sup>

### **ISSUE**

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted May 13, 2019 employment incident.

### **FACTUAL HISTORY**

On May 21, 2019 appellant, then a 30-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on May 13, 2019 he injured his right knee while in the performance of duty. He explained that while regaining control of an unruly inmate he placed the inmate on the floor, which caused him to land on his right knee with all of his weight. Appellant indicated that he felt pain in this right knee which swelled and bruised after the incident. Four days later he starting having issues with bending, extending, and weight bearing on his right knee. On the reverse side of the claim form, the employing establishment indicated that appellant was injured in the performance of duty.

In a June 12, 2019 development letter, OWCP informed appellant that additional evidence was required in support of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested evidence.

On May 24, 2019 Dr. Mariusz Paluch, a Board-certified radiologist, interpreted x-rays of appellant's right knee as within normal limits.

In a May 24, 2019 narrative report, Jessica Lorenz Armstrong, a certified physician assistant, indicated that appellant presented with a two-week history of right knee pain that started when he twisted and fell on his right knee on a concrete floor while subduing an inmate at work. She noted that he had immediate swelling and experienced bruising two days after the incident. Appellant reported that his knee "gives out" due to instability and that he experienced significant crunching in his right knee. He also noted that he had difficulty walking on uneven ground. Appellant indicated that his pain was in the medial and lateral aspects of his right knee and that he had no history of right knee conditions or injuries. A physical examination revealed tenderness to palpation over the medial joint line, a mildly positive McMurray's test, and crepitation with range of motion emanating from the patellofemoral joint. Ms. Lorenz Armstrong indicated that there was some evidence of inflammation in appellant's joint, and she opined that he most likely sustained a medial collateral ligament sprain during his altercation. She also opined that he may

---

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> The Board notes that following the July 17, 2019 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.*

have sustained a medial meniscal tear, and recommended an injection and a knee brace. Ms. Lorenz Armstrong instructed that appellant could return to work without restrictions.

A May 24, 2019 state workers' compensation medical form signed by Ms. Lorenz Armstrong indicated that appellant was injured on May 13, 2019. She reiterated appellant's history of injury contained in her May 24, 2019 narrative report. Ms. Lorenz Armstrong diagnosed a possible medial meniscus tear or sprain, recommended an injection and knee brace, and indicated that appellant could return to full-duty work.

A May 31, 2019 report from Ms. Lorenz Armstrong indicated that appellant presented for a follow-up visit for knee pain. She repeated appellant's history of injury, conducted a physical examination, and indicated that his knee was improving. Ms. Lorenz Armstrong diagnosed a possible meniscal tear and noted that if the swelling and buckling in his knee continued she would order a magnetic resonance imaging (MRI) scan.

A May 31, 2019 state workers' compensation medical form signed by Ms. Lorenz Armstrong indicated that appellant was injured on May 13, 2019 and complained of occasional right knee swelling and pain. She diagnosed a possible meniscus tear and a medial collateral ligament sprain and recommended using a knee brace as needed. Ms. Lorenz Armstrong indicated that appellant could return to full-duty work.

By decision dated July 17, 2019, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted May 13, 2019 employment incident. Thus, it found that the requirements had not been met to establish an injury as defined by FECA.

### **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 of FECA,<sup>6</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>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>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established.

---

<sup>5</sup> *Supra* note 3.

<sup>6</sup> *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</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>8</sup> *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

There are two components involved in establishing the 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. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>9</sup>

### **ANALYSIS**

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted May 13, 2019 employment incident.

In support of his claim, appellant submitted reports and state workers' compensation medical forms dated May 24 and 31, 2019, by Ms. Lorenz Armstrong, a physician assistant. The Board has held that certain healthcare providers such as nurses, physician assistants, physical therapists, and social workers are not considered physicians as defined under FECA.<sup>10</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>11</sup> Thus, Ms. Lorenz Armstrong's several reports are of no probative value<sup>12</sup> and are insufficient to establish appellant's claim.

Appellant also submitted x-rays of his right knee. Diagnostic studies standing alone lack probative value as to the issue of causal relationship as they do not address whether the employment incident caused any of the diagnosed conditions.<sup>13</sup>

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish a medical condition causally related to the accepted May 13, 2019 employment incident.<sup>14</sup> Appellant has therefore 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 medical condition causally related to the accepted May 13, 2019 employment incident.

---

<sup>9</sup> *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5).

<sup>10</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

<sup>11</sup> *L.P.*, Docket No. 19-1812 (issued April 16, 2020).

<sup>12</sup> *See M.M.*, Docket No. 20-0019 (issued May 6, 2020); *A.A.*, Docket No. 19-0957 (issued October 22, 2019).

<sup>13</sup> *See J.S.*, Docket No. 17-1039 (issued October 6, 2017).

<sup>14</sup> *See id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 17, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 2020  
Washington, DC

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

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

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