United States Department of Labor
Employees' Compensation Appeals Board

R.L., Appellant	)	
and	)	**Docket No. 20-0284**
	)	**Issued: June 30, 2020**
DEPARTMENT OF THE NAVY, MARINE CORPS INSTALLATION FACILITIES & ENVIRONMENT DIVISION, Quantico, VA, Employer	)	

Appearances:
Appellant, pro se
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
JANICE B. ASKIN, Judge

JURISDICTION

On November 18, 2019 appellant filed a timely appeal from a June 28, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish a right knee condition causally related to the accepted April 11, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the June 28, 2019 decision, and with his appeal form, appellant submitted 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 additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On April 25, 2018 appellant, then a 60-year-old electrician, filed a traumatic injury claim (Form CA-1) alleging that on April 11, 2018 he sustained a right knee injury when he slipped off a sidewalk and twisted his knee while moving a mechanical man lift down the sidewalk while in the performance of duty. He stopped work on the date of injury.

Appellant was initially treated on April 11, 2018 by Kimberly McCue, an employing establishment physician of nursing and Board-certified family nurse practitioner, who noted a history of injury that, on that day, he hurt his right knee while slipping off a sidewalk. He placed appellant on restricted activity until April 18, 2018.

An April 17, 2018 progress note from Dr. Lisa Jones King, a Board-certified internist, indicated that appellant was unable to work at that time.

In an April 11, 2018 attending physician's report (Form CA-20), Dr. Douglas P. Murphy, an attending Board-certified physiatrist, noted a history of injury that, on that day, appellant sustained a right knee injury at work. He noted that appellant had a preexisting injury or disease. Dr. Murphy diagnosed degenerative joint disease of the right knee. He checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by an employment activity. Dr. Murphy noted that it was unknown as to when appellant could resume regular work.

Duty status reports (Form CA-17) dated May 18 and August 3, 2018 with illegible signatures noted a history that on April 11, 2018 appellant hurt his knee while slipping off a sidewalk. Appellant was advised to resume light-duty work with restrictions as of May 28, 2018.

On October 3, 2018 the employing establishment informed OWCP that appellant required surgery.

OWCP, in a January 15, 2019 development letter, notified appellant that when his claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work, and since the employing establishment had not controverted continuation of pay or challenged the case, a limited amount of medical expenses were administratively approved and paid. It noted that it had reopened the claim for formal consideration because he had requested authorization for surgery. OWCP informed appellant that additional factual and medical evidence was required to establish 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 January 26, 2019 appellant responded to OWCP's development questionnaire. He noted that while pulling a mechanical man lift he twisted his knee and tore his lower meniscus, which aggravated arthritis in his knee. Appellant indicated that he did not have any prior, similar disability or symptoms.

In a letter dated February 4, 2019, Dr. King noted a history of injury that on April 11, 2018 appellant slipped and twisted his right knee while helping his coworkers move a single man lift. She indicated that he underwent right total knee replacement on December 6, 2018.

Dr. Murphy, in a May 18, 2018 progress note, discussed examination findings and reviewed diagnostic test results. He provided an impression that appellant had right knee pain due to substantial osteoarthritis, tricompartmental. Dr. Murphy advised that appellant was unable to return to work and provided work restrictions.

In a June 18, 2018 right knee magnetic resonance imaging (MRI) scan report, Dr. Muhammad R. Khan, a Board-certified diagnostic radiologist, provided impressions of moderate-to-severe osteoarthritis involving the medial compartment with degenerative tear involving the medial meniscus; mild-to-moderate osteoarthritis involving the patellofemoral joint with thinning of the hyaline cartilage; and varicosities in the medial aspect of the left, clinically indicated interventional radiology can be consulted for venous insufficiency.

In consult requests dated October 2, 2018, Dr. Robert S. Adelaar, a Board-certified orthopedic surgeon, discussed examination findings and reviewed diagnostic test results. He provided an impression of right knee osteoarthritis.

OWCP, by decision dated March 5, 2019, denied appellant's traumatic injury claim finding that the evidence of record was insufficient to establish a diagnosed condition in connection with the accepted April 11, 2018 employment incident. It concluded therefore that the requirements had not been met to establish an injury as defined by FECA.

A September 4, 2018 report by Dr. Young Seo, a Board-certified physiatrist, and Dr. Murphy indicated that appellant received an injection to treat his right knee pain and degenerative joint disease.

Dr. Murphy, in an August 30, 2018 note, provided an impression of right knee pain due to moderate-to-severe osteoarthritis. He also noted that appellant had a meniscal tear.

In a March 20, 2019 letter, Dr. Murphy noted that appellant reported that he had kicked something and subsequently experienced pain and swelling. He also noted a history of his medical treatment, including his December 6, 2018 right total knee replacement. Dr. Murphy advised that appellant's fall clearly was an exacerbating factor contributing to the need for surgery.

On April 2, 2019 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review regarding the March 5, 2019 decision. He submitted physical therapy daily notes dated June 21, 2018 to March 1, 2019.

In a March 21, 2019 progress note and certificate of illness/injury, Dr. Varatharaj J. Mounasamy, a Board-certified orthopedic surgeon, reported that appellant was status post right total knee arthroplasty. He advised that appellant could resume regular duties on March 25, 2019.

An operative report signed by Dr. Alexandria O. Starks, a surgical resident physician, indicated that she performed right total knee arthroplasty on December 6, 2018 to treat appellant's right knee osteoarthritis.

By decision dated June 28, 2019, an OWCP hearing representative affirmed, the March 5, 2019 decision, as modified, finding that appellant had established a medical diagnosis in connection with the accepted April 11, 2018 employment incident. The hearing representative

determined, however, that the medical evidence of record was insufficient to establish that his diagnosed condition was caused or aggravated by the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim, including 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,[4] 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.[5] 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.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. 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. The second component is whether the employment incident caused a personal injury and this component can be established only by medical evidence.[7]

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] 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 specific employment factors identified by the employee.[9]

In a 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

[3] *Supra* note 1.

[4] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right condition causally related to the accepted April 11, 2018 employment incident.

In an April 11, 2018 Form CA-20 report, Dr. Murphy checked a box marked "Yes" indicating that appellant's diagnosed right knee degenerative joint disease was caused or aggravated by the April 11, 2018 employment incident. While his report generally supports causal relationship, he did not offer medical rationale sufficient to explain how and why he believes that the April 11, 2018 employment incident could have resulted in or contributed to the diagnosed condition. When a physician's opinion on causal relationship consists only of checking a box marked "Yes" in response to a form question, without explanation or rationale, that opinion has limited probative value and is insufficient to establish a claim.[11] Such rationale is particularly important since Dr. Murphy noted that appellant had a preexisting injury or disease.[12] Thus, his report is insufficient to meet appellant's burden of proof.

In his March 20, 2019 letter, Dr. Murphy opined that appellant's fall was clearly an exacerbating factor that contributed to his need to undergo right total knee placement on December 6, 2018. He did not, however, explain how the April 11, 2018 employment incident was sufficient to have resulted in the need for surgery. Medical evidence that provides a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[13] Therefore, Dr. Murphy's report is insufficient to establish appellant's claim.

Dr. Murphy's remaining May 18 and August 30, 2018 progress notes provided impressions of right knee pain due to moderate-to-severe osteoarthritis, tricompartmental, and meniscal tear, but this evidence does not render an opinion on causation. 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.[14] Therefore, these reports are insufficient to establish appellant's claim.

Dr. King's April 17, 2018 progress note and February 4, 2019 letter noted a history of the April 11, 2018 employment incident and appellant's December 6, 2018 right total knee replacement. She also advised that he was totally disabled from work. Dr. King did not, however,

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *V.W.*, Docket No. 19-1537 (issued May 13, 2020); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[11] *V.W.*, *id. K.R.*, Docket No. 19-0375 (issued July 3, 2019).

[12] *See K.M.*, Docket No. 19-1247 (issued February 21, 2020); *B.R.*, Docket No. 16-0456 (issued April 25, 2016).

[13] *C.V.*, Docket No. 18-1106 (issued March 20, 2019); *M.E.*, Docket No. 18-0330 (issued September 14, 2018); *A.D.*, 58 ECAB 149 (2006).

[14] *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

provide a specific diagnosis of an injury or medical condition nor did she provide an opinion as to causal relationship. The Board has held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.[15] As such, Dr. King's medical evidence is insufficient to meet appellant's burden of proof.

While the September 4 and October 2, 2018 reports of Dr. Seo and Dr. Adelaar indicated that appellant had degenerative joint disease and osteoarthritis of the right knee, neither physician provided a history of injury or an opinion regarding causal relationship. Lacking these elements, their reports are insufficient to establish appellant's claim.[16]

Similarly, Dr. Mounasamy's March 21, 2019 progress note and Dr. Starks' operative reports are also insufficient to establish causal relationship. The physicians noted appellant's December 6, 2018 right total knee arthroplasty, but did not provide a history of injury or an opinion that his right knee condition and need for surgery were causally related the April 11, 2018 employment incident.[17]

Appellant submitted Dr. Khan's June 18, 2018 MRI scan report which addressed appellant's right knee conditions. The Board has held, however, that diagnostic test reports standing alone lack probative value as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.[18]

Appellant also submitted May 18 and August 3, 2018 Form CA-17 reports containing illegible signatures. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[19] Therefore, these reports have no probative value and are insufficient to establish the claim.

Additionally, appellant submitted reports signed solely by a nurse practitioner or a physical therapist. The Board has held that medical reports signed solely by a nurse practitioner or a physical therapist are of no probative value as neither a nurse practitioner nor a physical therapist is considered physician as defined under FECA and are therefore not competent to render a medical opinion.[20] These reports are therefore insufficient to establish the claim.

[15] *L.P.*, Docket No. 19-1812 (issued April 16, 2020); *S.J.*, Docket No. 20-0157 (issued April 1, 2020); *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

[16] *Id*.

[17] *Id.*

[18] *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

[19] *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019).

[20] 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). *See also 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); *L.F.*, *supra* note 18. (physical therapist); *T.J.*, Docket No. 19-1339 (issued March 4, 2020) (nurse practitioner).

As there is no well-rationalized medical opinion presently of record before the Board, previously considered by OWCP, establishing appellant's traumatic injury claim the Board finds that he has not met his burden of proof.[21]

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 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 right knee condition causally related to the accepted April 11, 2018 employment incident.

ORDER

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

Issued: June 30, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

[21] *T.J., id.*; *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 2018).