

FACTUAL HISTORY

On October 31, 2016 appellant, then a 34-year-old mechanic, filed an occupational disease claim (Form CA-2) alleging that he sustained a left knee condition due to factors of his federal employment. He stated that he was working and cleaning in the wash rack which required getting up and down and while twisting. Appellant alleged that while getting up he slipped on the wet floor and his left knee started to bother him badly while in the course of his employment duties. He alleged that his left knee was swollen and weak with a burning feeling. Appellant noted that he first became aware of his condition and realized its relation to his federal employment on August 9, 2016.

On October 27, 2016 appellant completed a sworn narrative statement and asserted that on August 9, 2016 he was working in the wash rack rinsing the bays and restocking soap when he slipped and turned on the metal grating injuring his left knee. He noted that his left knee was originally injured overseas in 2010.

In support of his claim, appellant submitted an October 25, 2016 report from Dr. Christopher R. Mann, an osteopath, who diagnosed left knee internal derangement and left knee meniscus tear.

In an October 31, 2016 letter, the employing establishment noted that appellant's position expired on October 30, 2016 "due to lack of workload." It noted that he first reported his August 9, 2016 alleged injury on October 4, 2016 when he was informed that his position was ending. The employing establishment requested a sworn statement, which appellant provided on October 27, 2016. Appellant again informed the employing establishment that he had a prior left knee injury, which he sustained while working overseas in 2010. The employing establishment noted that he was active during the summer, coaching baseball and completing a "mud bog."

In a November 7, 2016 development letter, OWCP notified appellant that it had converted his claim to one for an August 9, 2016 traumatic injury and advised him of the deficiencies of his claim. It requested additional factual and medical evidence and afforded him 30 days to respond.

On November 10, 2016 appellant underwent a left knee magnetic resonance imaging (MRI) scan which demonstrated a linear posterior horn medial meniscal tear with superior and inferior articular surface extension, stage II chondromalacia throughout the knee and patella, knee effusion, and bone edema and acute irritation with in the medial femoral condyle.

By decision dated December 19, 2016, OWCP found that the August 9, 2016 employment incident occurred as alleged, but denied appellant's claim finding that there was no medical evidence containing a medical diagnosis in connection with the incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On May 8, 2017 appellant requested reconsideration of the December 19, 2016 decision.

OWCP continued to receive medical evidence. On October 25, 2016 Dr. Mann reported that he had examined appellant due to left knee swelling, weakness and locking up. He noted that appellant reported he was performing his regular duties on August 9, 2016 when his left knee "gave-way." Dr. Mann indicated that appellant was stepping over or around the frame of a large

vehicle when he twisted his left knee. He further noted that appellant had a previous left knee injury on July 18, 2010 while working in Iraq. Dr. Mann found that appellant's current condition was an aggravation of a preexisting condition, that appellant's previous injury was to the left knee not the right as mentioned in contemporaneous medical records, and that he received no treatment at the time of the original injury in 2010. In a note dated December 13, 2016, Dr. Mann again diagnosed left knee internal derangement and left knee meniscal tear.

Appellant provided medical records dated July 19, 2010 from Dr. Robert Holmes, a Board-certified internist, addressing his right knee pain sustained while working in Iraq on July 18, 2010. Dr. Holmes aspirated appellant's right knee and administered anesthesia in the knee. He diagnosed knee sprain and likely medial meniscal tear. Dr. Holmes prescribed a brace.

By decision dated June 13, 2017, OWCP denied modification of the December 19, 2016 decision. It found that Dr. Mann's October 25, 2016 report was not based on an accurate history of injury as it did not address appellant's August 9, 2016 slip on a grate while cleaning the wash rack, but instead attributed his left knee injury to twisting while stepping over large vehicle frames.

On January 23, 2018 appellant requested reconsideration of the June 13, 2017 decision. He submitted a December 20, 2017 report from Dr. Mann who indicated that he was aware that appellant was working in the wash rack and that he slipped on the wet floor while walking around the large vehicle which he worked on as a mechanic. He noted that appellant was getting up, down, and twisting his left knee. Dr. Mann opined that appellant sustained a significant left knee injury while performing his regular job at the employing establishment on August 9, 2016. He found that appellant had sustained significant injury to the structures of the left knee that he did not have prior to this incident. Dr. Mann also noted that this was an aggravation of a preexisting injury that appellant first sustained at work on July 19, 2010.

By decision dated March 30, 2018, OWCP denied modification of the July 13, 2017 decision. It found that appellant's claim was denied on the basis of factual inconsistencies regarding how the injury occurred as well as late notification of the injury which cast doubt that the injury occurred in the manner alleged.

On September 20, 2018 appellant requested reconsideration of the March 30, 2018 OWCP decision. He provided April 30 and May 2, 2018 witness statements from coworkers who reported that his July 2010 injury was to his left knee. Both noted that when he returned to work, appellant drove heavy vehicles with a brace on his left knee.

In an August 22, 2018 report, Dr. Mann asserted that appellant sustained an acute injury on August 9, 2016. He again asserted that appellant slipped at work causing a twisting injury to his left knee. Dr. Mann noted that following the July 2010 injury appellant was allowed to drive with a brace on his left knee and that the contemporaneous medical records inaccurately referenced his right knee.

By decision dated December 20, 2018, OWCP modified the March 30, 2018 decision, finding that appellant had established a diagnosis in connection to the work injury, but failed to provide medical evidence establishing causal relationship between the accepted August 9, 2016 employment incident and the diagnosed left knee condition.

On March 13, 2019 appellant requested reconsideration of the December 20, 2018 OWCP decision. In a January 3, 2019 report, Dr. Mann repeated that appellant's left knee "gave way" during a slip and twist injury at work. He opined that his diagnosed condition was due to his work injury.

By decision dated March 20, 2019, OWCP modified the March 30, 2018 decision, finding that appellant had not established that an employment incident occurred in the performance of duty on August 9, 2016, as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,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 must first be determined whether fact of injury has been established.⁷ 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.⁸ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of

³ *Supra* note 1

⁴ *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).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *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).

⁷ *R.B.*, Docket No. 17-2014 (issued February 14, 2019); *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁸ *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁹ *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 7.

action.¹⁰ The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence that cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether the case has been established. An employee's statements alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹¹

ANALYSIS

The Board finds that the case is not in posture for decision.

On his October 31, 2016 claim form, appellant alleged that he injured his left knee on August 9, 2016 when he slipped and twisted his left knee while at work. He sought medical treatment on October 25, 2016 from Dr. Mann and provided a sworn affidavit confirming these facts on October 27, 2016.

The Board finds, as OWCP had found in its decisions dated December 19, 2016, June 13, 2017, December 20, 2018, that appellant has established that the incident involving slipping and twisting his left knee while at work occurred on August 9, 2016, as alleged. Appellant provided consistent statements on his claim form, in his sworn statement, and to Dr. Mann which establish that the alleged employment incident occurred on August 9, 2016. Appellant has provided a single account of the mechanism of injury that has not been refuted by any evidence in the record.¹² While Dr. Mann initially reported on October 25, 2016 that appellant's left knee gave way on August 9, 2016 when he twisted his left knee while stepping over a large vehicle frame, he subsequently further explained in his December 20, 2017 report that appellant had been working in the wash rack area on August 9, 2016, getting up and down, and twisting his left knee, when he slipped on the wet floor while walking around the large vehicle he was working on as a mechanic. As noted above, a claimant's statement that an injury occurred at a given time, place, and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹³ As Dr. Mann specifically clarified in his December 20, 2017 report that appellant was working and twisting his left knee on August 9, 2016 and that he thereafter slipped/left knee gave out on a wet floor, the Board therefore finds that appellant has established that the August 9, 2016 employment incident occurred in the performance of duty, as alleged.

¹⁰ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹¹ *S.W.*, Docket No. 19-0653 (issued November 21, 2019); *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹² *B.S.*, Docket No. 19-0524 (issued August 8, 2019).

¹³ *Supra* note 11.

As appellant has established that the August 9, 2016 employment incident factually occurred, the question becomes whether this incident caused a personal injury.¹⁴ The Board will, therefore, remand the case for consideration of the medical evidence. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden of proof to establish an injury or condition causally related to the accepted August 9, 2016 employment incident.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the March 20, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: January 27, 2020
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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

¹⁴ *Supra* note 12.