

ISSUES

The issues are: (1) whether appellant has met his burden of proof to expand the acceptance of his claim to include the additional conditions of a closed nondisplaced left femur fracture and a left knee insufficiency fracture, causally related to the accepted April 27, 2018 employment injury; and (2) whether appellant has met his burden of proof to establish disability from work for the period June 30 through August 21, 2018, causally related to the accepted April 27, 2018 employment injury.

FACTUAL HISTORY

On April 28, 2018 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 27, 2018 he developed a left knee strain and heard his knee “pop” while walking with a tub of parcels to load his postal vehicle while in the performance of duty. He did not indicate that he had stopped work.

Appellant submitted medical evidence in support of his claim which included a May 18, 2018 report, by Dr. Mitesh K. Patel, Board-certified in sports medicine and family practice, who reported that appellant was seen for left knee pain following an April 27, 2018 work injury. Appellant noted feeling pain while walking up a ramp and felt a pop in his left knee when he pivoted while carrying parcels. A review of x-ray interpretations showed left knee mild patellofemoral arthritis and no fracture. In a form report of even date, Dr. Patel diagnosed left knee pain and recommended a magnetic resonance imaging (MRI) scan of the left knee.

In reports dated June 13, 2018, Dr. Patel diagnosed left knee insufficiency fracture and recommended a medial unloader brace.

By decision dated June 21, 2018, OWCP accepted the claim for left knee strain.

By decision dated June 25, 2018, OWCP denied expansion of appellant’s claim to include the additional conditions of a closed nondisplaced left femur condyle fracture and a left knee insufficiency fracture.

A June 1, 2018 MRI scan of appellant’s left knee showed very mild patellofemoral osteoarthritis, grade 2 medial collateral ligament sprain, bone edema extending into the medial femoral condyle, and subacute, subcortical, transverse medial femoral condyle fracture.

Dr. Patel, in a June 13, 2018 report, diagnosed left medial condyle insufficiency fracture based on review of the left knee MRI scan. Appellant’s physical examination revealed no left knee effusion, tenderness in the left medial femoral condyle, and negative McMurray, Drawer, and Lachman tests. Dr. Patel diagnosed acute left knee pain and closed nondisplaced left femur condyle fracture.

In a June 21, 2018 report, Dr. Patel again noted appellant’s diagnosis as closed nondisplaced left femur condyle fracture. He related that appellant had been fitted with an orthosis.

On July 9, 2018 appellant filed a wage-loss compensation claim (Form CA-7) for the period June 30 through July 6, 2018.

In a development letter dated July 20, 2018, OWCP informed appellant that the evidence of record was insufficient to establish his claim for wage-loss compensation for the period June 30, 2018 and continuing. It noted that appellant's claim had been accepted for left knee sprain and denied for closed nondisplaced left femur condyle fracture and left knee insufficiency fracture. OWCP advised him regarding the type of evidence required to support his wage-loss compensation claim. Appellant was afforded 30 days to provide the requested evidence.

In a July 20, 2018 work capacity evaluation report (Form OWCP-5c), Dr. Patel opined that appellant was totally disabled. In a note of even date, he diagnosed left knee medial collateral ligament sprain and nondisplaced left medial femur condyle fracture. Dr. Patel checked a box marked "No" that appellant was unable to perform her work activities without restrictions.

OWCP received additional Form CA-7's claiming wage-loss compensation for the period July 7 through August 3, 2018.

On July 20, 2018 appellant requested review of the written record by an OWCP hearing representative of the June 25, 2018 decision denying expansion of his claim.⁴

In a July 20, 2018 report, Dr. Patel diagnosed a left femur closed nondisplaced condyle fracture and a left knee medial collateral ligament sprain. Appellant's physical examination findings and history of injury were noted and Dr. Patel opined that appellant's insufficiency fracture was caused by appellant's return to work and sudden increased activity.

Dr. Patel, in a report dated August 17, 2018, diagnosed a left knee medial collateral ligament sprain and a medial femoral condyle transverse fracture. Appellant's physical examination findings were noted and Dr. Patel indicated that after appellant was removed from work, he had been pain free and had not experienced swelling or mechanical symptoms. In a note of even date, he diagnosed an MCL sprain and indicated that appellant was able to perform modified work. In an OWCP Form 5c report of even date, Dr. Patel diagnosed left knee sprain. He indicated that appellant was capable of working with restrictions of walking and standing limited to three hours.

On August 22, 2018 appellant returned to full-time, light-duty work.

In a September 13, 2018 duty status report (Form CA-17), Dr. Patel diagnosed tibial fracture and medial collateral ligament sprain, released appellant to return to work, and provided work restrictions.

By decision dated September 14, 2018, OWCP denied appellant's wage-loss compensation claim for the period June 30, 2018 and continuing finding that appellant had not established that he was disabled due to the employment-related conditions.

Following the September 14, 2018 decision, OWCP received a September 13, 2018 report from Dr. Patel diagnosing a left femur closed nondisplaced condyle fracture and a left knee medial

⁴ The Board notes that the request form indicated that he requested a review from a June 22, 2018 decision, but there is no decision of record of that date.

collateral ligament sprain. Dr. Patel noted that appellant had been receiving physical therapy and been working with restrictions.

On September 21, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, regarding the September 14, 2018 decision which denied appellant's wage-loss compensation claim. The hearing was held on January 23, 2019.

By decision dated October 25, 2018, OWCP's hearing representative affirmed the June 25, 2018 decision denying expansion of the acceptance of appellant's claim to include a closed nondisplaced left femur fracture and a left knee insufficiency fracture.

OWCP received progress reports from Dr. Patel dated November 2, 2018 and January 4 and February 4, 2019 in which he repeated appellant's diagnoses and noted appellant's work restrictions.

On January 23, 2019 appellant, through counsel, requested reconsideration of the October 25, 2018 hearing representative's decision denying expansion of the acceptance of appellant's claim.

In an August 22, 2018 report, Dr. Patel described appellant's April 27, 2018 employment injury, summarized the medical treatment he had provided since the initial evaluation on May 18, 2018, and noted his examination findings. He explained that at the time of the April 27, 2018 employment injury appellant was developing a left knee stress fracture from his employment, and that walking down a ramp with heavy packages on April 27, 2018 worsened this condition. Dr. Patel explained that appellant had increasing left knee pain attributable to the underlying stress fracture which caused a pivoting left knee motion and resulted in the medical collateral ligament sprain and pop. He further explained that the left knee stress fracture was further significantly aggravated by appellant's return to full duty for two weeks. Dr. Patel opined that the demands of appellant's job resulted in the medial femoral condyle fracture. He reported that during a prior evaluation on June 13, 2018 appellant had noted that he was not working because the employing establishment could not accommodate his work restrictions.

By decision dated February 28, 2019, the hearing representative affirmed the September 14, 2018 decision regarding appellant's wage-loss compensation claim.

In reports dated March 8 and April 3, 2019, Dr. Patel noted appellant's history of injury and indicated that he had returned to work with restrictions. Physical examination findings were detailed and he diagnosed a medial collateral ligament sprain and a tibial plateau fracture.

By decision dated April 23, 2019, OWCP denied modification of the October 25, 2018 decision regarding claim expansion.

LEGAL PRECEDENT -- ISSUE 1

If an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁵

The medical evidence required to establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, is rationalized medical opinion evidence.⁶ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. Additionally, the opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁷

ANALYSIS -- ISSUE 1

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

OWCP initially accepted appellant's claim for left knee strain. In support of his request that acceptance of the claim be expanded to include a closed nondisplaced left femur fracture and a left knee insufficiency fracture, appellant submitted reports from Dr. Patel. Read together, these reports are sufficient to require further development of the medical evidence.

Dr. Patel explained that he had reviewed appellant's medical history and found that appellant's left knee stress fracture had been developing and that it had been aggravated by walking down a ramp with heavy packages on April 27, 2018 while performing his employment duties. He noted appellant's MRI scan findings and provided findings on physical examination. Dr. Patel diagnosed a left femur closed nondisplaced condyle fracture and a medial collateral ligament sprain. He opined that appellant's condition was caused and had been aggravated by both the April 27, 2018 employment injury and his return to full-duty employment for a period of two weeks. Dr. Patel explained how appellant's increasing left knee pain was attributable to the underlying stress fracture which resulted in a pivoting motion of the left knee motion, sufficient to cause a "pop" and a strain, and an aggravation of the underlying condition.

Accordingly, the Board notes that Dr. Patel provided an affirmative opinion on causal relationship. Dr. Patel's reports, when read together, identified the accepted April 27, 2018 employment injury which appellant claimed caused his condition, identified findings upon examination, and explained how the accepted April 27, 2018 employment injury, specifically walking down a ramp with heavy packages, caused or aggravated appellant's left femur closed nondisplaced condyle fracture and medial collateral ligament sprain. The Board finds that

⁵ *S.J.*, Docket No. 19-1489 (issued January 13, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁶ *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁷ *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Dr. Patel's opinion, while not sufficiently rationalized to meet appellant's burden of proof, is sufficient, given the absence of opposing medical evidence, to require further development of the record.⁸

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.⁹ OWCP has an obligation to see that justice is done.¹⁰

The case will be remanded to OWCP for such further development of the record as deemed necessary, to be followed by the issuance of a *de novo* decision.¹¹

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 28 and April 23, 2019 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 6, 2020
Washington, DC

Christopher J. Godfrey, 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

⁸ See *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *A.F.*, Docket No. 15-1687 (issued June 9, 2016). See also *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁹ See *C.H.*, Docket No. 18-0108 (issued July 19, 2018); see e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71 (1956).

¹⁰ *C.H.*, *id.*; *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹¹ In light of the Board's disposition regarding Issue 1, Issue 2 is currently not in posture for decision.