

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

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**Y.S., Appellant**

**and**

**DEPARTMENT OF THE ARMY,  
EXPEDITIONARY CONTRACTING  
COMMAND, Camp Arifjan, Kuwait, Employer**

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**Docket No. 19-1572  
Issued: March 12, 2020**

*Appearances:*  
*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Deputy Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 18, 2019 appellant, through counsel, filed a timely appeal from an April 10, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<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> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish a left knee condition causally related to the accepted October 22, 2017 employment incident.

## FACTUAL HISTORY

On December 19, 2017 appellant, then a 56-year-old quality assurance specialist, filed a traumatic injury claim (Form CA-1) alleging that on October 22, 2017 she tripped over debris and fell face down in the employing establishment's Outside Dining Facility parking lot when walking with a coworker during her lunchbreak while in the performance of duty. The employing establishment controverted the claim, asserting that the alleged injury occurred during her lunchbreak and that evidence was not provided to support an employment-related injury or entitlement to continuation of pay. No evidence was received with the claim.

In a December 27, 2017 development letter, OWCP requested that appellant provide additional factual and medical information in support of her claim, including a report from her attending physician which addressed causal relationship between a diagnosed condition and the claimed October 22, 2017 employment incident. It afforded her 30 days to submit the necessary evidence.

In response, appellant submitted a November 22, 2017 witness statement from D.H. attesting to her trip and fall on October 22, 2017.

A copy of appellant's chronological record of medical care, with a date range from September 19, 2016 through November 13, 2017, was also provided. In a November 6, 2017 entry, Dr. Jason Alisangco, Board-certified in family practice and sports medicine, reported the history of injury as "[patient] states she tripped two weeks ago, but did not feel pain until a week later." He noted that appellant was diagnosed with arthritis two months prior. Dr. Alisangco indicated that she had abnormal movement of all extremities, normal motor strength, and no weakness observed of the left knee. Examination findings of the left knee revealed effusion and tenderness on palpation joint capsule. Dr. Alisangco diagnosed osteoarthritis of the knee with symptomatic knee effusion. Treatment consisted of aspiration with steroid.

After a November 6, 2017 steroid injection, appellant developed increased pain and inability to bear weight or flex her knee. The record reflects that she was admitted to the military hospital on November 13, 2017 at the employing establishment. In a partially redacted November 10, 2017 memorandum, Maj. (Dr.) Jeremy K. Rush, a Board-certified orthopedic surgeon, indicated that appellant was admitted for left septic knee arthritis and that she required evacuation. He opined that she would not be fit for duty for four to six months. On November 18, 2017 appellant was admitted to the hospital in Landstuhl, Germany and was released on November 27, 2017. She was then transported to Walter Reed Hospital in Bethesda, Maryland.

By decision dated January 29, 2018, OWCP accepted that the October 22, 2017 employment incident occurred while in the performance of duty as alleged. However, it denied her claim finding that the medical evidence of record was insufficient to establish that her diagnosed left knee osteoarthritis, synovitis, and sepsis conditions were caused or aggravated by the accepted October 22, 2017 employment incident.

On January 11, 2019 appellant, through counsel, requested reconsideration.

Medical records were received consisting of laboratory and diagnostic tests results, medical procedure notes, and counseling records related to appellant's treatment for septic arthritis.

In a December 31, 2018 report, Dr. Joshua B. Macht, a Board-certified internist, noted his December 20, 2018 review of appellant's medical records. He diagnosed left knee sprain injury treated with left knee injection complicated by septic arthritis. Dr. Macht opined that appellant sustained an acute left knee sprain injury when she fell on October 22, 2017 as her medical records documented the onset of swelling and pain a few days later. He noted that appellant ultimately sought medical attention and was diagnosed with a symptomatic left knee effusion and had an aspiration and injection procedure. Dr. Macht noted that procedure was complicated by septic arthritis and she had to undergo additional treatment as a result. He indicated that appellant also has a documented history of left knee osteoarthritis. Dr. Macht further opined that appellant suffered an acute exacerbation of her chronic left knee symptoms when she fell on October 22, 2017. He explained that the mechanism of appellant losing balance and falling, and her attempt to maintain her balance, put an unexpected strain on the musculoligamentous structures of the knee. This unexpected stretching of the tendons, ligaments, and muscle tissue of the left knee joint structure and the stretching beyond its normal functional range of motion led to pain, swelling, inflammation, and potentially tearing of the involved structures. Dr. Macht noted that appellant had presented for examination with evidence of this mechanism of injury on November 6, 2017 when she was found to have a knee effusion (swelling of the knee joint) and acute pain. He opined that this was the direct result of the October 22, 2017 strain injury and, per her documented history, she did not have this degree of pain or swelling with the left knee prior to the October 22, 2017 accident. Dr. Macht therefore concluded that appellant suffered an acute left knee sprain injury with exacerbation of her chronic left knee symptoms. He also opined that appellant's subsequent diagnosis of left knee septic arthritis was also causally related to the October 22, 2017 accident as it developed as a post-procedural complication incurred during the treatment of the October 22, 2017 injury.

By decision dated April 10, 2019, OWCP denied modification of its January 29, 2018 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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,<sup>3</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

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<sup>3</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.<sup>4</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>5</sup>

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.<sup>6</sup> 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.<sup>7</sup> The second component is whether the employment incident caused a personal injury.<sup>8</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence. 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.<sup>9</sup> The absence of a physical examination by a physician may affect the weight to be given a medical report, but does not necessarily render it incompetent as medical evidence.<sup>10</sup> In cases where the sole issue is one of causal relationship, a physical examination is unnecessary as it would be of no consequence and would only result in additional delay and cost.<sup>11</sup>

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.<sup>12</sup>

### ANALYSIS

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

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<sup>4</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>5</sup> *See C.C.*, Docket No. 18-1453 (issued January 28, 2020); *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).

<sup>6</sup> *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

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

<sup>8</sup> *E.M.*, *id.*; *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>10</sup> *See W.C.*, Docket No. 18-1386 (issued January 22, 2019); *M.M.*, Docket No. 17-0438 (issued March 13, 2018); *C.B.*, Docket No. 17-0726 (issued July 3, 2017); *Melvina Jackson*, 38 ECAB 443, 447-52 (1987).

<sup>11</sup> *See Sherry Shreiber*, Docket No. 04-1966 (issued January 24, 2005) (the Board held that the fact that an OWCP-selected second opinion physician had not physically examined the claimant was of no consequence as the diagnosis had already been established, and thus the only question was causal relationship).

<sup>12</sup> 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).

In his December 31, 2018 report, Dr. Macht opined that appellant suffered an acute sprain injury of the left knee and an acute exacerbation of her chronic left knee symptoms when she fell on October 22, 2017. He provided a proper factual and medical history of injury, noting that review of her medical records documented the onset of swelling and pain a few days later. This was collaborated by Dr. Alisangco's November 6, 2017 entry wherein he reported that appellant felt pain about a week after she tripped. Dr. Macht further noted that appellant had a history of left knee osteoarthritis and, per her documented history, she did not have this degree of pain or swelling with the left knee prior to the October 22, 2017 employment incident. He noted a diagnosis of symptomatic left knee effusion and that she underwent an aspiration and injection procedure, which was complicated by septic arthritis. Dr. Macht explained that, when appellant attempted to maintain her balance and avoid falling to the ground, the mechanism of losing balance when falling put an unexpected strain on the musculoligamentous structures of the knee and that unexpected stretching of the tendons, ligaments, and muscle tissue of the left knee joint structure led to pain, swelling, inflammation, and potentially tearing of the involved structures. Dr. Macht indicated that she presented with evidence of this mechanism of injury on November 6, 2017 when she was found to have a knee effusion (swelling of the knee joint) and acute pain. He concluded that appellant suffered an acute left knee sprain injury with exacerbation of her chronic left knee symptoms as a result of the October 22, 2017 injury. Dr. Macht also opined that the subsequent diagnosis of left knee septic arthritis was also causally related to the accepted October 22, 2017 employment incident as it developed as a post-procedural complication incurred during the treatment of the October 22, 2017 injury.

The Board finds that the December 31, 2018 report of Dr. Macht is sufficient to require further development of the medical evidence to see that justice is done.<sup>13</sup> Dr. Macht is a Board-certified physician in internal medicine who is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship and he provided a comprehensive and convincing review of the medical record and case history. It is further found that he provided a comprehensive and convincing pathophysiological explanation as to how the mechanism of the accepted employment trip and fall was sufficient to cause the conditions of an acute sprain injury of the left knee and acute exacerbation of her chronic left knee symptoms. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.<sup>14</sup> Accordingly, Dr. Macht's medical opinion is well rationalized and logical and is therefore sufficient to require further development of appellant's claim.<sup>15</sup>

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

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<sup>13</sup> *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>14</sup> *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein).

<sup>15</sup> See *J.H.*, *supra* note 13.

responsibility in the development of the evidence.<sup>16</sup> OWCP has an obligation to see that justice is done.<sup>17</sup>

On remand OWCP shall refer appellant to an appropriate specialist, along with the case record and a statement of accepted facts. Its referral physician shall provide a well-rationalized opinion as to whether appellant's diagnosed left knee conditions are causally related to or aggravated by the accepted October 22, 2017 employment incident. After such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 10, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 12, 2020  
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>16</sup> See *id.* See also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>17</sup> See *B.C.*, Docket No. 15-1853 (issued January 19, 2016).