

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

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B.S., Appellant)	
)	
and)	Docket No. 20-0295
)	Issued: November 5, 2020
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Loma Linda, CA, Employer)	
_____)	

Appearances:
William H. Brawner, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On November 20, 2019 appellant, through counsel, filed a timely appeal from a November 6, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a left lower extremity condition causally related to the accepted June 22, 2015 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 30, 2015 appellant, then a 54-year-old vocational nurse, filed a traumatic injury claim (Form CA-1) alleging that on June 22, 2015 he injured his left knee, left lower leg, and left ankle when he slipped on a wet floor in the bathroom. He noted that he had a history of a prior employment-related left knee injury.⁴ Appellant stopped work on June 22 and returned to work on June 25, 2015. OWCP assigned the claim OWCP File No. xxxxxx486.

In support of his claim, appellant submitted an attending physician's supplemental report (Form CA-20a) dated June 24, 2015, wherein Dr. Steven Shin, a Board-certified orthopedic surgeon, noted that appellant was status post an open reduction and internal fixation of the left ankle with acute or chronic left knee pain. He diagnosed left foot pain and a left bimalleolar nondisplaced fracture. Arshad Samad, a physician assistant, evaluated appellant on June 22, 2015. In an attending physician's report (Form CA-20) dated July 1, 2015, the physician assistant noted a history of appellant slipping and falling on his left foot and reinjuring his left knee and diagnosed left foot pain.

In a development letter dated July 8, 2015, OWCP requested that appellant submit additional factual and medical evidence in support of his claim, including a detailed report from his attending physician explaining how the identified employment incident caused or aggravated a diagnosed condition. It afforded him 30 days to respond.

On July 24, 2015 Dr. Gerald I. West, who specializes in family medicine, indicated that appellant had twisted his left knee when she slipped on a wet floor of a bathroom while at work. He described his history of left knee degeneration and a lateral meniscal tear and his history of a March 31, 2015 open reduction internal fixation of the left ankle. Dr. West reviewed the findings from a 2014 magnetic resonance imaging (MRI) scan and recommended another MRI scan to determine if the recent incident had aggravated or exacerbated appellant's condition. He

³ Docket No. 18-0770 (issued December 4, 2018).

⁴ OWCP previously accepted that appellant sustained an employment-related knee contusion on December 21, 2013 that had resolved as of January 8, 2014, assigned OWCP File No. xxxxxx153. Under OWCP File No. xxxxxx153, by decision dated August 25, 2017, the Board affirmed a February 28, 2017 decision finding that appellant had not established a recurrence of disability beginning April 14, 2014 causally related to his December 21, 2013 employment injury. Docket No. 17-0941 (issued August 25, 2017). Appellant also has a prior accepted claim for a temporary aggravation of unilateral primary osteoarthritis of the left knee due to an April 14, 2014 employment injury, assigned OWCP File No. xxxxxx561.

diagnosed left knee joint pain, traumatic arthritis of the left knee, and derangement of the left lateral meniscus and provided work restrictions.

In a July 27, 2015 report, Dr. West advised that appellant had twisted his left knee on June 22, 2015 after he slipped. He diagnosed joint pain, traumatic arthritis, and derangement of the lateral meniscus of the left knee. Dr. West opined that the findings were “consistent with [appellant’s] alleged injury.”

By decision dated August 14, 2015, OWCP denied appellant’s traumatic injury claim. It found that he had not submitted sufficient medical evidence to establish that he sustained a diagnosed condition causally related to the accepted June 22, 2015 work incident.

On August 20, 2015 appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

In an August 31, 2015 report, Dr. West discussed his prior findings that appellant had sustained an acceleration of degenerative changes and a meniscal tear due to injuries on either December 12, 2013 or April 14, 2014. He related:

“It is within reasonable medical probability that the injury [he] sustained to his left knee on June 22, [2015] can be considered an exacerbation. Each time he reinjures the knee, his functional capacity to walk/stand is adversely affected ... similar to the injuries he sustained on December 2013 and April 13, 2014, the injury on June 22, 2015 has accelerated his symptoms of pain, swelling, and instability in the knee.”

In a report dated February 11, 2016, Dr. G.B. Ha’Eri, a Board-certified orthopedic surgeon, indicated that he had treated appellant on October 7, 2015 and January 27, 2016 for left knee injuries sustained on December 21, 2013, April 14, 2014, and June 22, 2015. He noted that he had fractured his left knee in 1987 while in the military and injured his left knee at work on December 21, 2013 and April 14, 2014 in altercations with psychiatric patients. Dr. Ha’Eri diagnosed left knee osteoarthritis due to the 1987 left knee injury and subsequent surgery, an aggravation of the preexisting left knee osteoarthritis due to the December 21, 2013, April 14, 2014, and June 22, 2015 work injuries, and a left knee torn lateral meniscus “more likely to have been caused by the industrial injuries of December 21, 2013 and April 14, 2014.” Dr. Ha’Eri related:

“Based on [the] history provided by [appellant], my physical examination and review of the medical records, it is the opinion of the undersigned that the industrial injuries of December 21, 2013, April 14, 2014, and June 22, 2015 aggravated the preexisting condition of his left knee, which was post[-]traumatic osteoarthritis, and also caused a torn lateral meniscus.”

“The mechanism of the injuries described by [appellant] was consistent with the physical altercation with the psychiatric patients dated December 21, 2013 and April 14, 2014 and his slip and twisting injury to the left knee dated June 22, 2015 when he was walking with a walker boot after the surgical repair of his left ankle fracture.”

On February 22, 2016 appellant requested a review of the written record in lieu of an oral hearing.

By decision dated April 6, 2016, OWCP's hearing representative affirmed the August 14, 2015 decision. She found that Dr. Ha'Eri had not described in detail the employment incident or addressed the natural progression of appellant's preexisting condition.

On March 16, 2017 Dr. Ha'Eri found that appellant's December 21, 2013, April 14, 2014, and June 22, 2015 employment injuries had permanently aggravated his preexisting osteoarthritis of the left knee. He noted that he had continued to work even though he had a torn lateral meniscus. Dr. Ha'Eri related, "By not undergoing the surgery intervention and continuing to work, the injuries of December 21, 2013, April 14, 2014, and June 22, 2015 left [appellant] with permanent aggravation of a preexisting condition of his left knee and in fact accelerated the process of breakdown of the articular cartilage in his left knee, as well as extending the tear in the lateral meniscus." He indicated that he had reviewed an April 21, 2016 report from Dr. Michael Einbund, a Board-certified orthopedic surgeon, and disagreed with his finding that he had sustained only a temporary aggravation of his left knee.

On April 4, 2017 appellant, through counsel, requested reconsideration. He contended that Dr. Ha'Eri had provided a reasoned explanation of why the work injuries accelerated and exacerbated the progression of his preexisting left knee osteoarthritis.

By decision dated January 4, 2018, OWCP denied modification of its April 6, 2016 decision.

Appellant appealed to the Board. By decision dated December 4, 2018, the Board set aside the January 4, 2018 decision. It remanded the case for OWCP to combine OWCP File No. xxxxxx153 and OWCP File No. xxxxxx561 with the current file number and to further evaluate the evidence to determine whether appellant sustained either an injury on June 22, 2015 due to the accepted employment incident or as the result of the progression of a previously accepted employment injury.

OWCP subsequently administratively combined OWCP File Nos. xxxxxx153 and xxxxxx561 with the present claim, OWCP File No. xxxxxx486, with the later serving as the master file.

On July 19, 2019 OWCP provided Dr. Ha'Eri with a statement of accepted facts and MRI scans dated 2014 and 2016.⁵ It requested that he explain whether the June 22, 2015 employment incident resulted in a diagnosed medical condition or altered the natural progression of a preexisting condition.

⁵ An August 9, 2014 MRI scan of the left knee demonstrated thinning or cartilage loss of the anterior portion of the medial femoral condyle and of the patella and a horizontal tear of the lateral and posteriorlateral portions of the lateral meniscus. A left knee MRI scan dated November 29, 2016, showed postsurgical changes, and, if there was no history of a prior meniscectomy, a complex multidirectional tear of the anterior horn and body of the lateral meniscus and tricompartmental osteoarthrosis with near full-thickness chondral loss.

On August 21, 2019 Dr. Ha'Eri indicated that he had last evaluated appellant on March 16, 2017. He discussed his complaints of worsening symptoms of left knee pain, stiffness, and instability since the date of his last examination. On examination Dr. Ha'Eri found a positive McMurray's test and mild knee effusion and tenderness. He diagnosed osteoarthritis due to a 1987 traumatic fracture of the lateral tibial plateau. Dr. Ha'Eri further diagnosed a permanent aggravation of left knee osteoarthritis and a lateral meniscal tear due to December 21, 2013, April 14, 2014, and June 22, 2015 employment injuries. He opined that appellant had sustained an undiagnosed meniscal tear due to the December 21, 2013 employment injury, which he opined contributed to his April 14, 2014 injury. Dr. Ha'Eri noted that the August 11, 2014 MRI scan showed a horizontal tear of the lateral meniscus and thinning of the cartilage of the anterior medial femoral condyle and patella. An MRI scan of the left knee obtained on November 29, 2016, subsequent to the June 22, 2015 employment incident, showed a complex multidirectional tear of the lateral meniscus and tricompartmental osteoarthritis with areas of near full-thickness chondral loss. Dr. Ha'Eri opined that the three employment injuries had "permanently aggravated the preexisting condition of his left knee (osteoarthritis) and in fact, accelerated the process of the breakdown of articular cartilage and the tear in the lateral meniscus as demonstrated by MRI [scans]." He asserted that timely surgical intervention following appellant's left knee injuries would have slowed the progression of his left knee osteoarthritis.

By decision dated November 6, 2019, OWCP denied appellant's traumatic injury claim. It found that the evidence of record was insufficient to demonstrate that the accepted June 22, 2015 employment incident caused a medical condition or changed the progression of a preexisting condition. OWCP determined that Dr. Ha'Eri did not explain how the June 22, 2015 employment incident contributed to his current condition or discuss the natural progression of the condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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 filed within the applicable time limitation of FECA,⁷ that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁸ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁹

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.¹⁰

⁶ *Supra* note 2.

⁷ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

⁹ *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

¹⁰ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

Generally, fact of injury consists of 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.¹¹ The second component is whether employment incident caused a personal injury.¹² An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.¹³

Causal relationship is a medical issue and the medical evidence required to establish causal relationship 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 incident.¹⁴

ANALYSIS

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

OWCP previously accepted that appellant had sustained a knee contusion that had resolved as of January 8, 2014 due to a December 21, 2013 employment injury under OWCP File No. xxxxxx153. It also accepted that he sustained a temporary aggravation of unilateral primary osteoarthritis of the left knee due to an April 14, 2014 employment injury under OWCP File No. xxxxxx561. Under the current claim, OWCP File No. xxxxxx486, appellant alleged that he sustained an injury to his left knee, left lower leg, and left ankle due to an accepted June 22, 2015 employment incident. On prior appeal, the Board ordered that OWCP combine the above-listed claims and further consider whether the evidence established that the accepted employment incident resulted in a diagnosed condition or progression of a preexisting condition.

On remand OWCP administratively combined the claims and requested a supplemental report from Dr. Ha'Eri. On August 21, 2019 Dr. Ha'Eri found that appellant's employment injuries on December 21, 2013, April 14, 2014, and June 22, 2015 had permanently aggravated his preexisting osteoarthritis of the left knee. He opined that he had torn his lateral meniscus on December 21, 2013 and that the tear had contributed to the April 14, 2014 employment injury. Dr. Ha'Eri indicated that this injury was not attended surgically following the second injury and appellant continued to work after a brief period; as such, his knee deteriorated through the gradual process of weight bearing through the left leg. He noted that an August 11, 2014 MRI scan of the left knee showed a tear of the lateral meniscus and thinning of the anterior medial femoral condyle and patella cartilage, while a November 29, 2016 MRI scan revealed a complex multidirectional tear of the lateral meniscus and tricompartmental osteoarthritis with areas of near full-thickness chondral loss worsening of the left knee tear of the lateral meniscus. Dr. Ha'Eri determined that the objective findings on the MRI scan supported that the December 21, 2013, April 14, 2014, and

¹¹ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

¹² *Id.*

¹³ *D.V.*, Docket No. 19-1642 (issued June 4, 2020); *Shirley A. Temple*, 48 ECAB 404 (1997).

¹⁴ *See S.S.*, *supra* note 10; *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

June 22, 2015 injuries had permanently aggravated appellant's left knee osteoarthritis and accelerated the loss of articular cartilage and lateral meniscal tear.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation; however, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁵ The Board finds that the August 21, 2019 report from Dr. Ha'Eri is sufficient to require further development of the record.¹⁶ Dr. Ha'Eri's opinion is supportive, unequivocal, bolstered by objective findings, and based on an accurate history.¹⁷ While he did not sufficiently explain the mechanism by which the June 22, 2015 employment incident caused a permanent aggravation of left knee osteoarthritis and a lateral meniscal tear, his opinion is uncontradicted, reasoned, and logical and thus requires further development of appellant's claim.¹⁸

Additionally, following remand by the Board, OWCP further developed the medical evidence by requesting a supplemental report from Dr. Ha'Eri. Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁹ The Board will thus remand the case for OWCP to further develop the medical evidence to determine whether the accepted June 22, 2015 employment incident caused or aggravated a diagnosed condition or contributed to the progression of an underlying condition. OWCP should additionally evaluate whether the two accepted employment injuries in December 2013 and April 2014, as well as the June 2015 employment incident, caused or aggravated an underlying condition. Following this and any further development deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

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

¹⁵ *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹⁶ *See K.S.*, Docket No. 19-0506 (issued July 23, 2019).

¹⁷ *D.B.*, Docket No. 19-0504 (issued July 22, 2020); *V.G.*, Docket No. 17-1418 (issued April 4, 2018).

¹⁸ *D.B.*, *id.*

¹⁹ *D.B.*, Docket No. 19-0811 (issued March 9, 2020); *Richard F. Williams*, 55 ECAB 346 (2004).

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: November 5, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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