United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 19-0111**
	)	**Issued: October 22, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Fort Worth, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 19, 2018 appellant filed a timely appeal from a September 28, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a right lower extremity condition causally related to the accepted December 29, 2017 employment incident.

[1] The Board notes that, following the September 28, 2018 decision, OWCP received 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.*

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 29, 2017 appellant, then a 48-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on that same date he sustained a right knee sprain when he was walking back to his truck while in the performance of duty. He notified his supervisor, stopped work, and first sought medical treatment on December 29, 2017.

By development letter dated January 8, 2018, OWCP informed appellant that he had not submitted sufficient factual or medical evidence to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested information.

In support of his claim, appellant submitted a December 29, 2017 report from Renee Bourgeois, a registered nurse, who related that he was walking back to his truck after delivering a package when he felt a crunch to his right knee and sudden severe pain. He denied any type of mechanism of injury and related that he was just walking. Nurse Bourgeois diagnosed right knee strain and referred appellant for physical therapy which began on January 2, 2018.

A December 29, 2017 report by Dr. James Esser, a Board-certified radiologist, indicated that an x-ray of the right knee revealed normal findings. He noted that appellant was walking and felt a crunch in his knee with no definitive injury. Dr. Esser related findings of right knee degenerative changes.

Dr. Charles Ross, an osteopathic physician specializing in internal medicine, in a January 9, 2018 report, noted that on December 29, 2017 appellant had delivered a package and was walking back to his truck when he felt a crunch to his right knee and sudden severe pain, but no definitive injury to the knee. Appellant was walking, but that there was no twisting motion or anything that would cause a knee injury to happen. He further noted that review of the right knee x-ray revealed degenerative changes with no acute findings. Dr. Ross diagnosed right knee strain.

In a January 10, 2018 progress note, Matthew Seliga, a treating physical therapist, reported that appellant's right knee status was slowly improving and appellant was tolerating all interventions with improvement. However, upon beginning to gait train backward (for hamstring recruitment), appellant experienced an audible pop and catch in the right knee. At this point he experienced a sharp pain and inability to bear weight for a few minutes. Appellant performed a pivot shift maneuver and passive range of motion. After a brief rest and active range of motion period, he was able to stand and the treatment session was concluded.

Dr. Amjad Safvi, a Board-certified radiologist, noted in a January 11, 2018 report, that an x-ray of the right knee revealed normal findings with no fracture or dislocation.

In a January 11, 2018 report, Dr. Ross related that review of the physical therapist's notes and discussion showed that on January 10, 2018 appellant was in physical therapy and walking backward for hamstring recruitment when there was an audible pop from his right knee. Appellant was unable to bear weight for several minutes. He reported that, since the incident, he continued to have pain on the posterolateral aspect of his right knee and thigh, stating that most of his discomfort was located in the right thigh and not the knee. Dr. Ross diagnosed muscle strain of

the right thigh and referred appellant for a magnetic resonance imaging (MRI) scan of the right lower extremity. The physician explained that based solely on the original history, (1) that there was no definitive incident at work or elsewhere that could be considered causative of appellant's right knee pain; (2) by January 9, 2018 appellant had minimal discomfort and his activity was advanced to near full duty; and (3) appellant's current significant pain with weight bearing primarily involved his right thigh and not his right knee began "while walking backward in physical therapy." Dr. Ross opined that, most likely, appellant sustained an acute strain or even rupture of a component of the hamstring. He ordered an MRI scan of the right knee and thigh to rule out these possibilities and noted that appellant was unable to safely ambulate without crutches.

On January 12, 2018 appellant completed the questionnaire and related that on December 29, 2017 he was walking back to his vehicle through grass when he felt a sudden sharp pain in his right knee.

In a January 18, 2018 progress report, Dr. Michael Grandison, an osteopathic physician specializing in family medicine, related that appellant presented for a follow-up due to posterior right thigh and posterior right knee pain. He diagnosed muscle strain of right thigh and muscle strain of right knee.

By decision dated February 15, 2018, OWCP denied the claim finding that the evidence of record failed to establish that the diagnosed conditions were causally related to the accepted December 29, 2017 employment incident.

On April 6, 2018 appellant requested reconsideration. In support of his claim, he submitted additional evidence.

In a March 6, 2018 report, Dr. Rory Allen, an osteopathic physician specializing in family medicine, evaluated appellant due to complaints of right knee pain. He noted appellant's history of injury and related that appellant had been referred for physical therapy. However, around the fifth physical therapy treatment, appellant felt more pain while doing exercises. Dr. Allen reported that appellant was told to heel walk backward and felt a very large and loud snap, causing him to go down to the ground requiring help by the staff to be put back on the examination table. He reported that appellant continued to have localized medial joint pain which was progressively worsening. Dr. Allen discussed his medical history, noting that appellant recalled being active in soccer and football during junior and senior high school and that he had experienced bilateral knee sports injuries, which did not require any orthopedic surgical evaluation or casting or torn muscles or ligaments. Appellant reported that the issues with his right knee had resolved. Dr. Allen diagnosed right knee pain/strain, rule out internal derangement, and left Achilles tendon pain, rule out tendinitis. In an accompanying attending physician's report (Form CA-20) of that same date, he diagnosed right knee internal derangement. Dr. Allen noted a December 26, 2017[3] date of injury when appellant experienced a pop of the right knee while he was walking back to his mail truck. He checked the box marked "Yes" when asked if he believed that the condition was caused or aggravated by the employment activity.

[3] This appears to be a typographical error as Dr. Allen's other reports of record note the correct date of injury, December 29, 2017.

Dr. Allen, in a March 20, 2018 report, noted review of the March 9, 2018 right knee MRI scan which showed a moderate amount of joint effusion, edema, and medial meniscus posterior horn inner surface meniscal tear with a Grade-2 sprain of the right medial collateral ligament and possibly a loose body in the right medial joint area. He diagnosed right medial meniscus tear, possibly loose foreign body, and Grade-2 sprain of the medial collateral ligament. In an accompanying Form CA-20 of that, same date, Dr. Allen diagnosed right medial meniscus tear and Grade-2 medical collateral ligament (MCL) sprain. He checked the box marked "yes" indicating that the conditions were caused or aggravated by the employment activity, noting that appellant felt a loud pop resulting in excruciating pain.

In a March 26, 2018 medical report, Dr. Aaron Eubanks, a Board-certified orthopedic surgeon, reported that he evaluated appellant for right knee pain which had been ongoing for approximately three months. He noted that appellant first noticed his pain/injury on December 29, 2017 which occurred as a result of an employment injury. Appellant reported no right knee pain prior to that injury. Dr. Eubanks reviewed the March 9, 2018 right knee MRI scan which revealed a partial tear to the right meniscus with some mild degenerative changes. He diagnosed acute meniscus tear after a work-related tripping injury.

In an April 5, 2018 report, Dr. Allen discussed appellant's December 29, 2017 employment incident and he further discussed appellant's fifth physical therapy session when he felt a large and loud snap while doing heel walk backward exercises. He noted review of the March 9, 2018 right knee MRI scan which showed a right knee meniscus tear. Dr. Allen diagnosed right medial meniscus tear, possibly loose foreign body, and Grade-2 sprain of the medial collateral ligament, and opined that appellant sustained a traumatic injury to the right knee.

By decision dated April 16, 2018, OWCP denied modification of the February 15, 2018 decision.

On May 17, 2018 appellant requested reconsideration and submitted additional evidence.

In a May 7, 2018 report, Dr. Eubanks diagnosed medial meniscus tear of the right knee and recommended knee arthroscopy.

In medical and form reports dated March 20 to July 31, 2018, Dr. Allen documented treatment for appellant's right knee condition. An accompanying April 10, 2018 nerve conduction velocity and electromyography study was provided for the bilateral lower extremities. Dr. Allen reported that the study revealed sural sensory and saphenous sensory neuropathy, right greater than left, and bilateral L5-S1 radiculitis. He noted that appellant had a prior lumbar spine-related disorder and a 2016 MRI scan revealed a bulged disc condition at L4-5. Dr. Allen diagnosed right medial meniscus tear, right knee strain, loose foreign body in the right knee joint, Grade-2 sprain of the medial collateral ligament, right sided peroneal and tibial motor neuropathy, bilateral sural and saphenous sensory neuropathy, and bilateral L5-S1 radiculitis.

In a May 9, 2018 report, Dr. Allen related that appellant's mechanism of injury was clearly documented and supported. He explained that the MRI scan study was positive for acute tear of the right knee. With respect to the concern of past medical conditions to the knee, Dr. Allen reported that clinical documentation clearly stated that appellant had never had any internal

damage to the knee, including no need for prior imaging, therapeutic treatment, or surgical intervention, and was functioning in a full capacity prior to the December 26, 2017 injury. He concluded that appellant's claim had been wrongfully denied. In a July 31, 2018 report, Dr. Allen determined that appellant was temporarily totally disabled and was instructed to remain off work from July 31 through August 31, 2018.

By decision dated August 14, 2018, OWCP denied modification of the April 16, 2018 decision.

On September 18, 2018 appellant requested reconsideration of the August 14, 2018 decision. In support of his request, he submitted an August 22, 2018 report wherein Dr. Allen discussed the December 26, 2017 employment incident. Dr. Allen reported that the work injury occurred while appellant was out on his delivery route and walking on uneven grassy surfaces when he felt a grinding, crunching, popping sensation in his right knee, resulting in immediate pain. Appellant denied any right knee injury prior to this incident. He initially reported that the injury occurred on the back of the knee and middle of the thigh which worsened as the day progressed. Dr. Allen noted that appellant reported increased pain and aggravation of his right knee while he was attending his fifth physical therapy session, when he was performing a heel walk backward exercise and felt a large and loud snap sound, causing him to go down to the ground. An MRI scan of the right knee was ordered following that incident. Dr. Allen discussed appellant's medical history noting that he was active in soccer and football during junior and senior high school, and had problems to both knees from sports injuries, which had resolved. He discussed findings from the diagnostic studies and provided physical examination findings. Dr. Allen diagnosed right knee medial meniscus tear and right knee sprain. He opined that appellant sustained the work-related injury while employed as a mail carrier on December 26, 2017. Dr. Allen noted that appellant was walking on an uneven grassy surface when appellant felt a grinding, crunching, popping sensation in his right knee which buckled, but he did not fall. He explained that the mechanism directly caused compression, torsional, and rotational forces of appellant's right knee directly causing a right knee medial meniscal tear and right knee sprain.

By decision dated September 28, 2018, OWCP denied modification of the August 14, 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,[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

[4] *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.[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 if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. 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. The second component is whether the employment incident caused a personal injury.[7]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.[8]

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 physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[9]

ANALYSIS

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

In support of his claim, appellant submitted a series of reports from Dr. Allen. In his March 6, 2018 report, Dr. Allen opined that appellant's right knee condition was caused by walking at work on December 29, 2017, noting that appellant felt a popping in his knee while walking that day. In a March 20, 2018 Form CA-20, he diagnosed right medial meniscus tear and Grade-2 MCL sprain. Dr. Allen noted a December 29, 2017 date of injury and described the history of injury as right knee pain from prolonged walking to and from the mail truck. He checked the box marked "Yes" indicating that the condition was caused or aggravated by the employment activity, again noting that appellant felt a loud pop resulting in excruciating pain. In his August 22, 2018 report, Dr. Allen related that appellant's December 29, 2017 employment injury occurred while appellant was out on his delivery route and felt a pop in his right knee from walking on an uneven grassy surface. He noted that appellant felt a grinding, crunching, and popping sensation in his right knee causing it to buckle. Dr. Allen concluded that the buckling of appellant's knee

[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] *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).

[7] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *M.O.*, Docket No. 18-0229 (issued September 23, 2019); *J.F.*, Docket No. 19-0456 (issued July 12, 2019).

directly caused compression, torsional, and rotational forces of appellant's right knee, directly causing a right knee medial meniscal tear and right knee sprain.

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.[10] While Dr. Allen's reports do not contain sufficient rationale to discharge appellant's burden of proof by the weight of the reliable, substantial, and probative evidence that appellant's right knee condition was caused or aggravated by the accepted employment incident, these reports raise an inference of causal relationship sufficient to require further development of the case record by OWCP.[11]

The Board, therefore, finds that the case must be remanded for further development of the medical evidence. OWCP shall refer appellant to a specialist in the appropriate field of medicine for a reasoned opinion regarding whether his right knee condition is causally related to the accepted employment incident. If the physician opines that the diagnosed condition is not causally related to the employment incident, he or she must explain with rationale how or why their opinion differs from that of Dr. Allen. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

[10] *J.H.*, Docket No. 18-1637 (issued January 29, 2020). *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

[11] *See T.K.*, Docket No. 20-0150 (issued July 9, 2020); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2018 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: October 22, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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