

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

---

**Z.S., Appellant**  
**and**  
**DEPARTMENT OF HOMELAND SECURITY,**  
**CUSTOMS & BORDER PATROL,**  
**Rosemont, IL, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 19-1010**  
**Issued: October 1, 2020**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On April 8, 2019 appellant filed a timely appeal from a February 28, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 knee condition causally related to the accepted November 27, 2017 employment incident.

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On December 9, 2017 appellant, then a 39-year-old customs and border protection officer, filed a traumatic injury claim (Form CA-1) alleging that on November 27, 2017 he felt his right knee snap and experienced immediate pain after kneeling multiple times to collect empty shell casings at a shooting range while in the performance of duty. He did not stop work.

In a December 11, 2017 report, Dr. James R. Bresch, Board-certified in orthopedics and sports medicine, noted appellant's account of the November 27, 2017 employment incident, examined the right knee, and observed medial joint line tenderness with a positive McMurray's sign. He diagnosed a right medial meniscus tear and administered a cortisone injection.

A January 11, 2018 right knee magnetic resonance imaging (MRI) scan interpreted by Dr. Ian Fisher, Board-certified in diagnostic radiology, demonstrated a bucket-handle tear of the medial meniscus, possible full-thickness cartilage loss in the medial patellar facet, a mild anterior cruciate ligament (ACL) tear, moderate effusion, a small Baker's cyst, and a tiny intra-articular loose body posterior to the lateral meniscus.

In a report dated January 15, 2018, Dr. Bresch diagnosed a bucket handle medial meniscus tear in the right knee. He recommended a right knee arthroscopy with partial medial meniscectomy.

In a development letter dated February 16, 2018, OWCP advised appellant that the evidence of record was deficient. It requested that he respond to an attached development questionnaire and provide medical evidence to establish a diagnosed condition as a result of the alleged employment incident. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted a completed questionnaire and asserted that he had no right knee symptoms or conditions prior to the November 27, 2017 employment incident. Appellant noted that he sought treatment at an emergency room on November 27, 2017, but could not obtain a follow-up appointment until December 11, 2017.

Appellant also provided a December 11, 2017 patient intake questionnaire, which noted that he was at the shooting range for work, picking up empty shells, when his right knee snapped and became painful. The questionnaire further noted that, while he had previously undergone a left knee meniscal repair, he had not previously seen a physician for treatment of his right knee.

By decision dated March 29, 2018, OWCP accepted that the November 27, 2017 employment incident occurred as alleged, but denied appellant's claim, finding that the medical evidence of record was insufficient to establish that his diagnosed right knee condition was causally related to the accepted incident.

On December 3, 2018 appellant requested reconsideration and submitted additional medical evidence.

In an April 23, 2018 work status report, Dr. Bresch indicated that he performed a right knee arthroscopy with partial medial meniscectomy on April 13, 2018. He held appellant off work through May 7, 2018.

In a May 2, 2018 report, Dr. Bresch reviewed the history of injury and treatment. He noted that imaging studies revealed well-maintained tricompartmental joint spaces without evidence of collapse. Dr. Bresch opined that the diagnosed right meniscal tear was causally related to the November 27, 2017 employment incident as appellant had no right knee symptoms prior to that event.

By decision dated February 28, 2019, OWCP denied modification of the March 29, 2018 decision. It found that Dr. Bresch's new medical reports failed to explain how appellant sustained a right knee injury as a result of the accepted November 27, 2017 employment incident. OWCP further found that Dr. Bresch had not explained how the degenerative findings demonstrated by the MRI scan study provide the operative report or postoperative findings.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> 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,<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 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>

In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.<sup>6</sup> There are two components involved in establishing fact of injury. First, the employee must establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>7</sup> Second, the employee must establish that the employment incident caused a personal injury.<sup>8</sup>

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical

---

<sup>2</sup> *Supra* note 1.

<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).

<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> *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> *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

<sup>7</sup> *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>8</sup> *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

opinion evidence.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 factor(s) identified by the employee.<sup>10</sup> The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>11</sup>

In a case in which 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 appellant has not met his burden of proof to establish a right knee condition causally related to the accepted November 27, 2017 employment incident.

Appellant submitted a series of reports by Dr. Bresch dated December 11, 2017 to May 2, 2018. In his initial report, Dr. Bresch noted a November 27, 2017 date of injury and diagnosed a right medial meniscal tear. In a January 15, 2018 report, he diagnosed a bucket handle tear of the right medial meniscus and recommended surgical repair. In an April 23, 2018 report, Dr. Bresch indicated performing a right knee arthroscopy on April 13, 2018, but did not provide the surgical report. He opined in a May 2, 2018 report that the diagnosed right medial meniscal tear was causally related to the accepted November 27, 2017 employment incident as appellant had no prior right knee symptoms. However, the Board has held that the fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship. Temporal relationship alone will not suffice.<sup>13</sup>

Although Dr. Bresch's reports contain an affirmative opinion on causal relationship, the Board finds that they do not contain sufficient medical rationale explaining how kneeling to pick up empty shell casings at work caused or contributed to appellant's right knee condition. The Board has found that medical evidence that states a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value

---

<sup>9</sup> See *S.A.*, Docket No. 18-0399 (issued October 16, 2018); see also *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>10</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>11</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>12</sup> *F.C.*, Docket No. 19-0594 (issued August 13, 2019); *R.C.*, Docket No. 18-1146 (issued August 12, 2019); *J.F.*, Docket No. 19-0456 (issued July 12, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

<sup>13</sup> *S.S.*, Docket No. 19-0675 (issued August 22, 2019); *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

on the issue of causal relationship.<sup>14</sup> Because Dr. Bresch did not provide a reasoned opinion explaining how the November 27, 2017 employment incident caused or contributed to appellant's right knee condition, his reports are insufficient to establish appellant's claim. The need for rationalized medical opinion evidence is particularly important in this case since the MRI scan demonstrated preexisting degenerative findings.<sup>15</sup>

Appellant also provided a January 11, 2018 right knee MRI scan demonstrating a bucket-handle tear of the medial meniscus, a small Baker's cyst, and possible full-thickness cartilage loss in the medial patellar facet. The Board has held that diagnostic reports, standing alone lack probative value on the issue of causal relationship as they do not offer an opinion regarding the cause of an employee's condition.<sup>16</sup> For this reason, this evidence is insufficient to meet appellant's burden of proof.

In order to obtain benefits under FECA an employee has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.<sup>17</sup> As the medical evidence of record is insufficient to establish that appellant's diagnosed right knee condition was causally related to the accepted November 27, 2017 employment incident. The Board finds that he has not met his burden of proof to establish his traumatic injury claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted November 27, 2017 employment incident.

---

<sup>14</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

<sup>15</sup> See *J.F.*, *supra* note 12; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e.

<sup>16</sup> See *J.F.*, *supra* note 12.

<sup>17</sup> *F.C.*, *supra* note 12; *R.C.*, *supra* note 12; *J.M.*, *supra* note 5; *R.C.*, *supra* note 4.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 28, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 1, 2020  
Washington, DC

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

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

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