United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 20-0384**
	)	**Issued: October 8, 2020**
DEPARTMENT OF DEFENSE, DEFENSE COMMISSARY AGENCY, McGUIRE AIR FORCE BASE, NJ, Employer	)	

Appearances:
Aaron B. Aumiller, Esq., for the appellant[1]
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 December 9, 2019 appellant, through counsel, filed a timely appeal from an October 1, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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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[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 knee condition causally related to the accepted February 3, 2017 employment incident.

FACTUAL HISTORY

On February 13, 2017 appellant, then a 56-year-old meat cutter, filed a traumatic injury claim (Form CA-1) alleging that on February 3, 2017 he injured his knee when he walked in front of a case of meat and his knee popped, causing severe pain in the knee area while in the performance of duty. He indicated that he was unable to bend over and lift meat materials or boxes and suffered an internal derangement of his knee. On the reverse side of the claim form, the employing establishment controverted the claim, contending that appellant was not injured in the performance of duty because he was walking back to his duty station from his break at the time of the alleged incident.

In a February 4, 2017 report, Dr. Paul Reyes, Board-certified in internal medicine, indicated that appellant was seen for a medial collateral ligament knee strain and degenerative joint disease. In a prescription note dated February 4, 2017, he noted that appellant should remain off work until he was reevaluated by a workers' compensation physician or an orthopedic physician.

A February 17, 2017 attending physician's report (Form CA-20) by Dr. Mark Pollard, a Board-certified orthopedic surgeon, indicated that appellant was injured at work on February 3, 2017 when he was walking and heard a pop in his left knee and experienced the immediate onset of pain. He reported that there was no evidence of a preexisting condition. Dr. Pollard noted that an x-ray revealed mild degenerative joint disease and he diagnosed acute left knee pain. He checked the box marked "Yes" indicating that appellant's condition was caused or aggravated by an employment activity, and he explained that appellant's injury occurred while he was at work. Dr. Pollard indicated that appellant should not return to work until March 31, 2017. In a note of even date he indicated that appellant presented with knee pain. Dr. Pollard diagnosed acute left knee pain and indicated that appellant's acute left knee pain diagnosis was causally related to appellant's work incident.[3]

In an April 4, 2017 development letter, OWCP notified appellant that when his claim was first received it appeared to be a minor injury that resulted in minimal or no lost time from work, and since the employing establishment had not controverted continuation of pay or challenged the case, a limited amount of medical expenses were administratively approved and paid. It noted that it had now reopened the claim for formal consideration because he had filed a wage-loss claim. OWCP informed appellant that additional factual and medical evidence were required to establish his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested evidence.

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[3] A February 23, 2017 attending provider treatment plan by Dr. Pollard indicated that appellant was injured on February 3, 2017 and that his condition was employment related.

In February 4, 2017 emergency room records, Dr. Reyes indicated that appellant presented with "right" knee pain and after he felt his "right" knee pop while at work the previous day. Appellant explained that his pain was aggravated by walking and improved when resting. Dr. Reyes noted that appellant had a medical history of a musculoskeletal disorder and a right meniscus repair. A physical examination revealed lateral tenderness in appellant's "right" knee and a positive McMurray's test. Dr. Reyes diagnosed internal derangement of the knee and degenerative joint disease in the knee. He advised that appellant not return to work until reevaluated by a physician.

February 4, 2017 x-rays of appellant's left knee interpreted by Dr. Nitesh Bhagat, a Board-certified radiologist, displayed mild osteoarthritis and a small intra-articular body within the posterior joint.

In a February 17, 2017 narrative report, Dr. Pollard indicated that appellant presented with left knee pain. Appellant related that his knee popped while he was walking on a concrete floor at work on February 3, 2017 and he experienced immediate sharp pain in the medial aspect of his left knee and difficulty weight-bearing. His pain worsened with bending and twisting and improved with resting. Appellant indicated that he had no previous left knee injuries. A physical examination of his left knee revealed a possible slight effusion, medial joint line tenderness, and medial pain with McMurray's test. Dr. Pollard noted that x-rays of appellant's left knee displayed mild degenerative changes and he diagnosed mild degenerative joint disease and a possible medial meniscus tear. He advised that appellant should stay off work.

A March 12, 2017 magnetic resonance imaging (MRI) scan of appellant's left knee interpreted by Dr. Veniamin Barshay, Board-certified in nuclear medicine, noted a displaced tear of the body and posterior horn of the medial meniscus, a displaced flap fragment in the medial gutter, a linear abnormal signal in the anterior horn of the lateral meniscus, mild abnormal signal in the medial compartment articular cartilage, and a small Baker's cyst.

In a March 16, 2017 report, Dr. Pollard indicated that appellant experienced continued left knee pain. He noted his review of appellant's history of injury and his physical examination findings. Dr. Pollard reviewed appellant's left knee MRI scan that demonstrated mild degenerative joint disease, a medial meniscus tear, and a displaced flap in the medial gutter, and thereafter diagnosed left knee medial meniscus tear and degenerative joint disease. In a separate March 16, 2017 note, he indicated that appellant's left knee medial meniscus tear was causally related to appellant's work incident.

Dr. Pollard related in an April 3, 2017 operative report that he performed a left knee arthroscopy with partial medial meniscectomy, an excision of the patellofemoral plica, and an examination of appellant's left knee under anesthesia. He diagnosed a medial meniscus tear with a large flat tear and a grade 2 and 3 change of the medial femoral condyle and grade 3 change of the patellofemoral joint and a patellofemoral plica. In an accompanying note, Dr. Pollard indicated that appellant could return to work on May 15, 2017.

In an unsigned April 14, 2017 visit summary report, it was noted that Dr. Pollard had diagnosed a left knee medial meniscus tear and left knee primary osteoarthritis.

Appellant completed OWCP's questionnaire on April 18, 2017. He indicated that while at work on February 3, 2017 he was stretching and bending to check supplies within meat cases to see which additional cuts of meat were needed when he felt his left knee joint twist and heard and felt it pop. Appellant explained that he immediately experienced excruciating pain and felt unstable and was unable to walk properly after the incident. He went to the emergency room the next day.

By decision dated May 12, 2017, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the February 3, 2017 accepted employment incident. It concluded therefore that the requirements had not been met to establish an injury as defined by FECA.

In a June 2, 2017 medical report, Dr. Pollard indicated that appellant's pain had improved, as he presented with minimal pain in the medial aspect of his left knee. He noted that appellant's current left knee examination revealed normal results. Dr. Pollard opined that within a reasonable degree of medical probability appellant's meniscus tear was caused by the injury he sustained on February 3, 2017.

On May 14, 2018 appellant requested reconsideration. He attached a timeline of his injury and his medical treatment.

By decision dated August 9, 2018, OWCP denied modification of its May 12, 2017 decision.

On January 10, 2019 appellant, through counsel, requested reconsideration. In an attached letter of even date, counsel argued that a newly submitted September 25, 2018 narrative medical report by Dr. Pollard was based on an accurate medical history and explained how appellant's movements at work had caused his meniscus tear.

In a September 25, 2018 letter, Dr. Pollard noted his review of appellant's history of injury and his treatment, including physical examination findings and diagnostic imaging results. He concluded that mechanically the event of February 3, 2017 caused appellant's injury by direct causation. Dr. Pollard indicated that appellant previously had an asymptomatic knee and suffered a meniscus tear while walking at work. He noted that this type of injury can occur with a twist or other motion while walking. Dr. Pollard additionally noted that appellant's injury was proximately caused by appellant's workplace incident, and he indicated that his opinions were within a reasonable degree of medical certainty.

By decision dated March 6, 2019, OWCP denied modification of its May 12, 2017 decision.

On July 5, 2019 appellant, through counsel, requested reconsideration. In an attached letter dated July 4, 2019, counsel indicated that a newly submitted June 4, 2019 narrative medical report by Dr. Pollard was fully rationalized as it provided a detailed explanation of how appellant's accepted employment incident caused his diagnosed condition.

A June 4, 2019 letter from Dr. Pollard reviewed appellant's history of injury and medical treatment. He noted appellant's physical examination findings and diagnostic imaging results.

Dr. Pollard indicated that on May 16, 2019 appellant presented with mild-to-moderate left knee pain, but stated that his symptoms were overall tolerable. He indicated that "the targeted opinion of the knee diagnosis of the medial meniscus tear is that it occurred mechanically with the event of February 3, 2017." Dr. Pollard opined that "the direct causation would be, as [appellant] had previously asymptomatic knee and was reportedly walking and twisted the knee while at work and suffered immediate onset of sharp medial joint tenderness, medial pain with McMurrray's test." He stated that appellant twisted his knee, causing immediate pain in the medial aspect of appellant's knee, which was confirmed by a left knee MRI scan. Dr. Pollard further opined that this type of tear "can" "certainly" occur due to a twist or other motion while walking. He opined that appellant's medial meniscus tear was proximately caused by appellant's February 3, 2017 accepted employment injury.

By decision dated October 1, 2019, OWCP denied modification of its May 12, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim, including 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,[5] 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.[6] 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.[7]

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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and this component can be established only by medical evidence.[8]

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[4] *Supra* note 2.

[5] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden*, *Sr.*, 40 ECAB 312 (1988).

[7] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[9] 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 specific employment factors identified by the employee.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his left knee conditions were causally related to the accepted February 3, 2017 employment incident.

Appellant was initially seen on February 4, 2017 in an emergency room by Dr. Reyes. Dr. Reyes indicated that appellant presented with right [sic] knee pain and stated that appellant felt his right [sic] knee pop while at work the previous day. He noted that appellant had a medical history of a musculoskeletal disorder and a right meniscus repair. Dr. Reyes conducted a physical examination and diagnosed internal derangement of the knee and degenerative joint disease in the knee. Discharge instructions indicated that appellant was seen for a sprained knee. In a February 4, 2017 prescription note, Dr. Reyes indicated that appellant should stay off of work until reevaluated by a physician. A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.[11] These emergency records contain an inaccurate factual and medical background, as they state that appellant presented with right knee pain and stated that he felt his right knee pop while at work the previous day, while in fact he alleged that his injury occurred to his left knee. Additionally, Dr. Reyes did not provide an opinion on the cause of appellant's condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[12] Therefore, these medical records are insufficient to establish appellant's claim.

In a February 17, 2017 note, Dr. Pollard indicated that appellant presented with knee pain. He diagnosed acute left knee pain and indicated that appellant's acute left knee pain diagnosis was causally related to appellant's work incident. The Board has held that pain is a symptom and not a compensable medical diagnosis.[13] Dr. Pollard also did not provide an opinion as to causal relationship. As noted medical evidence that does not offer an opinion regarding the cause of an

[9] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] *Id*.

[12] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[13] *See S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

employee's condition is of no probative value on the issue of causal relationship.[14] This report, therefore, is insufficient to establish appellant's claim.

Dr. Pollard's February 17, 2017 attending physician's report (Form CA-20) indicated that appellant was injured at work on February 3, 2017 when he was walking and heard a pop in his left knee and experienced immediate pain. He stated that there was no evidence of a preexisting condition. Dr. Pollard noted that an x-ray revealed mild degenerative joint disease. He checked a box marked "Yes" in response to the question of whether appellant's condition was caused or aggravated by an employment activity, and he explained that appellant's injury occurred while he was at work. The Board has held however that when a physician's opinion on causal relationship consists only of a checkmark on a form, without further explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[15] Dr. Pollard did not provide an explanation of how the February 3, 2017 accepted employment incident caused or aggravated appellant's diagnosed degenerative joint condition. The Board has held that medical opinion evidence should offer a medically sound explanation of how the specific employment incident or work factors physiologically caused appellant's injury.[16]

Dr. Pollard's February 17, 2017 narrative report indicated that appellant had related that his left knee popped while he was walking on a concrete floor at work on February 3, 2017 and appellant experienced immediate sharp pain in the medial aspect of his left knee and difficulty weight-bearing. Appellant indicated that he had no previous left knee injuries. Dr. Pollard conducted physical examination of appellant's left knee and noted that x-rays of appellant's left knee displayed mild degenerative changes. He diagnosed left knee mild degenerative joint disease and a possible medial meniscus tear. In this report, as in his April 3, 2017 operative report, and April 14, 2017 progress note, Dr. Pollard did not offer a medical opinion regarding the cause of appellant's diagnoses. The Board has held that medical evidence that does not offer an opinion regarding the cause of a diagnosed condition is of no probative value on the issue of causal relationship.[17] As such, these medical reports are insufficient to establish appellant's claim.

In a February 23, 2017 attending provider treatment plan, Dr. Pollard indicated that appellant was injured on February 3, 2017 and that appellant's condition was employment related. However, he did not provide a diagnosis in this report. In a March 16, 2017 report, Dr. Pollard also concluded that appellant's left knee condition was causally related to the accepted employment incident. The Board has held that medical reports are of no probative value if they do not provide medical reasoning, or rationale, explaining how appellant's work activity caused or aggravated a particular diagnosed condition.[18] Therefore, these documents are insufficient to establish his claim.

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[14] *Id*.

[15] *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *Gary J. Watling*, 52 ECAB 278 (2001).

[16] *See H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

[17] *Supra* note 13.

[18] *M.E.*, Docket No. 18-0940 (issued June 11, 2019).

Dr. Pollard reported on June 2, 2017 that appellant presented with minimal pain in the medial aspect of his left knee. He repeated appellant's history of injury, conducted a physical examination, opined that it was within a reasonable degree of medical probability that appellant's meniscus tear was caused by the injury he sustained on February 3, 2017. While Dr. Pollard's opinion supports causal relationship, he does not explain how the accepted February 3, 2017 employment injury caused appellant's meniscus tear. As he failed to provide medical rationale explaining the basis of his conclusory opinion, this report is of limited probative value and insufficient to establish appellant's claim.[19]

Dr. Pollard's September 25, 2018 report noted that appellant presented with mild-to-moderate pain in the medial aspect of his left knee. He stated that "the targeted opinion of mechanically the event of February 3, 2017 caused this injury would be direct causation." Dr. Pollard indicated that appellant previously had an asymptomatic knee and suffered a meniscus tear while walking at work. He noted that this type of injury can occur with a twist or other motion while walking. Dr. Pollard additionally noted that appellant's injury was proximately caused by his workplace incident, and he indicated that his opinions were within a reasonable degree of medical certainty. His explanation that appellant's type of injury can occur when a twist or other motion while walking is speculative in nature. The Board has held that medical opinions that are speculative or equivocal are of diminished probative value.[20] Lacking a rationalized explanation, Dr. Pollard's September 25, 2018 letter is insufficient to meet appellant's burden of proof.[21]

Similarly, in his June 4, 2019 report, Dr. Pollard opined that appellant's medial meniscus tear was proximately caused by his February 3, 2017 accepted employment injury. He stated that on February 3, 2017 appellant was walking while at work and twisted his knee, causing immediate pain in the medial aspect of appellant's knee, and a left knee MRI scan confirmed that he sustained a flap-type tear of the meniscus. Dr. Pollard further opined that this type of tear can certainly occur due to a twist or other motion while walking. His opinion that appellant's type of meniscus tear can occur due to a twist or other motion while walking is speculative, and as stated above, the Board has held that medical opinions that are speculative or equivocal are of diminished probative value.[22] Lacking a rationalized explanation, as to how the accepted incident caused the diagnosed conditions, Dr. Pollard's June 4, 2019 report, as well as his other reports of record, are insufficient to meet appellant's burden of proof.

OWCP also received a February 4, 2017 x-ray report and a March 12, 2017 left knee MRI scan. The Board has held, however, that diagnostic studies, standing alone, lack probative value as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.[23]

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[19] *S.D.*, Docket No. 20-0413 (issued July 28, 2020).

[20] *H.A.*, Docket No. 18-1455 (issued August 23, 2019).

[21] *See C.B.*, Docket No. 20-0464 (issued July 21, 2020).

[22] *Supra* note 20.

[23] *Supra* note 18.

As the medical evidence of record does not include a rationalized opinion explaining that appellant's accepted February 3, 2017 employment incident caused his diagnosed left knee conditions, the Board finds that he has not met his burden of proof.

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 that his left knee conditions were causally related to the accepted February 3, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 1, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 8, 2020
Washington, DC

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

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

Christopher J. Godfrey, Deputy Chief Judge, dissenting:

I respectfully dissent from the decision of the majority. The majority finds that appellant has not submitted sufficient medical evidence to either establish his claim, or to require OWCP to undertake further development of the medical evidence on the issue of causal relationship between his diagnosed left knee meniscus tear and the accepted February 3, 2017 employment incident. I cannot support the finding of the majority and would remand the case for OWCP to fulfill its

responsibility to develop the claim in a nonadversarial manner consistent with its own established procedures and Board precedent.

OWCP previously accepted that appellant's left knee "popped out" as he was walking in front of a meat case while performing work tasks and that he sustained a diagnosed meniscus tear. It is undisputed that this incident resulted in immediate left knee pain at the time of incident. The

sole question before the Board is whether appellant has met his burden of proof to establish that the act of walking (along with twisting) while at work caused the diagnosed condition.

With his claim form appellant submitted an attending physician's report (Form CA-20) from Dr. Pollard, a qualified medical specialist in orthopedics, who confirmed the history of injury and opined that there was a causal relationship between the accepted employment incident and the diagnosed condition.

OWCP procedures require that, when a claimant files a claim form, it must undertake initial development of his or her claim. Its procedure manual explains the necessary medical development required before adjudication of the claim.[1] Herein, based upon those procedures, OWCP properly noted the initial evidence submitted and sent a development letter to inform appellant that he was required to supply an additional medical opinion from his attending physician addressing how his employment incident resulted in the diagnosed condition.[2]

In response to the development letter, appellant submitted additional medical evidence including new treatment notes from Dr. Pollard, reports detailing diagnostic testing, an operative report, and treatment notes from Dr. Reyes. In a response to the questionnaire, he explained his workplace physical activities at the time of the incident and onset of pain, including bending and stretching while walking by meat cases. Thereafter, OWCP denied his claim finding Dr. Pollard's opinion, as well as the other evidence of record, insufficient to establish causal relationship.

Following the initial denial, appellant submitted March 16 and June 2, 2017 reports by Dr. Pollard who again provided a supportive medical opinion as to causal relationship. Upon reconsideration OWCP, for a second time, denied the claim finding that the evidence submitted was insufficient to establish causal relationship. Subsequently, appellant and his counsel submitted two opinion letters from Dr. Pollard specifically addressing the issue of causal relationship. In both letters Dr. Pollard relied upon a correct history of injury and found that the accepted act of walking while at work was the "direct cause" of the diagnosed left knee condition and explained that appellant had immediate onset of pain upon twisting his knee, that the diagnosis of a tear was confirmed by MRI scan, and that the type of injury (a tear) was one that can "certainly" be caused by the twisting of a knee or other motion while walking. On reconsideration of the claim, OWCP found for the third time that the evidence of record was insufficient to establish causal relationship.

I find that, following the submission of the opinion letters by Dr. Pollard, the claims examiner should have followed OWCP procedures which expressly provide that:

> "For OWCP to undertake additional medical development, the claimant must establish a *prima facie* case by submitting medical evidence from a physician which, at the least, states a diagnosis and clearly supports causal relationship. However, in some cases, the medical opinion need not be fully rationalized in order

[1] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.8.c (June 2011).

[2] *Id*. at Chapter 2.800.8.b(2).

for the CE to undertake further development. For example, the attending physician may provide a diagnosis and an opinion which is not well-reasoned, but nonetheless supports causal relationship. In such cases, further clarification is needed to establish the case, and the medical development should be undertaken by the CE.[3]"

I find that Dr. Pollard's reports and opinion letters are appropriately sufficient to establish a *prima facie* case as he provided a clear diagnosis of a left knee injury and he has opined that the accepted incident was the "direct cause" of that diagnosed condition on several occasions. That is all that was required to trigger further development pursuant to OWCP's procedures.[4] Beyond that, however, Dr. Pollard has also explained how the act of walking can "certainly" be caused by the twisting of a knee or other motion. While the majority opinion identifies the qualifier of "can" to diminish Dr. Pollard's opinion as "speculative," I find his opinion of certainty far more convincing than its semantic qualifier.[5] The undersigned observes that the majority is effectively requiring that appellant submit a fully supportive and rationalized opinion just to trigger the necessity for OWCP to further development the medical record. However, when an injured worker submits a supportive, rationalized medical opinion why is that opinion, absent conflicting medical evidence in the case record, insufficient to accept the claim as compensable?

OWCP procedures require that this aforementioned development occur before adjudication of the issue of causal relationship.[6]

I further find that the Board's precedent also requires further development of the claim. In the oft-cited case of *John J. Carlone*[7] the Board provided guidance as to when OWCP must undertake further development of the medical evidence in a causal relationship determination. Mr. Carlone also had sustained a left knee injury for which he filed a claim and submitted form reports, including two attending physician reports (a Form CA-16 and a Form CA-20). The Board found that those two form reports, which did not contain narrative medical rationale, were nonetheless sufficient to require OWCP to undertake further claim development on the issue of causal relationship. It noted that "only in rare instances where the evidence indicates that no additional information could possibly overcome one or more defects in the claim is it proper for the Office to deny a case without further development."[8] The Board reasoned that "adherence to

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[3] *Id*. at Chapter 2.800.8.b(3).

[4] Thus, the evidence establishes that appellant was performing an employment duty of walking which resulted in an immediate onset of pain, followed by a diagnosed knee tear, which the attending physician says is activity sufficient to cause a tear.

[5] One cannot reasonably argue a physician who directly opines that "falling from atop a 10-story building onto a concrete road 'can certainly' be sufficient to cause a broken leg" has provided an opinion that is illogical or equivocal or otherwise deficient and thus failed to state a proper opinion because she or he said such an event "can" cause the resultant condition.

[6] *Supra* note 1.

[7] 41 ECAB 354 (1989).

[8] *Id*.

proper Office procedures for development of the evidence will avoid unnecessary delays in adjudication and payment and the filing of premature appeals to this Board."[9]

Due to the failure to undertake initial claim development consistent with OWCP procedures and Board precedent, appellant is presently three and a half years post injury, post surgery, and his wage loss is uncompensated and his medical bills unpaid. I conclude that this delay and outcome could have been averted had OWCP simply instructed Dr. Pollard why his opinion was deficient and requested a supplemental opinion, or sent his "deficient" opinions to a district medical adviser or a second opinion physician. Or, as already explained, OWCP could have accepted the claim.

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

[9] *Id.*