

employing establishment acknowledged that she was injured in the performance of duty. Appellant stopped work on February 4, 2019.

X-rays of appellant's left knee, dated February 1, 2019, revealed mild patellofemoral osteoarthritis and possible small suprapatellar loose body or spur.

In a medical report dated February 4, 2019, Dr. Joshua Rother, a Board-certified orthopedic surgeon, noted that appellant injured her left knee after slipping on ice while delivering mail on February 1, 2019. He reviewed x-rays of her left knee and diagnosed left knee internal derangement with possible meniscal pathology. In an accompanying report, Dr. Rother again diagnosed left knee internal derangement and indicated that appellant was unable to work.

A February 22, 2019 magnetic resonance imaging (MRI) scan of appellant's left knee, demonstrated moderate-to-large knee joint effusion, high-grade chondromalacia patella, and focal reactive marrow edema in the lateral tibial plateau.

In a February 27, 2019 note, Dr. Rother reviewed an MRI scan of appellant's left knee and diagnosed small loose body laterally and a bone contusion of the lateral tibial plateau. He recommended a left knee scope with loose body removal chondroplasty.

In a March 4, 2019 report, Dr. Rother indicated that appellant was unable to work until she received surgery.

In a development letter dated April 2, 2019, OWCP notified appellant of the factual and medical deficiencies of her claim. It advised her of the type of evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

On April 9, 2019 appellant filed a claim for compensation (Form CA-7) for leave without pay used from March 16 to 29, 2019.

In an April 17, 2019 report, Dr. Rother noted that appellant was unable to work until she received surgery.

In a letter dated April 22, 2019, OWCP informed appellant that no action could be taken on any Form CA-7 claims for compensation until her traumatic injury claim had been adjudicated.

By decision dated April 25, 2019, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a causal relationship between her diagnosed conditions and the accepted January 31, 2019 employment incident.

In a May 20, 2019 report, Dr. Rother again confirmed that appellant experienced a left knee injury on January 31, 2019 while slipping on ice at work. He opined that the internal derangement process occurred as she had a twisting moment, which caused enough stress upon the meniscus and potential tearing to that structure. Dr. Rother noted that appellant did not have a significant amount of underlying arthrosis in the left knee and that he did not believe that there were any preexisting factors that would have contributed to her current left knee condition.

On May 23, 2019 appellant requested a review of the written record by OWCP's Branch of Hearings and Review.

By decision dated August 5, 2019, OWCP's hearing representative set aside the April 25, 2019 decision and remanded the case for referral to a district medical adviser (DMA) to review the medical evidence of record and requested an explanation as to whether there was a causal relationship between appellant's diagnosed left knee condition and the accepted January 31, 2019 employment incident.

In a letter dated August 20, 2019, OWCP requested additional factual information from appellant regarding the accepted employment incident.

In a September 3, 2019 narrative statement, appellant explained that on January 31, 2019 she slipped on ice when returning to her work building after parking her work vehicle. She noted that she did not fall, but, slipped with her right foot and caught herself with her left foot to avoid falling.

On October 17, 2019 OWCP forwarded a statement of accepted facts (SOAF) and appellant's medical record to Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as DMA, for an opinion on causal relationship and the necessity of left knee surgery.

In a November 20, 2019 report, Dr. Hammel advised that, based on the medical evidence of record, the proposed left knee scope with loose body removal chondroplasty, was not causally related to the accepted medical condition(s). He further indicated that he concurred with Dr. Rother's finding of significant preexisting arthritis. Dr. Hammel opined that the proposed surgery was only intended to treat arthritis, not appellant's accepted, diagnosed conditions. He indicated that no work diagnosis was accepted and that left knee surgery was not medically necessary.

By decision dated December 4, 2019, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a causal relationship between her diagnosed conditions and the accepted January 31, 2019 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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,³ 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

² *Id.*

³ *M.O.*, Docket No. 19-1398 (issued August 13, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.⁴ 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.⁵

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.⁶ The second component is whether the employment incident caused a personal injury.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ 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 identified by the claimant.⁹

In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.¹⁰

ANALYSIS

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

Appellant's attending physician, Dr. Rother, diagnosed left knee internal derangement, small loose body laterally, and a bone contusion of the lateral tibial plateau. He recommended a left knee scope with loose body removal chondroplasty. OWCP referred a SOAF along with the medical evidence of record to Dr. Hammel, serving as DMA, who opined that the proposed surgery was only intended to treat appellant's preexisting arthritis. The DMA indicated that the proposed surgery was not medically necessary and not causally related to the accepted January 31, 2019 employment incident.

The Board finds that the November 20, 2019 opinion of the DMA fails to appropriately address the underlying issues of whether there is a causal relationship between appellant's diagnosed left knee condition and the accepted employment incident and whether the proposed

⁴ *J.R.*, Docket No. 20-0496 (issued August 13, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *B.M.*, Docket No. 19-1341 (issued August 12, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *D.M.*, Docket No. 20-0386 (issued August 10, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *A.R.*, Docket No. 19-0465 (issued August 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *W.L.*, Docket No. 19-1581 (issued August 5, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *M.G.*, Docket No. 19-1791 (issued August 13, 2020); *K.W.*, Docket No. 18-1523 (issued May 22, 2019).

left knee procedure is medically necessary to treat the diagnosed left knee condition. The DMA was instructed to provide a clear, rationalized explanation on causal relationship. However, he did not offer a rationalized medical opinion on whether appellant's diagnosed left knee condition was causally related to the accepted employment incident. Instead, the DMA merely responded "No" when answering the question regarding whether the proposed left knee procedure was causally related to the diagnosed left knee condition and was medically necessary. He also erroneously stated that Dr. Rother noted significant preexisting arthritis and opined that the proposed surgery was only related to this preexisting condition. However, Dr. Rother, in his May 20, 2019 report, explicitly stated that appellant did "not have a significant amount of underlying arthrosis present within the knee" and that he did "not think that there [were] any preexisting factors that would necessarily come into play as it pertain[ed] to [appellant's] knee."

As such, the Board finds that the DMA failed to provide a rationalized medical opinion explaining whether appellant's diagnosed left knee condition was causally related to the accepted employment incident. The DMA further failed to provide a rationalized medical opinion explaining whether the left knee scope with loose body removal chondroplasty proposed by Dr. Rother is medically necessary to treat the diagnosed condition.¹¹

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.¹² While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹³ Once OWCP undertakes development of the record, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.¹⁴ Accordingly, as OWCP undertook development of the evidence by referring appellant to its DMA, it had a duty to secure an appropriate report addressing the relevant issues.¹⁵ Because the DMA has not adequately addressed causal relationship or the medical necessity of the proposed left knee scope with loose body removal chondroplasty, the case must be remanded to OWCP.¹⁶

On remand OWCP shall request a supplemental report from Dr. Hammel to obtain a rationalized medical opinion on whether there is a causal relationship between appellant's diagnosed left knee condition and the accepted January 31, 2019 employment incident and whether the proposed left knee scope with loose body removal chondroplasty is medically necessary to treat the diagnosed left knee condition. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

¹¹ *Id.*

¹² *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

¹³ *S.S.*, Docket No. 18-0397 (issued January 15, 2019); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁴ *B.C.*, Docket No. 19-1983 (issued June 8, 2020).

¹⁵ *Id.*

¹⁶ *M.G.*, *supra* note 10.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the December 4, 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: October 2, 2020
Washington, DC

Alec J. Koromilas, 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