



## **FACTUAL HISTORY**

On October 23, 2019 appellant, then a 64-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on March 27, 2019 he sustained a torn meniscus, pain, and inflammation of the right knee when he bent down on all fours to retrieve trash from under a desk while in the performance of duty. He stopped work on August 12, 2019.

In a November 5, 2019 development letter, OWCP informed appellant of the deficiencies of 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 necessary evidence.

Thereafter, OWCP received a series of employing establishment health unit progress notes and reports. In a March 27, 2019 progress note, Dr. Yash B. Sarda, an internist, noted that appellant had a long-standing history of knee pain that had worsened since the prior month. He reported examination findings and provided an assessment that given appellant's history and physical, the most likely differential diagnosis was knee osteoarthritis. Other possible diagnoses included bursitis and metastasis to the knee.

Progress notes dated March 27 to October 10, 2019 from physical therapists, nurse practitioners, registered nurses, and a physician assistant addressed appellant's right knee conditions and indicated that he underwent right knee arthroscopy, partial medial meniscectomy, and partial lateral meniscectomy on August 28, 2019, which were performed by Dr. John S. Wood, a Board-certified orthopedic surgeon, and Dr. Kathryn B. Metcalf, then a resident physician.

In an April 9, 2019 progress note, Dr. Sally Namboodiri, a Board-certified internist, examined appellant, provided an assessment of right knee osteoarthritis exacerbated by work, and issued a work slip placing appellant off work through April 23, 2019.

In a June 17, 2019 right knee x-ray report, Dr. Lewis MacLaughlin, a diagnostic radiologist, provided an impression of a large complex morphology tear throughout the lateral meniscus anterior horn, body, and body-posterior horn junction with a parameniscal cyst anterior to the anterior horn. He also provided an impression of horizontal tear of the medial meniscus posterior horn and body segments with two millimeters of medial subluxation of the body segment. Additionally, Dr. MacLaughlin provided impressions of moderately severe lateral compartment and moderate medial and patellofemoral compartment osteoarthritis, small knee joint effusion, mild tendinopathy in the distal one centimeter (cm) of the quadriceps tendon, and moderate tendinopathy to the proximal 1.6 cm of the patellar tendon.

Dr. Wood, in a July 25, 2019 progress note, reported a history that appellant worked in housekeeping at the employing establishment and that he injured his right knee while picking up litter. He reported findings on examination. In a partial progress note dated August 28, 2019, Dr. Wood described the right knee arthroscopy he performed along with Dr. Metcalf on that date. In an October 17, 2019 progress note, he noted appellant's right knee complaints, discussed examination findings, and provided an impression of persistent pain and an anterior horn partial lateral meniscectomy *versus* a retear of the lateral meniscus. Dr. Wood, in a November 7, 2019 letter, advised that appellant could return to work on November 12, 2019 with restrictions related

to his right knee. He further advised that appellant could return to full-duty work on December 9, 2019.

In an August 28, 2019 progress note, Dr. Metcalf described the right knee surgery she performed on that date.

Dr. Christina M. Wertz, a diagnostic radiologist, in an undated right knee x-ray report, provided impressions of ongoing degenerative changes with small effusion and no acute fracture.

OWCP, by decision dated December 4, 2019, denied appellant's traumatic injury claim finding that the evidence of record failed to establish that his diagnosed condition was causally related to the accepted March 27, 2019 employment incident.

On an appeal request form dated and received by OWCP on January 11, 2020, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. He submitted additional medical evidence along with his request.

By decision dated January 28, 2020, OWCP's Branch of Hearings and Review denied appellant's hearing request. It found that the request was untimely filed as it was postmarked January 11, 2020, more than 30 days after its December 4, 2019 merit decision. After exercising its discretion, OWCP further found that the issue in the case could equally well be addressed through the reconsideration process.

### **LEGAL PRECEDENT -- ISSUE 1**

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 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>

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

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<sup>2</sup> *Id.*

<sup>3</sup> *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).

<sup>4</sup> *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).

<sup>5</sup> *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).

time, place, and in the manner alleged. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>6</sup>

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>7</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 specific employment factors identified by the employee.<sup>8</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>9</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted March 27, 2019 employment incident.

In support of his claim, appellant submitted a series of progress notes and reports from the employing establishment health unit. Dr. Namboodiri's April 9, 2019 progress note provided an assessment of right knee osteoarthritis exacerbated by work and placed appellant off work through April 23, 2019. While her opinion is generally supportive of causal relationship, she has not provided adequate medical rationale explaining how and why she believes that the accepted March 27, 2019 employment incident could have resulted in or contributed to the diagnosed condition and resultant disability from work. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to the employment incident.<sup>10</sup> Therefore, this report is insufficient to establish appellant's claim.

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<sup>6</sup> *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).

<sup>7</sup> *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).

<sup>8</sup> *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).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *V.W.*, Docket No. 19-1537 (issued May 13, 2020); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>10</sup> See *S.Y.*, Docket No. 20-0470 (issued July 15, 2020); *T.J.*, Docket No. 19-1339 (issued March 4, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

Dr. Wood's progress notes dated July 25 and August 28, 2019 and his November 7, 2019 letter provided a history of the March 27, 2019 employment incident, and discussed examination findings, appellant's right knee arthroscopic surgery, and work capacity. He did not, however, diagnose a medical condition or address the issue of causal relationship. To establish personal injury the medical evidence of record must document a diagnosed condition and must explain how that condition is causally related to the accepted employment incident. Lacking a firm diagnosis and a medical opinion regarding causal relationship, Dr. Wood's progress notes are of no probative value.<sup>11</sup> His October 17, 2019 progress note provided an impression of persistent pain and an anterior horn partial lateral meniscectomy versus a re-tear of the lateral meniscus, but again he did not address causal relationship. As noted above, 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.<sup>12</sup> Moreover, the Board has held that pain is a symptom and not a compensable medical diagnosis.<sup>13</sup>

Dr. Sarda's March 27, 2019 progress note provided an assessment that the most likely differential diagnosis was knee osteoarthritis based on appellant's history and physical examination findings and that other "possible" differential diagnoses included bursitis and metastasis to the knee. As noted, 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.<sup>14</sup>

Likewise, Dr. Metcalf's August 28, 2019 progress note described the right knee surgery she performed on that date, but did not provide an opinion on causal relationship.<sup>15</sup> As such, this evidence is insufficient to establish appellant's burden of proof.

X-ray reports from Dr. MacLaughlin and Dr. Wertz addressed appellant's right knee conditions. However, diagnostic studies, standing alone, lack probative value as to the issue of causal relationship as they do not address whether the employment incident caused the diagnosed condition.<sup>16</sup>

The remaining medical evidence pertaining to appellant's right knee condition consists of progress notes from physical therapists, nurse practitioners, registered nurses, and physician assistants. The Board has held that reports signed solely by physical therapists, nurse practitioners, registered nurses, and physician assistants are not considered physicians as defined under FECA.<sup>17</sup>

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<sup>11</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>12</sup> *Id.*

<sup>13</sup> See *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020); *C.C.*, Docket No. 18-1099 (issued December 21, 2018).

<sup>14</sup> *Supra* note 11.

<sup>15</sup> *Id.*

<sup>16</sup> See *M.L.*, Docket No. 18-0153 (issued January 22, 2020); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

<sup>17</sup> Section 8101(2) of FECA provides that the term physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined

Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>18</sup>

As there is no rationalized medical opinion establishing appellant's claim for compensation the Board finds that he has not met his burden of proof to establish his claim.<sup>19</sup>

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 and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b)(1) of FECA provides that “a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his [or her] claim before a representative of the Secretary.”<sup>20</sup> Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.<sup>21</sup> A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.<sup>22</sup> Although there is no right to a review of the written record or an oral hearing, if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124.

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by State law.” 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, *supra* note 9 at Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *B.M.*, Docket No. 19-1341 (issued August 12, 2020) (physical therapist); *R.K.*, Docket No. 20-0049 (issued April 10, 2020) (physician assistant); *T.S.*, Docket No. 20-0343 (issued July 15, 2020) (registered nurse); *T.J.*, *supra* note 10 (nurse practitioner).

<sup>18</sup> *T.S.*, *id.*; *G.U.*, Docket No. 19-1002 (issued November 25, 2019); *J.T.*, Docket No. 18-0664 (issued August 12, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id.*; *supra* note 9 at Chapter 2.805.3.a(1) (January 2013).

<sup>19</sup> *T.J.*, *supra* note 10; *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 2018).

<sup>20</sup> 5 U.S.C. § 8124(b)(1).

<sup>21</sup> 20 C.F.R. §§ 10.616, 10.617.

<sup>22</sup> *Id.* at § 10.616(a).

OWCP's regulations provide that the request for an oral hearing must be made within 30 days of the date of the decision for which a review is sought.<sup>23</sup> On an appeal request form dated January 11, 2020, appellant requested an oral hearing regarding OWCP's December 4, 2019 denial decision. As the request form was received more than 30 days after the issuance of the December 4, 2019 decision, the Board finds that appellant's request for a hearing was not timely filed. Therefore, OWCP properly found in its January 28, 2020 decision that appellant was not entitled to an oral hearing as a matter of right because his request was not made within 30 days of its December 4, 2019 decision.<sup>24</sup>

Although appellant's January 11, 2020 request for a hearing was untimely, OWCP has the discretionary authority to grant the request and it must exercise such discretion.<sup>25</sup> The Board finds that OWCP's Branch of Hearings and Review properly exercised discretion in the January 28, 2020 decision by determining that the issue in the case could be equally well addressed by a request for reconsideration before OWCP along with the submission of new evidence relevant to the issue at hand.

The Board has held that the only limitation on OWCP's authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.<sup>26</sup> The Board finds that the evidence of record does not indicate that OWCP abused its discretion by denying appellant's request for an oral hearing and thus it properly denied his oral hearing request.<sup>27</sup>

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted March 27, 2019 employment incident. The Board further finds that OWCP properly denied appellant's request for an oral hearing pursuant to 5 U.S.C. § 8124(b) as untimely filed.

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<sup>23</sup> *Id.*

<sup>24</sup> *R.W.*, Docket No. 13-0044 (issued February 22, 2013); *A.L.*, Docket No. 09-1851 (issued March 9, 2010); *F.W.*, Docket No. 08-0722 (issued August 7, 2008).

<sup>25</sup> *R.H.*, Docket No. 19-1488 (issued February 20, 2020).

<sup>26</sup> *Id.*

<sup>27</sup> *See J.O.*, Docket No. 17-0789 (issued May 15, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 28, 2020 and December 4, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 21, 2020  
Washington, DC

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

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

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