

Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUE

The issue is whether appellant has met his burden of proof to establish a right knee condition causally related to the accepted May 28, 2018 employment incident.

FACTUAL HISTORY

On May 29, 2018 appellant, then a 40-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on May 28, 2018 he was carrying lunch trays up stairs when his knee gave out while in the performance of duty. He stopped work on May 28, 2018.

On May 28, 2018 appellant was treated in the employing establishment clinic by A. Morrow, a registered nurse, for a right knee injury. He reported carrying a food cart up stairs when he felt a "pop" in his right knee. Nurse Morrow applied ice and an elastic bandage.

Appellant was subsequently treated in the emergency room on May 28, 2018 by Dr. Christopher Bonn, a specialist in emergency medicine, for knee pain. Dr. Bonn reported that appellant was carrying a food cart up stairs when he felt a pop and his right knee gave out. He also reported continuing care for chronic knee issues. Dr. Bonn noted tenderness to the right knee joint and limited range of motion in all fields secondary to pain. An x-ray of the right knee revealed degenerative changes with no acute fracture. Dr. Bonn diagnosed acute pain of the right knee and right knee sprain. He prescribed an elastic bandage wrap, crutches, and anti-inflammatory pain medication.

On July 3, 2018 Dr. Daniel R. Yanicko, Jr., a Board-certified orthopedic surgeon, treated appellant for a right knee injury which occurred at work on May 28, 2018 while he was carrying food trays and twisted his knee. He noted that appellant had a three-year history of chronic bilateral knee pain. Dr. Yanicko diagnosed acute lateral meniscus tear of the right knee and primary osteoarthritis of the right knee. He also administered a cortisone injection. In a work excuse note of even date, Dr. Yanicko diagnosed lateral meniscus tear and degenerative joint disease of the right knee and advised that appellant was disabled from work.

In a development letter dated July 19, 2018, OWCP indicated that, when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment had not controverted continuation of pay or challenged the case, payment of a limited amount of medical expenses was administratively approved. It explained that it had reopened the claim for formal consideration of

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the August 19, 2019 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.*

the merits because it received a request for authorization of surgery. OWCP requested additional evidence and afforded appellant 30 days to respond to its inquiries.

Appellant submitted a July 3, 2018 work excuse note from Dr. Yanicko who reiterated his diagnoses of lateral meniscus tear and degenerative joint disease of the right knee. Dr. Yanicko determined that appellant was disabled from work. In a work excuse note dated August 10, 2018, he again reported treating appellant on July 3, 2018 for a work-related injury which was acute in nature and not due to his military service.

Appellant attended physical therapy treatment on July 25, 2018.

By decision dated August 29, 2018, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed right knee condition and the accepted May 28, 2018 employment incident.

OWCP continued to receive evidence. Dr. Yanicko treated appellant on August 29, 2018 for a right knee sprain which occurred at work on May 28, 2018. He noted appellant's history was significant for chronic knee pain. X-rays of the right knee lateral views revealed grade 1 Osgood-Schlatter's lesion and a nodule. Dr. Yanicko noted medial and lateral joint space narrowing on the erect image. The skyline view revealed moderate tricompartmental spurs, osteophytes, and moderately severe patellofemoral spurs. Dr. Yanicko diagnosed other tear of lateral meniscus, right knee workers' compensation injury on May 28, 2018, and primary osteoarthritis of the right knee.

On September 19, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated February 15, 2019, an OWCP hearing representative affirmed the August 29, 2018 decision.

On May 2, 2019 Dr. Catherine Watkins Campbell, Board-certified in occupational medicine, reviewed appellant's medical records and noted that he was under the care of Dr. Yanicko for degenerative arthritis of both knees. She indicated that Dr. Yanicko documented a twisting injury on May 28, 2018 that significantly aggravated his underlying right knee arthritis. Dr. Watkins Campbell advised that appellant had a history of bilateral knee problems dating back to previous military service and experienced swelling, locking, and giving out of the right knee. She reviewed x-ray reports from Dr. Yanicko dated May 9 and August 29, 2018 and noted a noticeable increase in the medial joint space narrowing on the August 29, 2018 study compared to the May 9, 2018 studies. Dr. Watkins Campbell concluded that this was objective evidence of a substantial aggravation of preexisting arthritis in the right knee. She diagnosed sprain of the right knee and substantial aggravation of preexisting arthritis of the right knee. Dr. Watkins Campbell opined that the mechanism of injury, climbing stairs while manipulating a moderate-to-heavy weight, was a significant mechanism of injury to cause a sprain, knee joint derangement, and "*permanent* substantial aggravation of preexisting arthritis of the right knee as demonstrated significant x-ray evidence identified within three months of the injury event." (Emphasis in the original.)

In an attending physician's report (Form CA-20) dated May 2, 2019, Dr. Watkins Campbell diagnosed sprain of the right knee and substantial aggravation of preexisting arthritis of the right knee. She checked the box marked "Yes," indicating that the condition was caused or aggravated by an employment activity and noted that appellant was totally disabled from work.

On May 21, 2019 appellant, through counsel, requested reconsideration.

By decision dated August 19, 2019, OWCP denied modification of the February 15, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,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 if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁸ There are 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.⁹ The second component is whether the employment incident caused a personal injury.¹⁰

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹¹ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.¹² Additionally, the physician's opinion must be

⁴ *Id.*

⁵ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *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).

⁸ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁹ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *E.M.*, *id.*; *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *S.S.*, *supra* note 8; *Robert G. Morris*, 48 ECAB 238 (1996).

¹² *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition, and appellant's specific employment incident.¹³

In any 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.¹⁴

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted May 28, 2018 employment incident.

On May 2, 2019 Dr. Watkins Campbell reported that appellant sustained a twisting injury on May 28, 2018 that significantly aggravated his underlying right knee arthritis. She noted a noticeable increase in the medial joint space narrowing on an August 29, 2018 study compared to the May 9, 2018 study, which supported an aggravation of preexisting arthritis in the right knee. Dr. Watkins Campbell diagnosed sprain of the right knee and substantial aggravation of preexisting arthritis of the right knee. She opined that the mechanism of injury, climbing stairs while manipulating a moderate-to-heavy weight, was a significant mechanism of injury to cause a sprain, knee joint derangement, and permanent substantial permanent aggravation of preexisting arthritis of the right knee as evidenced by x-rays. However, Dr. Watkins Campbell failed to provide medical reasoning explaining how climbing stairs while lifting trays would cause or aggravate the diagnosed condition. The need for rationalized medical opinion evidence was particularly important because appellant had preexisting osteoarthritis of the right knee and continued to seek medical care for this condition. Dr. Watkins Campbell failed to provide a rationalized medical opinion which differentiates between the effects of the work-related injury and the preexisting condition.¹⁵

A Form CA-20 report from Dr. Watkins Campbell, dated May 2, 2019, diagnosed sprain of the right knee and substantial aggravation of preexisting arthritis of the right knee. As to causal relationship, Dr. Watkins Campbell merely checked a box marked "Yes" that the injury was related to the claimed employment incident. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "Yes" to a form question, without explanation or rationale, that opinion has diminished probative value and is insufficient establish

¹³ *Id.*

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹⁵ *See id.*

a claim.¹⁶ Therefore, Dr. Watkins Campbell's May 2, 2019 report is also insufficient to establish the claim.

Reports from Dr. Yanicko dated July 3 and August 29, 2018 noted that appellant sustained a right knee injury at work on May 28, 2018. Dr. Yanicko diagnosed tear of lateral meniscus of the right knee from a workers' compensation injury on May 28, 2018, and primary osteoarthritis of the right knee. While Dr. Yanicko provided affirmative opinions which supported causal relationship, he did not provide a pathophysiological explanation as to how the accepted incident either caused or contributed to his diagnosed conditions.¹⁷ The Board has consistently held that complete medical rationalization is particularly necessary when there are preexisting conditions involving the same body part,¹⁸ and has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.¹⁹ Thus, the Board finds that these reports from Dr. Yanicko are insufficient to establish causal relationship.

In a work excuse note dated July 3, 2018, Dr. Yanicko diagnosed lateral meniscus tear and degenerative joint disease of the right knee and advised that appellant was disabled from work. Similarly, in an August 10, 2018 work excuse note, he noted treating appellant for a work-related injury, which was acute in nature and not related to his military service. Dr. Yanicko did not provide a history of injury²⁰ or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.²¹ Therefore, these notes are insufficient to meet appellant's burden of proof.

Appellant was treated in the emergency room by Dr. Bonn on May 28, 2018 for knee pain, which developed after he carried a food cart upstairs at work. Dr. Bonn diagnosed acute pain of the right knee and right knee sprain. His notes are insufficient to establish the claim as "pain" is a symptom, not a medical diagnosis.²² Additionally, Dr. Bonn did not specifically address whether appellant's employment was sufficient to have caused or aggravated a diagnosed medical

¹⁶ See *M.O.*, Docket No. 18-1056 (issued November 6, 2018); *Deborah L. Beatty*, 54 ECAB 3234 (2003).

¹⁷ *Victor J. Woodhams*, 41 ECAB 345 (1989). *Supra* note 14

¹⁸ *K.R.*, Docket No. 18-1388 (issued January 9, 2019).

¹⁹ See, e.g., *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *J.B.*, Docket No. 17-1870 (issued April 11, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *P.O.*, Docket No. 14-1675 (issued December 3, 2015).

²⁰ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

²¹ *LB.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, No. 17-1549 (issued July 6, 2018).

²² Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012); *T.G.*, Docket No. 19-0904 (issued November 25, 2019).

condition.²³ This is particularly important because appellant has preexisting degenerative joint disease of the right knee.

Finally, appellant submitted employing establishment medical records from Nurse Morrow. The Board has held that treatment notes signed by a nurse²⁴ are not considered medical evidence as these providers are not considered physicians under FECA²⁵ and are not competent to render a medical opinion under FECA. Thus, this evidence is insufficient to meet appellant's burden of proof. Appellant also submitted reports from a physical therapist. Certain healthcare providers such as physical therapists²⁶ are not considered "physician[s]" as defined under FECA.²⁷ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.²⁸

As appellant has not submitted rationalized medical evidence to support his claim that he sustained a right knee condition causally related to the May 28, 2018 employment incident, the Board finds that he has not met his burden of proof to establish his 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 May 28, 2018 employment incident.

²³ *Supra* note 21.

²⁴ *B.B.*, Docket No. 09-1858 (issued April 16, 2010) (nurse's reports are of no probative medical value as nurses are not physicians under the FECA).

²⁵ *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

²⁶ *V.W.*, Docket No. 16-1444 (issued March 14, 2017) (where the Board found that physical therapy reports do not constitute competent medical evidence because a physical therapist is not a "physician" as defined under FECA).

²⁷ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *supra* note 25. A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

²⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 28, 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