United States Department of Labor
Employees' Compensation Appeals Board

E.H., Appellant	)	
and	)	**Docket No. 20-0663**
	)	**Issued: September 23, 2020**
DEPARTMENT OF THE ARMY, U.S. ARMY RESERVE COMMAND, Fort McCoy, WI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 3, 2020 appellant, through counsel, filed a timely appeal from a September 30, 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.

[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 13, 2018 employment incident.

FACTUAL HISTORY

On February 22, 2018 appellant, then a 32-year-old heavy mobile equipment repairer, filed a traumatic injury claim (Form CA-1) alleging that on February 13, 2018 he experienced left knee pain and left hip discomfort when changing hydraulic cylinders while in the performance of duty. He noted that, after squatting and sitting for approximately 30 minutes, he stood up and heard a loud crack and popping sound from his left knee. On the reverse side of the claim form the employing establishment checked a box marked "Yes" to indicate that appellant was injured in the performance of duty. Appellant stopped work on February 15, 2018 and returned to work on February 20, 2018.

A February 27, 2018 witness statement by A.G., appellant's coworker, corroborated appellant's account of the employment incident.

In a development letter dated March 16, 2018, OWCP informed appellant that additional evidence was required to establish his claim. It advised him of the type of medical evidence needed, including a rationalized medical opinion from a qualified physician explaining how the claimed employment incident caused or aggravated a diagnosed medical condition. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received x-rays of appellant's left knee, dated February 14, 2018, which revealed no fracture or dislocation.

In a February 14, 2018 report, Dr. Matthew Gordon, a Board-certified orthopedic surgeon, noted that appellant felt a pop and had acute "knee pain of one day duration" after standing up while fixing a truck at work. He reviewed x-rays of appellant's left knee and diagnosed chondromalacia of the left patella.

In a February 27, 2018 report, Dr. Gordon noted that appellant felt some clicking and popping in his left knee and had returned to full-duty work. He examined appellant and again diagnosed chondromalacia of the left patella. Dr. Gordon opined that the described employment incident was the competent medical cause of his left knee condition.

By decision dated April 20, 2018, OWCP denied appellant's traumatic injury claim. It found that the medical evidence of record was insufficient to establish a causal relationship between appellant's diagnosed conditions and the accepted February 13, 2018 employment incident.

On May 18, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received additional medical evidence. X-rays of appellant's left hip and left knee, dated March 8, 2018, revealed no significant abnormalities.

In a March 8, 2018 report, Dr. Shewli Roy, a Board-certified specialist in internal medicine, noted that on February 14, 2018 appellant was lifting heavy weight and he felt left knee and left hip pain after standing up from a squatting position. She indicated that, "[t]here was no injury mechanism." Dr. Roy examined appellant and diagnosed left hip pain and acute pain of the left knee.

In a March 9, 2018 report, David W. Varian, a physician assistant, noted that appellant injured his left knee at work changing hydraulic cylinders on a truck. He indicated that appellant experienced continued pain in the left knee and hip. Mr. Varian examined appellant and diagnosed left hip arthritis, left hip sprain, left knee osteoarthritis, and left knee strain.

In a March 20, 2018 report, Mr. Varian noted that appellant's knee was improving and that he had a minor episode of lateral hip pain. He examined appellant and diagnosed left hip arthritis, left hip sprain, left knee osteoarthritis, and left knee strain. Mr. Varian opined that there was a causal relationship between the stated conditions and the employment incident.

Dr. Roy noted, in an April 10, 2018 report, that appellant's pain and swelling had improved, but he still had some discomfort. She examined him and diagnosed left knee pain.

In an April 24, 2018 report, Mr. Varian noted that appellant's knee pain had returned because of repetitive stress at work. He examined appellant and diagnosed left hip arthritis, left hip sprain, left knee osteoarthritis, and left knee strain. Mr. Varian opined that there was a causal relationship between the stated conditions and the employment incident.

A May 7, 2018 magnetic resonance imaging (MRI) scan of appellant's left knee revealed tears of the posterior horn and body of the medial meniscus.

OWCP also received a May 10, 2018 report wherein, Dr. Eric Martin, a Board-certified orthopedic surgeon, noted that appellant had problems with knee bending and extended walking. Dr. Martin examined appellant and diagnosed patellofemoral dysfunction of the left knee and acute medial meniscus tear of the left knee. He opined that there was a causal relationship between the stated conditions and the employment incident.

Dr. Martin, in an undated state workers' compensation report, diagnosed joint disorder of the left knee and medial meniscus tear of the left knee. He replied "Yes" to the question of whether the employment incident was the medical cause of appellant's left knee conditions and noted a temporary impairment of 20 percent.

In an August 20, 2018 note, Dr. Martin opined that appellant's meniscal tear required surgical intervention and the recovery time would be four to six weeks.

By decision dated October 19, 2018, OWCP's hearing representative affirmed the April 20, 2018 decision.

On May 2, 2019 appellant, through counsel, requested reconsideration.

In an April 24, 2019 report, Dr. Kevin White, a Board-certified osteopathic physician specializing in orthopedic surgery, noted that on February 13, 2018 appellant felt a pop and had

acute knee pain while fixing a truck at work. He listed appellant's medical history and indicated that he had a prior history of right hip surgery on January 10, 2017. Dr. White reviewed the medical evidence of record and diagnosed left complex medial meniscus tear. He opined that appellant's condition was causally related to the February 13, 2018 employment incident. Dr. White noted that appellant would need surgery in the form of left knee arthroscopy with partial medial meniscectomy. He indicated that appellant could continue working in a light-duty capacity.

By decision dated September 30, 2019, OWCP denied modification of the October 19, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[4] 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.[5] 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.[6]

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.[7] The second component is whether the employment incident caused a personal injury.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] 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

[3] *Supra* note 2.

[4] *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).

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

[6] *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).

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

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

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

be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted February 13, 2018 employment incident.

In support of his claim, appellant submitted reports from Dr. Gordon, dated February 14 and 27, 2018, who noted that appellant felt a pop and had acute pain after standing up while fixing a truck at work. Dr. Gordon diagnosed chondromalacia of the left patella and opined that the employment incident was the competent medical cause of appellant's left knee condition. While he identified the accepted employment incident, he offered only a conclusory statement regarding causal relationship and failed to provide medical rationale as to how the employment incident was causally related to appellant's diagnosed condition. The Board has held that a medical report is of limited probative value on a given medical issue if it contains an opinion which is unsupported by medical rationale.[11] Accordingly, Dr. Gordon's opinion is insufficient to meet appellant's burden of proof to establish his claim.

In reports dated March 8 and April 10, 2018, Dr. Roy diagnosed left hip pain and left knee pain. The Board has consistently held that a diagnosis of "pain" does not constitute the basis for payment of compensation, as pain is a symptom not a specific diagnosis.[12] As Dr. Roy did not offer a valid medical diagnosis, her reports are insufficient to establish appellant's claim.

In a report dated May 10, 2018, Dr. Martin diagnosed patellofemoral dysfunction of the left knee and acute medial meniscus tear of the left knee. He opined that there was a causal relationship between the stated conditions and the employment incident, but offered no medical rationale to support his conclusory statement. The Board has held that a conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident or work factors were sufficient to result in the diagnosed medical condition, is insufficient to meet a claimant's burden of proof to establish a claim.[13] This report is therefore insufficient to establish appellant's claim.

Appellant also submitted an undated state workers' compensation report from Dr. Martin who diagnosed joint disorder of the left knee and medial meniscus tear of the left knee. Dr. Martin answered "Yes" to a question to indicate that the employment incident was the medical cause of appellant's left knee conditions. The Board has held that when a physician's opinion on causal

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

[11] *B.M.*, *supra* note 6.

[12] *T.S.*, Docket No. 20-0343 (issued July 15, 2020); *D.H.*, Docket No. 19-0931 (issued October 2, 2019); *R.R.*, Docket No. 18-1093 (issued December 18, 2018); *A.C.*, Docket No. 16-1587 (issued December 27, 2016); *Robert Broome*, 55 ECAB 339 (2004).

[13] *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019); *B.M.*, Docket No. 17-0324 (issued March 24, 2017); *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

relationship consists only of responding "Yes" to a form question, without more by the way of medical rationale, that opinion is of limited probative value and is insufficient to establish causal relationship.[14] As such, this report by Dr. Martin is insufficient to establish appellant's claim.

In a report dated April 24, 2019, Dr. White noted appellant's history of illness and reviewed the medical evidence of record. He diagnosed left complex medial meniscus tear and opined that appellant's condition was causally related to the February 13, 2018 employment incident. Dr. White indicated that appellant sustained an injury to his left knee after standing up from a squatting position, but offered no rationalized medical explanation as to how standing up could have caused a complex medial meniscus tear. As previously noted, conclusory opinion, unsupported by medical rationale, is of limited probative value and insufficient to establish appellant's claim.[15]

Additionally, appellant submitted reports from a physician assistant, dated March 9 through April 24, 2018. The Board has held that medical reports signed solely by a physician assistant are of no probative value as physician assistants are not considered physicians as defined under FECA.[16] These reports are therefore insufficient to establish appellant's claim.

The record also contains x-rays, dated February 14 and March 8, 2018, and an MRI scan, dated May 7, 2018. The Board has held, however, that diagnostic studies standing alone are of no probative value on the issue of causal relationship as they do not provide an opinion on whether the accepted employment incident caused any of the diagnosed conditions.[17]

As appellant has not submitted rationalized medical evidence explaining causal relationship between the accepted February 13, 2018 employment incident and his diagnosed conditions, the Board finds that he has not met his burden of proof.

On appeal counsel argues that causation was clear and unequivocal and that OWCP required biomechanical causation instead of medical causation. As explained above, the evidence of record does not contain a medical report from a physician that provides sufficient medical rationale to establish causal relationship.

[14] *M.S.*, Docket No. 20-0437 (issued July 14, 2020).

[15] *See A.M., R.D.,* and *J.D., supra* note 13.

[16] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, 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); *J.R.*, Docket No. 20-0496 (issued August 13, 2020) (physician assistants are not considered physicians under FECA).

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

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 left knee condition causally related to the accepted February 13, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 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