United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
	)	**Docket No. 21-0011**
and	)	**Issued: April 20, 2021**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Floral Park, NY, Employer	)	

Appearances:
Thomas S. Harkins, 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 October 4, 2020 appellant, through counsel, filed a timely appeal from a June 4, 2020 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 to consider 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 July 2, 2018 employment incident.

FACTUAL HISTORY

On July 2, 2018 appellant, then a 57-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date his left knee gave out while walking in the performance of duty. He stopped work on the date of injury. In an accompanying statement, appellant noted that he was walking on his route at the time of injury.

In hospital emergency department report and discharge instructions, Dr. Diana M. Valcich, a physician Board-certified in emergency and sports medicine, indicated that appellant was evaluated on July 2, 2018. The discharge diagnosis was knee sprain.

In a July 2, 2018 authorization for examination and/or treatment (Form CA-16), the employing establishing authorized appellant to seek medical care. In Part B of the Form CA-16, an undated attending physician's report, Dr. Robert Garroway, an attending Board-certified orthopedic surgeon, indicated that appellant was evaluated on July 6, 2018. He noted a history that appellant twisted his left knee and experienced pain. Dr. Garroway diagnosed sprain and osteoarthritis of the left knee.

OWCP subsequently received additional medical evidence from Dr. Garroway. In a July 6, 2018 duty status report (Form CA-17) and a narrative report of even date, Dr. Garroway reiterated appellant's history of injury. He diagnosed acute pain of the left knee, sprain of the left knee, unspecified ligament, initial encounter, and post-traumatic osteoarthritis of the right and left knees. Dr. Garroway performed a large joint injection in appellant's left knee. In the July 6, 2018 Form CA-17 report, he indicated that appellant's left knee sprain was due to his knee buckling while walking on July 2, 2018. Dr. Garroway advised that he was unable to work before August 10, 2018.

In prescriptions dated July 2 and 6, 2018, Dr. Garroway ordered a hinged knee brace and referred appellant to physical therapy to treat his left knee sprain/strain.

OWCP, in a July 20, 2018 development letter, informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim, including a narrative medical report from his physician, which provided a diagnosis and the physician's rationalized medical explanation as to how the alleged employment incident caused or aggravated the diagnosed condition. OWCP afforded appellant 30 days to respond.

In additional narrative reports and Form CA-17 reports dated July 23 and August 7, 2018, Dr. Garroway reexamined appellant and reiterated his prior assessments of post-traumatic osteoarthritis of the right and left knees, acute pain of the left knee, and sprain of the left knee, unspecified ligament, initial encounter. He also noted an assessment of complex tear of the medial meniscus of the right knee, current injury, initial encounter. In the July 23 and August 7, 2018 Form CA-17 reports, Dr. Garroway reiterated his prior opinion that appellant's left knee sprain

was due to his knee buckling while walking on July 2, 2018 and that he was unable to work. He also listed work restrictions.

Dr. Garroway, in a July 23, 2018 prescription, ordered a magnetic resonance imaging (MRI) scan of appellant's left knee.

In an August 2, 2018 left knee MRI scan report, Dr. Steve Sharon, a Board-certified diagnostic radiologist, provided an impression of complex medial meniscal tearing with mild surrounding synovitis. He also provided an impression of mild medial and patellofemoral compartment arthrosis with mild effusion, synovitis, and a small popliteal cyst.

OWCP, by decision dated September 7, 2018, denied appellant's traumatic injury claim, finding that the medical evidence of record failed to establish that his diagnosed conditions were causally related to the accepted July 2, 2018 employment incident.

In a September 6, 2018 report, Dr. Alpesh Shah, a Board-certified orthopedic surgeon, noted a history of the accepted July 2, 2018 employment incident, discussed examination findings, and reviewed diagnostic test results. He provided assessments of complex tear of the medial meniscus, current injury, right knee, subsequent encounter, and primary osteoarthritis of the left knee.

In an additional report dated September 17, 2018, Dr. Garroway continued to reiterate his prior bilateral knee assessments.

On October 15, 2018 appellant requested reconsideration of the September 7, 2018 decision. He submitted a July 2, 2018 left knee x-ray report by Dr. Jorge Tirado, a diagnostic radiologist. Dr. Tirado reported an impression of mild soft tissue swelling without underlying fracture.

On December 10, 2018 Dr. Garroway reported an assessment of sprain of the left knee, unspecified ligament, subsequent encounter.

In a December 21, 2018 decision, OWCP denied modification of its September 7, 2018 decision.

On January 17, 2019 appellant again requested reconsideration of the September 7, 2018 decision.

In narrative reports dated January 7, February 7, March 11, April 9, and May 6 and 9, 2019, and a Form CA-17 report dated May 6, 2019, Dr. Garroway reiterated his prior bilateral knee diagnoses. In the May 6, 2019 Form CA-17 report, he attributed appellant's left knee osteoarthritis to his knee buckling while walking on July 2, 2018. Dr. Garroway released him to perform limited-duty work with restrictions.

In an April 12, 2019 progress report, Dr. Garroway reiterated his diagnoses of unilateral post-traumatic osteoarthritis, complex tear of the medial meniscus, and pain of the left knee. He checked boxes marked "Yes" to indicate his opinion that the employment incident was the cause of appellant's injury/illness, his complaints were consistent with his history injury/illness, and his

history of injury/illness was consistent with his objective findings. Dr. Garroway noted that appellant was working with restrictions.

In a July 6, 2018 order, Dr. Garroway again referred appellant to physical therapy to treat his left knee sprain/strain.

By decision dated June 14, 2019, OWCP again denied modification.

In reports dated June 27, August 5, September 16, October 7, and November 14, 2019, Dr. Garroway restated his prior left knee assessments.

On March 16, 2020 appellant, through counsel, requested reconsideration of the June 14, 2019 decision and submitted additional reports from Dr. Garroway.

In a December 30, 2019 report, Dr. Garroway noted that appellant was first seen on July 6, 2018 for an injury he sustained at work on July 2, 2018. He diagnosed: left knee sprain; acute pain, left knee; post-traumatic osteoarthritis bilateral knees; and complex tear of the medial meniscus. Dr. Garroway noted that the long-term activity of prolonged walking required by his job duties likely contributed to arthritic changes in the left knee joint. He opined that appellant's left knee condition was causally related to the July 2, 2018 employment incident as the buckling of the knee from walking on stairs resulted in a meniscal tear and worsening of left knee arthritis and was permanent in nature, resulting in the need for a left knee total arthroplasty.

In a March 4, 2020 report and an undated partial report, Dr. Garroway advised that the July 2, 2018 employment incident caused a permanent worsening of appellant's left knee osteoarthritis for which left total knee arthroplasty was indicated. He further advised that his right knee had also worsened due to strain from his left knee injury.

In an additional March 24, 2020 progress report, Dr. Garroway continued to diagnose unilateral post-traumatic osteoarthritis and complex tear of medial meniscus of the left knee. He again checked boxes marked "Yes" to indicate his opinion that, among other things, the July 2, 2018 employment incident caused appellant's injury/illness. Additionally, Dr. Garroway again noted that appellant was working with restrictions.

By decision dated June 4, 2020 decision, OWCP denied modification of its June 14, 2019 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 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,[4] that an injury was sustained in the performance of duty as alleged, and that

[3] *Id*.

[4] *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).

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 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. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[7]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] 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.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted July 2, 2018 employment incident.

In a December 30, 2019 report, Dr. Garroway opined that appellant's left knee conditions were causally related to the July 2, 2018 employment incident as the buckling of the knee from walking on stairs resulted in a meniscal tear and worsening of left knee arthritis and was permanent in nature, resulting in the need for a left knee total arthroplasty. However, he did not describe appellant's July 2, 2018 employment incident in detail or explain the pathophysiological process through which it could have caused appellant's claimed left knee conditions.[10] The Board has held that a report is of limited probative value regarding causal relationship if it does not contain

[5] *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).

[6] *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).

[7] *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).

[8] *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).

[9] *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).

[10] *A.M.*, Docket No. 19-1394 (issued February 23, 2021).

medical rationale explaining how an employment activity could have caused or aggravated a medical condition.[11] This report is therefore insufficient to establish the claim.[12]

In a March 4, 2020 report and an undated partial report, Dr. Garroway opined that the July 2, 2018 employment incident caused a permanent worsening of appellant's left knee osteoarthritis for which left total knee arthroplasty was indicated. He also opined that his left knee injury worsened his right knee. Dr. Garroway, however, did not provide medical rationale explaining how bilateral knee conditions and need for surgery were caused by the July 2, 2018 employment incident. Likewise, in Form CA-17 reports dated July 6 and 23, and August 7, 2018 and May 6, 2019, Dr. Garroway failed to offer medical rationale in support of his opinion that appellant's left knee sprain and osteoarthritis were due to the work-related incident. Further, he did not offer an opinion as to whether appellant's disability from work and work restrictions were due to the accepted work incident. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[13]

In progress reports dated April 12, 2019 and March 24, 2020, Dr. Garroway diagnosed unilateral post-traumatic osteoarthritis, complex tear of the medial meniscus, and pain of the left knee. He checked the box marked "Yes" indicating that the July 2, 2018 employment incident was the cause of appellant's injury or illness. However, the Board has held that an opinion on causal relationship with an affirmative check mark, without more, by way of medical rationale, is insufficient to establish the claim.[14] Dr. Garroway's remaining reports again diagnosed bilateral knee conditions and addressed appellant's disability from work, work restrictions, and medical treatment, but failed to provide an opinion concluding that the July 2, 2018 employment incident caused or aggravated appellant's diagnosed bilateral knee conditions, disability, work restrictions, and medical treatment. As noted, the Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[15] For the reasons stated above, the Board finds that these reports are of limited probative value and insufficient to establish that appellant sustained an employment-related injury.

Dr. Valcich's July 2, 2018 report and discharge instructions provided a diagnosis of knee sprain. In a September 6, 2018 report, Dr. Shah provided assessments of complex tear of the medial meniscus, current injury, right knee, subsequent encounter, and primary osteoarthritis of the left knee. However, neither physician offered an opinion on the causal relationship between the diagnosed conditions and the July 2, 2018 employment incident. As noted, the Board has held

[11] *See V.D.*, Docket No. 20-0884 (issued February 12, 2021); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[12] To the extent that appellant is alleging an injury occurring over more than one workday or work shift, he may file an occupational disease claim (Form CA-2).

[13] *See C.W.*, Docket No. 20-0965 (issued February 5, 2021); *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[14] *D.M.*, Docket No. 20-1277 (issued February 8, 2021); *C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018); *B.L.*, Docket No. 17-0227 (issued July 23, 2018).

[15] *Id*.

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.[16] These reports from Dr. Valcich and Dr. Shah are therefore insufficient to establish appellant's claim.

The diagnostic reports from Dr. Sharon and Dr. Tirado addressed appellant's left 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.[17]

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.[18]

On appeal counsel contends that the factual and medical evidence of record is sufficient to establish that appellant sustained a compensable injury causally related to the accepted July 2, 2018 employment incident. As explained above, the Board finds that the medical evidence of record is insufficient to establish causal relationship between the accepted July 2, 2018 employment incident and the diagnosed conditions.

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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted July 2, 2018 employment incident.[19]

[16] *Id.*

[17] *See B.H.*, Docket No. 20-0777 (issued October 21, 2020); *M.L.*, Docket No. 18-0153 (issued January 22, 2020); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[18] *T.J.*, Docket No. 19-1339 (issued March 4, 2020); *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).

[19] The Board notes that the employing establishment issued a Form CA-16. A properly executed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the June 4, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2021
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