

**United States Department of Labor
Employees' Compensation Appeals Board**

S.H., Appellant)	
)	
and)	Docket No. 20-1357
)	Issued: May 25, 2021
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION FACILITY, Grand Rapids, MI, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On July 1, 2020 appellant, through counsel, filed a timely appeal from a March 10, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a left knee condition causally related to the accepted July 29, 2019 employment incident.

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.*

FACTUAL HISTORY

On August 19, 2019 appellant, then a 48-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on July 29, 2019 he sustained a left knee strain while pulling a full load of standard letter mail out of a robot. He did not stop work.

In support of his claim, appellant submitted an August 7, 2019 left knee x-ray interpretation, which revealed suprapatellar joint effusion and medial femoral tibial joint degenerative changes.

On August 20, 2019 the employing establishment issued an authorization for examination and/or treatment (Form CA-16). L.W., the authorizing official, described appellant's injury as a strained left knee and indicated that there was doubt that his injury was sustained in the performance of duty.

In a development letter dated August 28, 2019, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence required to establish his claim and afforded him 30 days to provide the requested evidence.

In a September 5, 2019 report, Dr. Peter C. Theut, a Board-certified orthopedic surgeon, diagnosed left knee osteoarthritis and referenced the July 29, 2019 incident. He noted that appellant had sustained a previous meniscus injury to his knee in January 2017 and had a medical history of arthroscopy and meniscectomy in his knee. Appellant's physical examination findings included a little bit of swelling and tenderness over the medial condyle. A review of x-ray interpretations revealed moderate medial joint narrowing, but no bone-on-bone. Dr. Theut attributed appellant's pain to early joint space narrowing. He opined that it was unlikely that appellant had a recurrent meniscus tear.

By decision dated October 1, 2019, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted July 29, 2019 employment incident.

On October 7, 2019 appellant, through counsel, requested a telephonic hearing, which was held on January 31, 2020.

By decision dated March 10, 2020, the hearing representative affirmed the denial of appellant's claim, finding that the medical evidence of record failed to explain how his diagnosed left knee condition was causally related to the accepted July 29, 2019 employment incident.³

³ The hearing representative noted that appellant had a claim for a January 17, 2014 left knee injury which had been accepted under OWCP File No. xxxxxx556 for sprain of knee, lateral collateral ligament, left; and tear of medial meniscus of knee, left. She instructed OWCP to administratively combine the current claim, File No. xxxxxx714, with OWCP File No. xxxxxx556 upon return of the case record. The files have been administratively combined with OWCP File No. xxxxxx556 serving as the master file.

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 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 whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the 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, the employee must submit evidence, in the form of medical evidence, to establish that 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 A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.¹⁰ Additionally, the physician's opinion must be 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 the specific employment incident.¹¹

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,

⁴ *Id.*

⁵ *C.D.*, Docket No. 20-0762 (issued January 13, 2021); *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).

⁶ *K.G.*, Docket No. 20-1242 (issued January 13, 2021); *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 *C.D.*, *supra* note 5; *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).

⁸ *K.G.*, *supra* note 6; *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).

⁹ *C.D.*, *supra* note 5; *T.H.*, 59 ECAB 388, 393-94 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *K.G.*, *supra* note 6; *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹¹ *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹²

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 29, 2019 employment incident.

In a September 5, 2019 report, Dr. Theut diagnosed osteoarthritis of the left knee and noted appellant's history regarding the July 29, 2019 accepted incident. He reported that appellant had sustained a knee injury in January 2017 and a medical history of arthroscopy and meniscectomy. However, Dr. Theut did not opine that the diagnosed left knee osteoarthritis condition was causally related to the accepted July 29, 2019 employment incident. 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.¹³ This report, therefore, is insufficient to establish appellant's claim.

Appellant also submitted an August 7, 2019 left knee x-ray interpretation. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁴ This report is, therefore, insufficient to establish the claim.

As the medical evidence of record does not include a rationalized opinion explaining that appellant's accepted July 29, 2019 employment incident caused or aggravated his diagnosed condition, the Board finds that he has not met his burden of proof.¹⁵

On appeal, counsel asserts that OWCP failed to apply the proper standard of causation and failed to give deference to the findings of the attending physician. As discussed, however, appellant has not submitted rationalized medical evidence establishing that he sustained a left knee condition causally related to the accepted July 29, 2019 employment incident, and thus has not met his burden of proof to establish his claim.¹⁶

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.

¹² *E.W.*, Docket 20-0760 (issued January 11, 2021); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013).

¹³ *See N.D.*, Docket No. 20-0991 (issued January 11, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *N.D.*, *id.*; *K.S.*, Docket No. 19-1623 (issued March 19, 2020); *M.J.*, Docket No. 19-1287 (issued January 13, 2020).

¹⁵ *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).

¹⁶ *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *K.K.*, Docket No. 19-1193 (issued October 21, 2019).

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 29, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 10, 2020 decision of the Office of Workers' Compensation Programs is affirmed.¹⁷

Issued: May 25, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

¹⁷ The Board notes that the employing establishment issued a Form CA-16. A completed 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. *See* 20 C.F.R. § 10.300(c); *C.B.*, Docket No. 19-1882 (issued April 1, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).