

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

I.S., Appellant)	
)	
and)	Docket No. 20-0216
)	Issued: August 15, 2022
DEPARTMENT OF THE NAVY, NORFOLK)	
NAVAL SHIPYARD, Portsmouth, VA, Employer)	
)	

Appearances:

Daniel M. Goodkin, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 5, 2019 appellant, through counsel, filed a timely appeal from a September 19, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).²

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 an 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 The Board notes that following the September 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.*

Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a right knee condition causally related to the accepted October 26, 2017 employment incident.

FACTUAL HISTORY

On November 1, 2017 appellant, then a 60-year-old rigger, filed a traumatic injury claim (Form CA-1) alleging that on October 26, 2017 he twisted his right knee when he stepped out of an employing establishment shuttle van while in the performance of duty. He stopped work on October 26, 2017.

On October 26 2017 Dr. Arthur Wardell, a Board-certified orthopedic surgeon, noted that appellant was using a right wrist brace and that he was experiencing aching stiffness in his left ankle. He diagnosed right wrist sprain, left ankle sprain, and sprain of the sacroiliac joint.

On October 30, 2017 Dr. Wardell completed a duty status report (Form CA-17) wherein he provided work restrictions due to appellant's thigh, knee, leg, ankle, and foot injuries, and also completed an attending physician's report (Form CA-20). He diagnosed right knee sprain in both form reports and checked a box marked "Yes" on the Form CA-20 indicating that he believed that this condition was caused or aggravated by the employment activity of stepping out of a shuttle van at work and hyperextending the right knee. Dr. Wardell found that appellant was totally disabled.

In a November 9, 2017 development letter, OWCP advised appellant of the deficiencies of his claim, requested additional factual and medical evidence, and provided a questionnaire for his completion. In a separate letter of even date, it requested additional information from the employing establishment. OWCP afforded both parties 30 days to provide the requested evidence.

On November 27, 2017 appellant responded to the development questionnaire and indicated that he had injured his right knee stepping off the employing establishment shuttle van while at work. He also provided additional medical evidence. On October 27, 2017 Dr. Wardell reported that appellant had injured his right knee at work on October 26, 2017 when he hyperextended it stepping out of an employing establishment shuttle van. He noted that following the employment incident he had experienced pain, stiffness, and aching in his knee. Dr. Wardell diagnosed right knee sprain and found that appellant was partially disabled.

In an October 30, 2017 treatment note, Dr. Wardell opined that appellant was totally disabled due to his right knee sprain. He recommended physical therapy. Dr. Wardell completed Form CA-17 and CA-20 reports on November 28, 2017 diagnosing right knee sprain and finding that he was disabled. He indicated by checking a box marked "Yes" on the Form CA-20 that

³ 5 U.S.C. § 8101 *et seq.*

appellant's condition was caused or aggravated by the employment activity of stepping out of the employing establishment shuttle and hyperextending his right knee.

By decision dated December 13, 2017, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that the diagnosed conditions are causally related to the accepted October 26, 2017 employment incident.

On January 11, 2018 appellant, through then-counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The oral hearing took place on June 8, 2018.

OWCP continued to receive medical evidence. Dr. Wardell provided a summary of his treatment notes from October 27 through December 27, 2017 in which he reported that appellant injured his right knee at work on October 26, 2017 when he hyperextended it stepping out of an employing establishment shuttle van and diagnosed right knee sprain. On December 27, 2017 he again diagnosed right knee sprain. In a January 3, 2018 note, Dr. Wardell reported that on October 26, 2017 appellant informed him that he had injured his right knee. On that date, he had examined him for previously accepted employment injuries of right wrist sprain and lumbar radiculopathy.⁴ Dr. Wardell explained that it was not normal procedure for him to place comments in the notes regarding other body areas not implicated by the accepted work injury. He reported significant objective findings including flexion contracture of the knee, crepitus and snapping on circumduction over the suprapatellar region. Dr. Wardell recommended a magnetic resonance imaging (MRI) scan of the right knee. He completed form reports on January 26 and February 26, 2018 diagnosing right knee sprain and finding that appellant was totally disabled.

On January 23, 2018 appellant underwent a right knee MRI scan. In a June 13, 2018 report, Dr. Wardell found that the MRI scan demonstrated objective evidence of articular cartilage damage of the medial femoral condyle. He opined that this finding was consistent with a hyperextension injury to the right knee as the medial femoral condyle was located at the distal end of the femur and articulated with the tibia. Dr. Wardell found that if the knee is hyperextended the anterior edge of the tibia will impact against the medial femoral condyle causing articular cartilage damage as noted in appellant's MRI scan. He concluded that to a reasonable degree of medical certainty, the mechanism of injury, hyperextension of the right knee, was consistent with the objective evidence on MRI scan of medial femoral condyle injury.

By decision dated July 19, 2018, OWCP's hearing representative affirmed the December 13, 2017 decision.

On July 10, 2019 appellant, through counsel, requested reconsideration and provided additional medical evidence. In a July 2, 2019 report, Dr. Wardell included his history of injury on October 26, 2017 when he hyperextended his right knee at work stepping of an employing establishment shuttle van. He opined that this hyperextension injury impacted the medial femoral condyle against the medial tibia resulting in articular cartilage damage of the medial femoral

⁴ In OWCP File No. xxxxxx909, OWCP accepted appellant's claim for right wrist sprain, left hip, thigh, foot, and ankle sprains, left sacroiliac ligament sprain, and post-traumatic stress disorder due to an accepted May 26, 2015 employment injury.

condyle which was consistent with appellant's symptoms and his course of medical treatment. Dr. Wardell diagnosed permanent aggravation of chondromalacia of the medial femoral condyle as a result of the accepted employment incident. He noted that he had relatively asymptomatic chondromalacia of the right knee prior to October 26, 2017 and that the hyperextension injury with impact of the medial femoral condyle of the femur against the medial tibia caused the cartilage in between the bones to be squeezed resulting in additional damage to the cartilage and increased symptoms. Dr. Wardell opined that the mechanism of injury on October 26, 2017 was competent to produce an aggravation of the underlying condition, and that he believed that this had occurred, rather than the MRI scan merely demonstrating appellant's preexisting condition without impact of the accepted employment incident.

By decision dated September 19, 2019, OWCP denied modification of its prior decision.⁵

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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,⁷ 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.⁸ 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.⁹

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. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.¹⁰

⁵ The case record initially transmitted to the Board did not include Dr. Wardell's October 26, 2017 report. On March 12, 2021 the Board issued an *Order to Complete Record Within 30 Days*, Docket No. 20-0216 (issued March 12, 2021). OWCP complied with this order on March 1, 2022 providing the Board with a copy of the October 26, 2017 report and the completed record.

⁶ *Supra* note 3.

⁷ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *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).

⁹ *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).

¹⁰ *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).

The evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹¹ 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 incident identified by the employee.¹²

ANALYSIS

The Board finds that this case is not in posture for decision.

In his reports dated June 13, 2018 and July 2, 2019, Dr. Wardell opined that appellant's underlying right knee condition of asymptomatic chondromalacia was aggravated by his October 26, 2017 employment incident of hyperextension of the right knee resulting in further articular cartilage damage of the medial femoral condyle. He explained how the hyperextension of his right knee with impact of the medial femoral condyle of the femur against the medial tibia caused the cartilage in between the bones to be squeezed which resulted in additional damage to the cartilage and increased symptoms of the medial femoral condyle of the femur and the medial tibia as noted in appellant's MRI scan.

Dr. Wardell's reports suggest a pathophysiological explanation as to how appellant's hyperextension injury of the right knee resulted in additional damage of his preexisting asymptomatic chondromalacia of the right knee. Accordingly, while these reports from Dr. Wardell are not fully rationalized, they are sufficient to require further development of appellant's claim.¹³

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁴ OWCP has an obligation to see that justice is done.¹⁵

On remand OWCP shall prepare a statement of accepted facts and obtain a rationalized opinion from a physician in the appropriate field of medicine as to whether the accepted

¹¹ *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).

¹² *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).

¹³ *S.R.*, Docket No. 20-0313 (issued April 11, 2022); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹⁴ *Id.*; *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁵ *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

employment incident caused, contributed to, or aggravated the diagnosed right knee condition.¹⁶ If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why their opinion differs from that of Dr. Wardell. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 15, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁶ *M.S.*, Docket No. 20-1095 (issued March 29, 2022); *C.G.*, Docket No. 20-1121 (issued February 11, 2021); *A.G.*, Docket No. 20-0454 (issued October 29, 2020).