United States Department of Labor
Employees' Compensation Appeals Board

K.V., Appellant	)	
	)	
and	)	**Docket No. 22-0698**
	)	**Issued: August 22, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Baltimore, MD, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On April 4, 2022 appellant, through counsel, filed a timely appeal from a March 24, 2022 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 knee condition causally related to the accepted July 26, 2021 employment incident.

FACTUAL HISTORY

On July 29, 2021 appellant, then a 59-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 26, 2021 he injured both knees when walking up the stairs while in the performance of duty. He explained that he felt a tear in his left and right knees, followed by excruciating pain. Appellant stopped work on July 26, 2021.

In an August 2, 2021 development letter, OWCP informed appellant of the deficiencies of his claim, requested additional factual and medical evidence, and provided a questionnaire for his completion. It afforded him 30 days to respond.

OWCP thereafter received an April 6, 2021 note from Dr. Rakhee Lalla, an osteopath Board-certified in neurology, finding that appellant had reached maximum medical improvement in regard to an unnamed condition. In July 27, 2021 notes, Jon Schoeffel, a physician assistant, reported that Dr. Theodore Manson, a Board-certified orthopedic surgeon, had performed a left total knee arthroplasty in March 2019.

On August 18, 2021 Dr. Manson diagnosed acute meniscal tear of the knee and found that appellant was totally disabled.

By decision dated September 7, 2021, OWCP accepted that the July 26, 2021 employment incident occurred, as alleged, but denied appellant's claim as causal relationship was not established between his diagnosed medical condition and his accepted July 26, 2021 employment incident.

On September 20, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP continued to receive evidence, including a September 17, 2021 note from Dr. Manson, which explained that appellant had fallen "at work where he sustained an injury to his left total knee arthroplasty." Dr. Manson also reported that appellant was developing pain in his right knee, but on physical examination showed no instability and no focal issues. He also found greater left knee laxity in full extension. Dr. Manson recommended a right knee magnetic resonance imaging (MRI) scan and additional work restrictions.

On December 21, 2021 Dr. Sarah Hobart, an orthopedic surgeon, performed right knee arthroscopic partial medial and lateral meniscectomies due to right knee medial and lateral meniscal tears.

An oral hearing was held on January 7, 2022.

Appellant submitted a September 17, 2021 duty status report (Form CA-17) completed by Dr. Manson, which listed both knees as affected by the accepted July 26, 2021 employment incident.

In a September 28, 2021 note, Dr. Manson indicated that appellant's right knee symptoms of pain, catching, locking, and crepitus with range of motion had not improved. He explained that appellant injured his right knee in a twisting injury at work on July 26, 2021. Dr. Manson recommended right knee magnetic resonance imaging (MRI) scan to rule out internal derangement and meniscal tear in the right knee.

On October 14, 2021 Dr. Manson completed an attending physician's report (Form CA-20), which listed a history of bilateral knee injuries and diagnosed right knee pain. He checked a box marked "Yes," indicating that appellant's condition was caused or aggravated by an employment activity.

On October 19, 2021 appellant underwent a right knee MRI scan, which demonstrated tears of the posterior horn of the medial meniscus and a small radial tear of the meniscal body.

By decision dated March 24, 2022, OWCP's hearing representative affirmed the September 7, 2021 decision. He noted that appellant was alleging both right and left knee injuries as a result of the accepted January 26, 2021 employment incident.

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 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 whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. There are two components involved in establishing fact of injury. The first component to be established 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

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[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).

[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).

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 the employment incident identified by the employee.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a knee condition causally related to the accepted January 26, 2021 employment incident.

In his report dated August 18, 2021, Dr. Manson diagnosed acute meniscal tear of the knee. He did not, however, provide an opinion on the issue of causal relationship. Likewise, Dr. Hobart completed a surgical report on December 21, 2021 and diagnosed right knee medial and lateral meniscal tears without providing an opinion on the issue of causal relationship. The Board has held that a medical report that does not offer an opinion on causal relationship is of no probative value and, thus, is insufficient to establish the claim.[10] Therefore, Dr. Manson's August 18, 2021 report and Dr. Hobart's December 21, 2021 report are insufficient to establish causal relationship.

In additional notes dated September 17 and 28, 2021, and a Form CA-20 dated October 14, 2021, Dr. Manson diagnosed an unspecified injury to appellant's left knee, resulting in a total left knee arthroplasty and right knee pain. The Board has held that pain is a symptom, not a diagnosis of a medical condition.[11] On April 14, 2021 Dr. Lalla did not provide a diagnosis. In a Form CA-17 dated September 17, 2021, Dr. Manson also did not provide an diagnosis. The Board has held that medical reports lacking a firm diagnosis are of no probative value.[12] Thus, this evidence is insufficient to establish the claim.

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[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] *T.D.,* Docket No. 19-1779 (issued March 9, 2021); *L.B.,* Docket No. 18-0533 (issued August 27, 2018); *D.K.,* Docket No. 17-1549 (issued July 6, 2018).

[11] *See E.S.,* Docket No. 21-0189 (issued November 16, 2021); *C.S.,* Docket No. 20-1354 (issued January 29, 2021); *D.R.,* Docket No. 18-1408 (issued March 1, 2019); *D.A.,* Docket No. 18-0783 (issued November 8, 2018). *L.T.,* Docket No. 20-0582 (issued November 15, 2021); *E.S.*; *C.S., id.*; *J.P.,* Docket No. 20-0381 (issued July 28, 2020); *R.L.,* Docket No. 20-0284 (issued June 30, 2020).

[12] *Id.*

The remaining medical evidence of record consists of diagnostic testing reports and notes by a physician assistant. The Board has held that diagnostic studies, standing alone, lack probative value and are insufficient to establish the claim.[13] In addition, certain healthcare providers such as physician assistants are not considered "physician[s]" as defined under FECA.[14] Their medical findings and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[15]

As appellant has not submitted medical evidence establishing causal relationship between any of his diagnosed knee conditions and the accepted July 26, 2021 employment incident, the Board finds that he has not met his burden of proof.

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 knee condition causally related to the accepted January 26, 2021 employment incident.

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[13] *See B.R.,* Docket No. 21-1109 (issued December 28, 2021); *J.K.,* Docket No. 20-0591 (issued August 12, 2020); *A.B.,* Docket No. 17-0301 (issued May 19, 2017).

[14] Section 8101(2) provides that under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* 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); *see also E.T.,* Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA).

[15] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the March 24, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 22, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board