United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	
DEPARTMENT OF VETERANS AFFAIRS, EDWARD P. BOLAND VA MEDICAL CENTER, Leeds, MA, Employer	)	**Docket No. 22-0107** **Issued: June 27, 2022**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On October 31, 2021 appellant filed a timely appeal from a July 6, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 right knee condition causally related to the accepted January 10, 2020 employment incident.

FACTUAL HISTORY

On January 24, 2020 appellant, then a 61-year-old electrician, filed a traumatic injury claim (Form CA-1) alleging that on January 3, 2020 he sustained pain and swelling in his knee when he

[1] 5 U.S.C. § 8101 *et seq*.

was looking for electrical parts to repair a switch while in the performance of duty. He noted that he was getting up from the floor, pushing with his right knee, when he heard a popping noise from his knee, followed by severe pain and slight swelling. On the reverse side of the claim form, appellant's supervisor, T.F., acknowledged that appellant was injured in the performance of duty.

On January 12, 2020 appellant underwent an x-ray scan of his right knee, which revealed mild anterior soft tissue swelling and edema, but no significant bony or articular findings.

In a January 20, 2020 work excuse note, Dr. Agnieszka Nicora, a Board-certified emergency medicine physician, advised that appellant should be off work for three days, followed by light-duty work pending evaluation by a physician for clearance. She also instructed appellant to avoid repetitive bending and kneeling and to protect the injured area.

Appellant stopped work on January 21, 2020.

A January 23, 2020 work excuse note from David Allen, a nurse practitioner, noted that appellant was seen on that date and advised that appellant could return to work on February 3, 2020 pending an appointment with a specialist.

January 27, 2020 progress notes by Dr. Robert Cross, a Board-certified physician specializing in occupational medicine, related that appellant worked as an electrician and, while getting off the floor after replacing a switch, pushed up on his right knee and felt an immediate "pop," pain, and swelling. Dr. Cross indicated that appellant believed the injury occurred on January 3, 2020 and related his history of treatment. Appellant reported that he was unable to work on the day of his visit because of the pain. Dr. Cross noted that appellant was ambulating with one crutch with difficulty. Examination of appellant's right knee revealed mild swelling around the patella, tenderness along bilateral meniscus, decreased flexion and extension, and an inability to bear weight without significant grimacing. Dr. Cross diagnosed right knee pain and advised that appellant should be off work pending evaluation by an orthopedist.

In a January 29, 2020 report, Dr. Andrew Chertoff, a Board-certified orthopedic surgeon, related that on January 3, 2020 appellant felt a pop in his knee when he got up off the floor while in the performance of duty and had right knee pain since then. He reviewed appellant's x-ray scans and ultrasound, which revealed no abnormalities. Dr. Chertoff recommended a magnetic resonance imaging (MRI) scan. In a work excuse note of even date, he advised that appellant should be off work pending MRI scan results.

In a development letter dated March 13, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In an undated statement, appellant responded to OWCP's development questionnaire, explaining that he was sitting on the floor in the electric shop, looking for parts to repair a switch, when he tried to get up off the floor using his right leg to push up. He heard a pop from his knee and felt pain. Appellant noted that he had not sustained any other injuries and did not have any similar disability or symptoms before the claimed employment incident.

Appellant also submitted an undated witness statement from a coworker, G.S., who noted that on January 10, 2020 he and appellant were looking for repair parts for a switch. He was looking in the lower cabinets and tried to stand up. G.S. indicated that appellant said he heard a pop from his knee and needed help getting off the floor. He also noted that appellant appeared to be in pain.

Appellant underwent an ultrasound on January 20, 2020, which revealed no evidence of deep venous thrombosis.

In the January 20, 2020 emergency medicine notes, Dr. Nicora related that, due to recent inflammation and discomfort in appellant's left knee, he had been putting more pressure on his right leg. She noted that appellant worked as an electrician and it was typical for him to work on his knees with repeated kneeling, standing, and changing position. Specifically, two days prior to his visit, he was bending down and put a great deal of pressure on his right knee to stand up and had right knee pain since. Dr. Nicora's examination revealed bilateral inferior patellar skin hypertrophy consistent with repeated kneeling, and an ultrasound revealed no venous thromboembolism or Baker's cyst. She diagnosed right knee patellar bursitis "likely from repeated trauma at work (kneeling)" and advised appellant to avoid kneeling and repetitive bending until his symptoms improved.

A March 24, 2020 narrative medical report from Dr. Chertoff related appellant's history of injury and noted that appellant reported no previous symptoms or treatment to his right knee. Dr. Chertoff noted that appellant continued to complain of pain, tenderness, and aching with locking, buckling, and giving way. He diagnosed internal derangement of the right knee and again recommended an MRI scan of the right knee to better understand the cause of appellant's symptoms. In an April 29, 2020 addendum, Dr. Chertoff corrected appellant's date of injury from January 3 to 10, 2020.

By decision dated May 1, 2020, OWCP denied appellant's traumatic injury claim, finding that the medical evidence submitted was insufficient to establish causal relationship between his diagnosed condition and the accepted January 3 or January 10, 2020 employment incident.

In a May 26, 2020 narrative medical report, Dr. Chertoff added that appellant was employed as an electrician and his work included constant standing, bending, kneeling, lifting, twisting, and pivoting. Based on appellant's history of injury, his review of appellant's knee x-rays, his evaluation of appellant's knee, and appellant's employment factors, he opined that "there is a possibility that the knee situation could have been caused by the injury of January 10, 20[2]0."

Appellant also submitted a number of addenda to earlier-submitted medical reports. In a July 13, 2020 addendum to her January 20, 2020 report, Dr. Nicora noted patient's assertion that, at the time of the January 20, 2020 examination, his knee pain had been ongoing for more than 10 days. In a July 27, 2020 addendum to a January 27, 2020 report, Kelly Loven, a nurse practitioner, corrected appellant's date of injury to January 10, 2020. In March 9 and 17, 2021 addenda, Dr. Nicora clarified that appellant was treated for right knee pain.

On April 7, 2021 appellant requested reconsideration. He submitted a statement describing his history of injury and treatment and clarifying that he had initially misstated his date of injury as January 3, 2020, when it actually occurred on January 10, 2020.

By decision dated July 6, 2021, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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,[3] 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.[4] 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.[5]

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 and can be established only by medical evidence.[6]

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[7] 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

[2] *Supra* note 1.

[3] *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).

[4] *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).

[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).

[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).

[7] *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).

nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted January 10, 2020 employment incident.

In her January 20, 2020 emergency medicine notes, Dr. Nicora related appellant's history of injury and diagnosed right knee patellar bursitis "likely from repeated trauma at work (kneeling)." Although she suggested a work-related cause for appellant's knee condition, she did not provide a rationalized medical opinion relating the specific diagnosed condition to the January 10, 2020 employment incident. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.[9] Therefore, this report is insufficient to establish appellant's traumatic injury claim.

In his May 26, 2020 narrative medical report, Dr. Chertoff opined that, based on appellant's history of injury, his review of appellant's knee x-rays, his evaluation of appellant's knee, and appellant's employment factors, "there is a possibility that the knee situation could have been caused by the injury of January 10, 20[2]0." The Board has held that medical opinions that suggest that a condition "could" be caused by work activities are speculative or equivocal in character and have limited probative value.[10] Accordingly, this report is also insufficient to establish causal relationship.

The January 27, 2020 progress notes signed by Dr. Cross described the accepted January 10, 2020 employment incident and diagnosed right knee pain. Similarly, in January 29 and March 24, 2020 reports, Dr. Chertoff described the employment incident and, in the March 24 report, diagnosed internal derangement of the right knee and recommended an MRI scan to better understand the cause of appellant's symptoms. However, none of these reports offered an opinion on causal relationship. The Board has held that medical evidence that lacks an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[11] For this reason, this medical evidence is insufficient to meet appellant's burden of proof.

In support of his claim, appellant submitted a January 23, 2020 report from a nurse practitioner. However, certain healthcare providers such as nurse practitioners[12] are not considered

[8] *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).

[9] *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[10] *J.W.*, Docket No. 18-0678 (issued March 3, 2020).

[11] *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[12] *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

"physician[s]" as defined under FECA.[13] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[14]

The remaining medical evidence consisted of a January 12, 2020 x-ray scan of appellant's right knee and a January 20, 2020 ultrasound. The Board has held, however, that diagnostic testing reports, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and a diagnosed condition.[15] For this reason, this evidence is also insufficient to meet appellant's burden of proof.

As appellant has not submitted medical evidence sufficient to establish that his right knee condition is causally related to the accepted January 10, 2020 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

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 right knee condition causally related to the accepted January 10, 2020 employment incident.

[13] 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* 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 R.L.*, Docket No. 19-0440 (issued July 8, 2019) (physical therapists are not considered physicians under FECA); *T.J.*, Docket No. 19-1339 (issued March 4, 2020) (nurse practitioners are not considered physicians under FECA).

[14] *Id*.

[15] *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

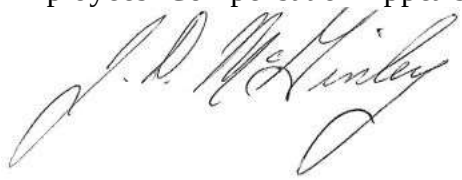
ORDER

IT IS HEREBY ORDERED THAT the July 6, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 27, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board



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