United States Department of Labor
Employees' Compensation Appeals Board

B.T., Appellant	)	
and	)	**Docket No. 22-0350**
	)	**Issued: May 16, 2022**
DEPARTMENT OF THE AIR FORCE, AIR NATIONAL GUARD, Cheyenne, WY, Employer	)	

Appearances:
Appellant, pro se
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 January 5, 2022 appellant filed a timely appeal from an August 30, 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.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish a knee condition causally related to the accepted June 24, 2021 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the August 30, 2021 decision, OWCP received additional evidence and appellant submitted new evidence with his appeal. 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*.

FACTUAL HISTORY

On June 29, 2021 appellant, then a 49-year-old administrative officer, filed a traumatic injury claim (Form CA-1) alleging that at 4:00 p.m. on June 24, 2021 he injured both knees while in the performance of duty. He indicated that on that date he used the rowing machine in the gym, fast walking and other exercises. The next day both of appellant's knees were swollen. Appellant related, "I believe the sustained fast walking irritated my knees." The employing establishment acknowledged that appellant was in the performance of duty at the time the incident occurred. It provided appellant's duty hours as 7:00 a.m. to 4:00 p.m. Appellant did not stop work.

A nurse practitioner evaluated appellant on June 28, 2021 for bilateral knee pain and swelling after exercising on June 24, 2021. He noted that he had a history of right knee anterior cruciate ligament (ACL) surgery in 1989. The nurse practitioner provided work restrictions.

In a report dated June 29, 2021, Dr. Ryan A. Aukerman, a Board-certified orthopedic surgeon, evaluated appellant for swelling and pain in the knees. Dr. Aukerman opined that, "[Appellant] has been trying to train to do the time to walk and said that his knee just blew up on him." He noted that appellant had right ACL surgery in October 1989. Dr. Aukerman diagnosed bilateral knee pain and effusion and referred appellant for magnetic resonance imaging (MRI) scans of the knees.

In a development letter dated June 13, 2021, OWCP advised appellant of the deficiencies of his claim and requested that he submit additional factual and medical evidence, including an explanation of whether he was in the performance of duty at the time of the alleged incident. By separate letter of even date, OWCP requested additional information from the employing establishment, including whether he was required to participate in the physical fitness program and whether the agency derived any benefit from his participation. It afforded both appellant and the employing establishment 30 days to respond.

Thereafter, OWCP received an attending physician's report (Form CA-20) dated June 28, 2021 from a nurse practitioner.

In a response received by OWCP on July 13, 2021, appellant related that he was injured exercising at the gym at work during his duty hours. He had no prior left knee condition but had previously injured his right knee. Appellant indicated that he was "speed walking on a treadmill and utilizing the rowing machine." He related that the employing establishment benefited from his exercising as he was "able to pass the military fitness test."

On July 13, 2021 the employing establishment advised that, while appellant was not required to participate in physical fitness, he was "a dual-status employee and his federal position hinges on his continued Wyoming National Guard membership." It asserted that he was "highly encouraged to participate in the authorized physical fitness policy" and that it derived a benefit from "allowing employees to engage in physical fitness training while on duty in a regular pay status." The employing establishment noted that appellant's work schedule was 7:00 a.m.to 4:30 p.m. as he worked a compressed schedule.

On July 27, 2021 Dr. Aukerman opined that appellant had sustained an injury to his knees on June 24, 2021 walking swiftly on a treadmill and rowing at the gym. He noted that appellant did not have knee pain prior to the incident. Dr. Aukerman opined that the left knee was "a completely new injury" and that the right knee "has likely been exacerbated by fast walking, pounding on the treadmill or deep flexion with rowing." He asserted that the requested MRI scans of the knees should be approved and indicated that he could not render another diagnosis or provide a treatment plan without the MRI scans.

By decision dated August 30, 2021, OWCP denied appellant's traumatic injury claim. It found that the medical evidence was insufficient to show that he sustained a medical condition causally related to the accepted 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 of FECA, that the claim was timely filed within the applicable time limitation of FECA,[4] that an injury was sustained while in the performance of duty as alleged; and that any disability or specific 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 on 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.[7] Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[8] The second component is whether the employment incident caused a personal injury.[9] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[10]

[3] *Supra* note 1.

[4] *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

[6] *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

[8] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[9] *Id*.

[10] *D.V.*, Docket No. 19-1642 (issued June 4, 2020); *Shirley A. Temple*, 48 ECAB 404 (1997).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[11] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.[12] 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.[13]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a knee condition causally related to the accepted June 24, 2021 employment incident.

In a report dated July 27, 2021, Dr. Aukerman provided a history of appellant injuring his knees on June 24, 2021 walking on a treadmill and rowing on a machine at the gym. He noted that, prior to this time, appellant had not experienced knee pain. Dr. Aukerman opined that appellant had sustained a new left knee injury. He further found that walking on the treadmill or performing deep flexion on the rowing machine had likely aggravated his right knee condition. While he noted that appellant had no symptoms prior to the injury, he provided no additional rationale supporting causation. The Board has held that the fact that a claimant was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.[14] Further, Dr. Aukerman did not explain the mechanism of how the accepted employment incident of appellant walking and rowing on a machine was competent to cause a diagnosed condition and, thus, his opinion is of little probative value.[15]

On June 29, 2021 Dr. Aukerman noted that appellant related that his knees "blew up" on him while he was training. He diagnosed bilateral knee effusion and pain and recommended MRI scans of the bilateral knees. Dr. Aukerman, however, did not specifically address the cause of the diagnosed conditions. 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.[16]

Appellant further submitted reports from a nurse practitioner. The Board, however, has held that medical reports signed solely by a nurse practitioner are of no probative value as such

[11] *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *T.H., supra* note 7.

[12] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

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

[14] *See S.K.*, Docket No. 19-0391 (issued December 13, 2019); *M.B.*, Docket No. 19-0840 (issued October 2, 2019).

[15] *See S.K.*, *id.*; *B.P.*, Docket No. 19-0777 (issued October 8, 2019).

[16] *C.S.*, Docket No. 18-1633 (issued December 30, 2019); *R.C.*, Docket No. 19-0376 (issued July 15, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

providers are not considered physicians as defined under FECA.[17] This evidence, therefore, is insufficient to establish appellant's burden of proof.

On appeal appellant asserts that he was in the performance of duty at the time of the June 24, 2021 employment incident and maintains that he has submitted sufficient evidence to establish an injury causally related to the work incident. OWCP accepted that he was in the performance of duty when the accepted June 24, 2021 employment incident occurred. As discussed, however, appellant has not submitted a rationalized medical opinion establishing causal relationship between a diagnosed condition and the accepted June 24, 2021 employment incident, and thus he has not met his burden of proof to establish his 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 knee condition causally related to the accepted June 24, 2021 employment incident.

[17] Section 8101(2) of FECA provides that a 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 M.C.*, Docket No. 19-1074 (issued June 12, 2020); *S.L.*, Docket No. 19-0607 (issued January 28, 2020) (nurse practitioners are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 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