

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

_____	)	
<b>W.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-0400</b>
	)	<b>Issued: November 4, 2022</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Brooklyn, NY, Employer</b>	)	
_____	)	

*Appearances:*  
Bruce Howard Didriksen, for the appellant<sup>1</sup>  
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 January 18, 2022 appellant, through his representative, filed a timely appeal from a December 2, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

---

<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish a left knee condition causally related to the accepted July 27, 2020 employment incident.

## FACTUAL HISTORY

On July 30, 2020 appellant, then a 54-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 27, 2020 he injured his left knee when delivering mail while in the performance of duty. He noted that he dropped a letter and bent down to his left side to pick it up and felt a pop in the left knee followed by pain and swelling. Appellant stopped work on July 28, 2020.

On July 28, 2020 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) authorizing appellant to seek medical care related to his left knee. In Part B, attending physician's report, of even date, Dr. Vijay Chadderwala, an osteopath and family medicine specialist, noted that there was no history of concurrent or preexisting injury and that x-rays were negative for acute fracture. He diagnosed left knee pain.

In an attending physician's report (Form CA-20) also dated July 28, 2020, Dr. Chadderwala noted that appellant related a history of left knee pain after his knee popped while picking up an object. He diagnosed left knee pain and checked a box marked "Yes" that it was caused or aggravated by the employment activity described. Dr. Chadderwala also completed a form report of even date and recommended that appellant remain out of work and undergo an evaluation by an orthopedist.

A duty status report (Form CA-17) dated July 31, 2020 by an unknown medical provider contained a diagnosis of left knee injury due to a July 27, 2020 employment incident and recommended that appellant remain out of work.

In a report dated August 13, 2020, Dr. Richard Bochner, a Board-certified orthopedic surgeon, indicated that appellant complained of left knee pain, which he attributed to an injury at work on July 27, 2020 when he bent down to pick up a piece of mail, twisted his knee, and felt a pop. Appellant noted that he stretched his knee and continued walking on his route, but woke up the next day with increased pain and swelling. Dr. Bochner performed a physical examination, which revealed reduced range of motion, tenderness, and a positive McMurray's test laterally on the left. He diagnosed a left knee injury and noted that he suspected a torn lateral meniscus with mild underlying arthritis. Dr. Bochner recommended magnetic resonance imaging (MRI) scan of the left knee.

In CA-17 forms dated August 7 and 13 and September 10, 2020, Dr. Bochner diagnosed a left knee injury due to a July 27, 2020 employment incident and recommended that appellant remain out of work.

In a September 30, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary and afforded him 30 days to respond.

OWCP thereafter received a September 10, 2020 report by Dr. Bochner, who noted that appellant continued to relate complaints of left knee pain and that his physical examination was consistent with a torn lateral meniscus. Dr. Bochner again recommended an MRI scan of the left knee.

A report of MRI scan of the left knee dated September 22, 2020 revealed medial and patellofemoral compartment arthrosis, degenerative tearing of the body and posterior horn of the medial meniscus, knee effusion with synovitis, and a low-grade medial collateral ligament (MCL) sprain.

In a follow up report dated October 1, 2020, Dr. Bochner reviewed appellant's MRI scan results and performed a physical examination, which revealed persistent posterior left knee pain, lateral-sided tenderness, and mild swelling. He indicated that the MRI scan showed degenerative changes and a degenerative meniscal injury. Dr. Bochner opined that appellant's pain was secondary to an exacerbation of underlying degenerative disease. He recommended physical therapy and recommended that appellant remain out of work.

In an initial evaluation report dated October 6, 2020, Thomas Ahrens, a physical therapist, noted that appellant related a history of a pop and pain in the left knee after bending into a squat position at work on July 27, 2020. He recommended therapeutic treatments one to three times per week for six to eight weeks. Appellant underwent additional physical therapy to his left knee on October 11, 2020.

In a letter dated October 27, 2020, Dr. Bochner opined that appellant was unable to perform his regular work duties as a result of a July 27, 2020 employment injury.

In a Form CA-20 dated November 2, 2020, Dr. Bochner diagnosed a left knee injury and checked a box marked "Yes" indicating that the condition was caused or aggravated by bending down to pick up mail on July 27, 2020.

By decision dated November 13, 2020, OWCP accepted that the July 27, 2020 employment incident occurred as alleged. However, it denied the claim, finding that the medical evidence of record was insufficient to establish that the diagnosed left knee conditions were causally related to the accepted employment incident.

On November 20, 2020 appellant requested reconsideration of the November 13, 2020 decision.

OWCP thereafter received November 2 and December 3, 2020 follow-up reports by Dr. Bochner, who noted appellant's ongoing complaints in the left knee. Dr. Bochner performed physical examinations and documented pain, swelling, and weakness in the left knee. He diagnosed a left knee injury and continued to recommend physical therapy.

In a narrative report dated November 20, 2020, Dr. Bochner opined that appellant had exacerbated his preexisting left knee osteoarthritis and sustained a sprain of the MCL when he bent down to pick up a letter and felt a pop in his knee on July 27, 2020. He noted that appellant had no symptoms in his knee prior to the incident and opined that his current condition was causally

related to the July 27, 2020 employment incident. Dr. Bochner recommended ongoing physical therapy and possible arthroscopic surgery to treat the meniscal injury.

In CA-20 forms dated December 3, 2020 and January 4, 2021, Dr. Bochner continued to diagnose a left knee injury and checked a box marked “Yes” indicating that it was caused or aggravated by bending down to pick up mail on July 27, 2020. He further noted that there was no history of a prior injury to the left knee.

By decision dated February 2, 2021, OWCP denied modification of the November 13, 2020 decision.

On August 31, 2021 appellant, through his representative, requested reconsideration of the February 2, 2021 decision.

In support of his request, appellant submitted a consultation report dated June 16, 2021 by Dr. Eric Berger, a pain management specialist, who noted that appellant related a history of feeling a pop and pain in his left knee while bending over to pick up a piece of mail on July 27, 2020. Dr. Berger performed a physical examination of the left knee, which revealed a positive drawer sign and McMurray’s test, palpable swelling, and exquisite tenderness along the medial and lateral aspects of the knee and infra- and suprapatellar regions of the kneecap. He reviewed the records of Drs. Chadderwala and Bochner and the September 22, 2020 MRI scan. Dr. Berger diagnosed a meniscus tear and MCL sprain of the left knee and opined within a high degree of medical certainty that appellant’s knee injury was caused by flexion and extension movements in his knee while working on July 27, 2020. He explained that bending and straightening motion of the knee on July 27, 2020 led to mechanical derangement and awkward motion in the knee which caused a tear to the medial meniscus. Dr. Berger discussed the anatomy and physiology of the various ligaments and other structures of the knee joint, and noted that traction, compression, and/or torque forces such as falling or twisting the knee, increased pressure and joint reaction forces that damaged the medial meniscus which then tore, causing further irritation and inflammation.

By decision dated December 2, 2021, OWCP denied modification of the February 2, 2021 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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,<sup>3</sup> that the claim was timely filed within the applicable time limitation period of FECA, 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

---

<sup>3</sup> *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.<sup>4</sup> 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.<sup>5</sup>

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, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.<sup>6</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>7</sup> 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.<sup>8</sup>

### ANALYSIS

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

In his June 16, 2021 report, Dr. Berger diagnosed a meniscus tear and MCL sprain in the left knee and opined that the conditions were caused by flexion and extension movements in appellant's knee while working on July 27, 2020. He explained that the bending and straightening motion of the knee on July 27, 2020 led to mechanical derangement and awkward motion in the knee which caused a tear to the medial meniscus. Dr. Berger noted that traction, compression, and/or torque forces such as falling or twisting the knee increase pressure and joint reaction forces that damage the medial meniscus which then tears, causing further irritation and inflammation.

The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest a causal connection beyond all possible doubt. Rather, the evidence required is only that which is necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.<sup>9</sup> As Dr. Berger provided a comprehensive review of the medical

---

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *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).

<sup>7</sup> *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).

<sup>8</sup> *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>9</sup> *T.F.*, Docket No. 19-1900 (issued October 27, 2020); *W.M.*, Docket No. 17-144 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011).

record and case history and a pathophysiological explanation as to how the accepted July 27, 2020 employment incident resulted in an injury to appellant's left knee, further development is required.<sup>10</sup>

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 for the development of the evidence.<sup>11</sup> OWCP has an obligation to see that justice is done.<sup>12</sup>

On remand OWCP shall refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts, for an examination and a rationalized medical opinion as to whether the accepted July 27, 2020 employment incident either caused or aggravated his diagnosed conditions.<sup>13</sup> If the second opinion disagrees with the explanation provided by Dr. Berger, he or she must provide a fully-rationalized explanation as to why the accepted employment incident was insufficient to have caused or aggravated appellant's diagnosed conditions of exacerbation of left knee osteoarthritis, medial meniscus tear, and MCL sprain. After this and other such further development of the case record as deemed necessary, OWCP shall issue a *de novo* decision.<sup>14</sup>

### CONCLUSION

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

---

<sup>10</sup> See *T.F., id.; 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).

<sup>11</sup> See *id.*; see also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy Hammons*, 51 ECAB 219, 223 (1999).

<sup>12</sup> See *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).

<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

<sup>14</sup> The Board notes that the employing establishment executed 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); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 2, 2021 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: November 4, 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