

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

C.B., Appellant)	
)	
and)	Docket No. 20-1561
)	Issued: October 31, 2022
U.S. POSTAL SERVICE, SAINT BERNARD)	
POST OFFICE, Cincinnati, OH, Employer)	
)	

Appearances: *Case Submitted on the Record*
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 27, 2020 appellant, through counsel, filed a timely appeal from a June 4, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over 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 her burden of proof to establish a right knee condition causally related to the accepted January 11, 2019 employment incident.

FACTUAL HISTORY

On January 11, 2019 appellant, then a 55-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sprained her right knee when she stepped over a large curb with a one-foot drop and felt a pop in her knee while in the performance of duty. She stopped work on that date.

In a January 11, 2019 emergency department note, Kristina Feder, a nurse practitioner diagnosed right knee sprain and indicated that appellant could return to work on January 12, 2019.

In a January 17, 2019 narrative report, Dr. Brion P. Moran, a Board-certified orthopedic surgeon, noted that on November 21, 2018 appellant was bit by a dog and injured her right knee running upstairs trying to get away from the dog. Appellant noted mild discomfort thereafter. She reported that she was again attacked by the same dog on January 5, 2019. Appellant later returned to work on January 11, 2019 and injured her right knee when it gave out on her while taking a step up on a curb. She stopped work following this incident. Dr. Moran indicated that appellant experienced significant pain that she did not have prior to the work incident. He diagnosed right knee sprain and moderate osteoarthritis, as demonstrated on x-ray. In a work status note of even date, Dr. Moran recommended that appellant should remain off work until further testing was done. In a duty status report (Form CA-17) of even date, he again diagnosed right knee sprain and indicated that it was caused by the claimed January 11, 2019 employment incident.

In a February 4, 2019 development letter, OWCP informed appellant of the deficiencies in her claim. It advised her of the additional factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In response, appellant submitted a January 11, 2019 report from Dr. Paul Metzger, an emergency medicine specialist, who diagnosed right knee sprain. In an emergency department report of even date, Dr. Timothy W. Dake, Board-certified in emergency medicine, noted that appellant presented with right knee pain. He indicated that she previously injured her knee when she was chased by a dog while walking up stairs. Dr. Dake reported that appellant felt knee pain earlier that day while taking a high step. Appellant reported that she felt a pop in her knee. Dr. Dake diagnosed right knee sprain.

A February 11, 2019 magnetic resonance imaging (MRI) scan of appellant's right knee revealed mild tricompartmental degenerative changes and a partial tear of the posterior root of the medial meniscus.

In response to OWCP's development questionnaire, appellant indicated that she had not been working since her January 11, 2019 employment incident. She stated that her right knee made a pop after she stepped over a curb. Appellant indicated that she was never previously diagnosed with a right knee condition.

In a February 14, 2019 medical report, Dr. Moran indicated that appellant's right knee pain had improved. He reviewed the February 11, 2019 MRI scan and noted that, although there was some questionable abnormality within the posterior horn of the medial meniscus, appellant had no true tear. Dr. Moran diagnosed right knee sprain and significant aggravation of right knee osteoarthritis. In a Form CA-17 of even date, he reiterated his diagnoses and provided work restrictions. In a work status note of even date, Dr. Moran advised that appellant may return to work on February 18, 2019 with restrictions.

By decision dated March 8, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that her diagnosed conditions were causally related to her accepted January 11, 2019 employment incident.

In a March 6, 2019 medical report, Dr. Moran repeated his examination findings and diagnoses.

In an April 17, 2019 medical report, Chandler T. Bell, a nurse practitioner, indicated that appellant was working again at full-duty status but continued to have some pain with extended periods of standing and walking. He diagnosed right knee sprain and significant aggravation of right knee osteoarthritis.

In a May 20, 2019 letter, Dr. Moran opined that, to a reasonable degree of medical certainty, appellant's diagnosed right knee sprain and significant aggravation of right knee osteoarthritis were causally related to the accepted January 11, 2019 employment incident. He noted that it made no difference whether appellant was taking a step up or down, or that she was previously attacked by a dog.

On May 21, 2019 appellant requested reconsideration.

By decision dated August 16, 2019, OWCP denied modification of its March 8, 2019 decision.

In a September 23, 2019 medical report, Dr. Moran again noted that appellant had a work-related injury on January 11, 2019, when her knee popped while she was stepping over a curb at work. He again opined that appellant's injury was clearly work related.

On October 7, 2019 appellant again requested reconsideration.

By decision dated November 14, 2019, OWCP denied modification of the August 16, 2019 decision.

On June 1, 2020 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In support of her request for reconsideration, appellant submitted an April 28, 2020 narrative report by Dr. Neil Allen, a Board-certified internist and neurologist, who indicated that he had reviewed her medical records. He noted that on January 11, 2019 appellant stepped over a curb with a one-and-a-half-foot drop on the far side with her right leg. She then pivoted over a bent right knee as she pulled her left leg over the curb. Dr. Allen reported that as appellant did

this, she felt a pop in the back of her right knee, experiencing pain and swelling. He noted her history of medical treatment and reported that he had reviewed the January 17, 2019 x-ray and February 11, 2019 MRI scan of the right knee. Dr. Allen diagnosed knee sprain/strain, precipitation of a medial meniscus tear, and aggravation of right knee osteoarthritis and opined that the conditions were work related. He explained that appellant's osteoarthritis developed over time and became symptomatic on January 11, 2019 when she planted and twisted a bent right knee, compressing and tearing the articular cartilage within her right knee. Dr. Allen opined that the age-related changes in appellant's right knee, combined with the acute trauma, such as a maximal axial load (downward loading) in torsion (twisting), resulted in the precipitation of appellant's underlying osteoarthritis and tearing of the articular cartilage within her right knee. He also noted that the February 11, 2019 MRI scan demonstrated that the accepted January 11, 2019 employment incident resulted in the meniscal injury as well. Dr. Allen concluded that appellant's right knee osteoarthritis and meniscal conditions were directly caused and/or aggravated by the acute trauma sustained during the accepted January 11, 2019 employment incident.

By decision dated June 4, 2020, OWCP denied modification of the November 14, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 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 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

³ *Supra* note 2.

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).

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 specific employment factors identified by the employee.⁹

ANALYSIS

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

In support of her reconsideration request, appellant submitted an April 28, 2020 report by Dr. Allen who indicated that he had reviewed appellant's medical records. Dr. Allen accurately described the accepted January 11, 2019 employment incident and noted his review of a January 17, 2019 x-ray and a February 11, 2019 MRI scan of the right knee. He diagnosed right knee sprain/strain, precipitation of a medial meniscus tear, and aggravation of right knee osteoarthritis. Dr. Allen explained the physiologic basis for his causation opinion by noting when appellant planted and twisted her bent right knee, combined with the underlying age-related changes in the knee, it compressed and tore the articular cartilage within the knee, resulting in the conditions diagnosed based upon appellant's x-ray and MRI scan. He concluded that appellant's right knee injury was directly caused and/or aggravated by the accepted January 11, 2019 employment incident.

Dr. Allen explained that the mechanism of appellant's traumatic injury supports the diagnoses he had made. Although his opinion is insufficiently rationalized to establish causal relationship, it does raise an uncontroverted inference regarding causal relationship between the diagnosed condition and the accepted employment incident sufficient to require that OWCP further develop the medical evidence in the claim.¹⁰

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 *See D.R.*, Docket No. 20-1104 (issued January 29, 2021); *E.G.*, Docket No. 19-1296 (issued December 19, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation and OWCP shares responsibility in the development of the evidence to see that justice is done.¹¹

The case shall, therefore, be remanded for OWCP to refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts. Its referral physician shall provide a well-rationalized opinion as to whether appellant has a diagnosed right knee condition causally related to the accepted January 11, 2019 employment incident. If the physician opines that a diagnosed condition is not causally related to the accepted employment incident, he or she must provide a rationalized explanation as to why their opinion differs from that articulated by Dr. Allen. After such further development of the case record as OWCP deems necessary, it 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 June 4, 2020 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: October 31, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹¹ See *D.R., Id.; A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).