United States Department of Labor
Employees' Compensation Appeals Board

K.B., Appellant	)	
and	)	**Docket No. 21-0953**
	)	**Issued: October 12, 2022**
U.S. POSTAL SERVICE, TROY POST OFFICE, Troy, PA, Employer	)	

Appearances:
Sherry A. Berardinelli, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 7, 2021 appellant, through his representative, filed a timely appeal from a December 23, 2020 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 over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted April 12, 2019 employment incident.

[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*.

FACTUAL HISTORY

On April 15, 2019 appellant, then a 51-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 12, 2019, when pushing his mail cart across the employing establishment parking lot, he stepped into a hole and his right knee twisted and buckled while in the performance of duty. He stopped work on April 12, 2019.

In an April 25, 2019 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him as to the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

A magnetic resonance imaging (MRI) scan of the right lower extremity dated April 22, 2019 revealed fissuring in the medial femoral condylar cartilage and a small partially ruptured Baker's cyst.

In an April 24, 2019 authorization for examination and/or treatment (Form CA-16), the employing establishment authorized appellant to seek medical care from Dr. Stephen J. Renzi, a Board-certified internist. In Part B of the Form CA-16, attending physician's report, Dr. Renzi, reported that appellant twisted his right knee at work. He diagnosed fissuring in the medial femoral condylar cartilage and ruptured Baker's cyst. Dr. Renzi checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the described employment activity. He opined that appellant was totally disabled from work beginning April 13, 2019.

In an attending physician's report (Form CA-20) dated April 26, 2019, Dr. Renzi noted that appellant twisted his right knee while delivering mail on April 12, 2019. He diagnosed right knee pain and checked a box marked "Yes" indicating that appellant's condition had been caused or aggravated by an employment activity. Dr. Renzi noted that appellant was totally disabled from work beginning April 12, 2019. In a work capacity evaluation (Form OWCP-5c) of even date, he noted that appellant was unable to resume work due to right knee pain. In an April 29, 2019 work excuse form, Dr. Renzi noted that appellant was off work from April 29 through May 7, 2019 and would be reevaluated on May 7, 2019. Similarly, in a note dated May 7, 2019, he opined that appellant sustained an injury to his right knee while loading mail into his work vehicle.

On May 6, 2019 Dr. Brett Auerbach, a Board-certified orthopedist, treated appellant for right knee pain. Appellant reported a history of two previous right knee arthroscopies in 1987 and 1993. Findings on examination revealed antalgic gait secondary to right knee pain and tenderness of the medial joint line. X-rays of the right knee revealed no acute findings. Dr. Auerbach diagnosed chondromalacia of the right medial femoral condyle and prescribed a hinged knee brace, physical therapy, and modified activity. In a May 6, 2019 note, he advised that appellant was totally disabled until a follow-up examination scheduled on June 10, 2019. In a May 15, 2019 Form CA-20, Dr. Auerbach noted findings of chondromalacia of the right medial femoral condyle and checked a box marked "No" indicating that appellant's condition was not caused or aggravated by an employment activity. He noted that appellant was totally disabled from work from May 6 through June 10, 2019.

On May 15, 2019 appellant responded to the development letter, noting that on April 12, 2019 he was pushing his mail cart across the parking lot of the employing establishment when he

stepped into a hole causing his knee to twist and buckle. He continued on his mail route because he thought the pain would resolve, but with each passing hour his knee pain progressed.

By decision dated May 31, 2019, OWCP denied appellant's traumatic injury claim, finding that the medical evidence submitted was insufficient to establish causal relationship between his diagnosed conditions and the accepted April 12, 2019 employment incident.

OWCP received additional evidence. On April 15, 2019 Dr. Renzi treated appellant for right knee pain that began at work. Appellant's history was significant for two prior knee surgeries. Findings on examination revealed positive anterior drawer test of the right knee along the medial collateral ligament and positive McMurray test. Dr. Renzi diagnosed right knee pain, applied an Ace bandage, and excused appellant from work. On April 23 and 29, 2019 he reevaluated appellant for worsening right knee pain and swelling. Dr. Renzi diagnosed right knee pain and performed a right knee steroid injection on April 23, 2019.

Dr. Auerbach evaluated appellant on June 5, 2019 for improving right knee pain after a work-related injury on April 12, 2019. Appellant reported being asymptomatic for 15 years prior to his most recent injury. Dr. Auerbach diagnosed chondromalacia of the right medial femoral condyle. He opined to a reasonable degree of medical certainty, the incident described by appellant, was the competent medical cause of his injury/illness. Dr. Auerbach advised that, upon review of the medical documentation previously submitted, there was a clerical error in which the wrong box was checked. He clarified that appellant's condition appeared to be related to a work injury and indicated that he would make corrections to the medical record. Dr. Auerbach noted that appellant was disabled from work. In a work restriction form dated June 5, 2019, he noted that appellant was out of work until his follow-up examination in four weeks. Dr. Auerbach treated appellant in a follow up on July 10, 2019 for right knee pain and swelling after a fall on July 5, 2019. Appellant reported an acute exacerbation of right knee pain on the lateral knee over the distal iliotibial tract that became worse during physical therapy and a recent fall in July. Dr. Auerbach noted x-rays revealed no acute fracture or dislocation. He diagnosed chondromalacia of the right femoral condyle and iliotibial band syndrome affecting the right lower leg. Dr. Auerbach opined that appellant's rehabilitation was complicated by an acute exacerbation of the iliotibial band syndrome.

X-rays of the right knee dated July 10, 2019 revealed no fractures, minimal joint fluid, and lucency involving the medial femoral condyle possibly degenerative geode.

On July 22, 2019 appellant requested reconsideration.

Appellant was seen again by Dr. Auerbach on August 12, 2019 for severe worsening right knee pain after the April 12, 2019 work injury. Dr. Auerbach diagnosed chondromalacia of the right medial condyle and iliotibial band syndrome affecting the right lower leg. He recommended an updated MRI scan of the right knee and continued his work restrictions. Dr. Auerbach continued to treat appellant on September 4, 2019 who reported improved right knee symptoms since attending physical therapy treatment. He noted a recent MRI scan of the right knee revealed moderate joint effusion, leaking Baker's cyst, articular cartilage defect on the weight bearing posterior central aspect of the medial femoral condyle, and mild chondromalacia of the lateral facet

of the patella near the apex. Dr. Auerbach diagnosed chondromalacia of the right medial condyle femur and performed an intra-articular cortisone injection.

By decision dated October 25, 2019, OWCP denied modification of the May 31, 2019 decision.

OWCP received additional evidence. In a return-to-work slip dated April 23, 2019, Dr. Renzi excused appellant from work from April 23 through 29, 2019 due to a work injury.

On October 6, 2020 appellant requested reconsideration.

By decision dated December 23, 2020, OWCP denied modification of the October 25, 2019 decision.

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 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. First, 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. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[7]

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.[8] The opinion of the physician must be based on a complete factual and medical

[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).

[7] *T.J.*, Docket No. 19-0461 (issued August 11, 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).

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.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted April 12, 2019 employment incident.

In an April 24, 2019 Form CA-20 report, Dr. Renzi checked a box marked "Yes" indicating that appellant's diagnosed fissuring in the medial femoral condylar cartilage and ruptured Baker's cyst were caused or aggravated by the described employment activity. Similarly, in an April 26, 2019 Form CA-20, he checked a box marked "Yes" indicating that appellant's diagnosed right knee pain and condition had been caused or aggravated by the April 12, 2019 employment activity. However, the Board has held that an opinion on causal relationship with an affirmative check mark, without more by way of medical rationale, is insufficient to establish the claim.[10] As such, this report is insufficient to establish appellant's claim.

In an April 26, 2019 Form OWCP-5c, Dr. Renzi noted that appellant was unable to work due to right knee pain. In work excuse forms dated April 23 and 29, 2019, he noted that appellant was off work from April 23 through May 7, 2019. Similarly, in a May 6, 2019 note, Dr. Auerbach noted that appellant was disabled until follow-up examination on June 10, 2019. Likewise, in a work restriction form dated June 5, 2019, he noted that appellant was out of work until his follow-up examination in four weeks. In these notes, Drs. Renzi and Auerbach did not offer a medical diagnosis or provide an opinion as to whether a diagnosed condition was causally related to the accepted employment incident. The Board has held that medical evidence that does not include an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[11] These notes from Drs. Renzi and Auerbach are, therefore, insufficient to establish appellant's claim.

On April 15, 23 and 29, 2019 Dr. Renzi diagnosed right knee pain that began at work. The Board has held that pain is a symptom and not a compensable medical diagnosis.[12] Accordingly, these reports are insufficient to meet appellant's burden of proof.

On May 6 and September 4, 2019 Dr. Auerbach diagnosed chondromalacia of the right medial femoral condyle and performed an intra-articular cortisone injection. However, he did not specifically relate the diagnosed conditions to the accepted April 12, 2019 employment incident.

[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 C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018).

[11] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[12] *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

The Board has held that medical evidence that does not offer an opinion regarding the cause of a diagnosed condition or disability is of no probative value on the issue of causal relationship.[13] Therefore, the Board finds that these reports are insufficient to establish appellant's burden of proof.

In a note dated May 7, 2019, Dr. Renzi opined that appellant twisted his right knee while loading mail into his work vehicle. In a May 15, 2019 Form CA-20, Dr. Auerbach indicated by checking a box marked "No" that appellant's condition was not caused or aggravated by an employment activity. He evaluated appellant on June 5, 2019 for a work-related right knee injury and diagnosed chondromalacia of the right medial femoral condyle. Appellant reported being asymptomatic for 15 years prior to the most recent injury. Dr. Auerbach advised that, upon review of the medical documentation previously submitted, there was a clerical error in which the wrong box was checked. He clarified that appellant's condition appeared to be related to a work injury and indicated that he would make corrections to the medical record. Dr. Auerbach opined to a reasonable degree of medical certainty, the incident described by appellant, was the competent medical cause of his injury/illness and disability. In an August 12, 2019 report, he treated appellant for severe worsening right knee pain after the April 12, 2019 work injury and diagnosed chondromalacia of the right medial condyle and iliotibial band syndrome affecting the right lower leg. While Dr. Renzi and Dr. Auerbach indicated that appellant's right knee condition was work related, they failed to provide medical rationale explaining the basis of their opinion. Without explaining, physiologically, how the specific employment incident or employment factors caused or aggravated the diagnosed condition, Dr. Renzi and Dr. Auerbach's opinions on causal relationship are of limited probative value and insufficient to establish appellant's claim.[14]

Appellant submitted multiple diagnostic testing reports. The Board has held that diagnostic studies, standing alone, are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[15]

As the record lacks rationalized medical evidence establishing causal relationship between appellant's diagnosed right knee condition and the accepted April 12, 2020 employment incident, the Board finds that appellant 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

[13] *See L.B., supra* note 11.

[14] *G.L., supra* note 12.

[15] *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

CONCLUSION

The Board finds that appellant has met not his burden of proof to establish a medical condition causally related to the accepted April 12, 2019 employment incident.[16]

ORDER

IT IS HEREBY ORDERED THAT the December 23, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 12, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

[16] The Board notes that the employing establishment issued 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).