United States Department of Labor
Employees' Compensation Appeals Board

F.F., Appellant	)	
and	)	**Docket No. 22-0266**
	)	**Issued: September 27, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Wilkes-Barre, PA, Employer	)	

Appearances:
Michael S. Melnick, Esq., for the appellant[1]
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 7, 2021 appellant, through counsel, filed a timely appeal from a July 1, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

[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.

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.[3]

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on March 16, 2017, as alleged.

FACTUAL HISTORY

This case has previously been before the Board.[4] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 24, 2018 appellant, then a 56-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he aggravated a previous left knee injury due to factors of his federal employment. He noted that he first became aware of his condition and first realized its relation to his federal employment on March 16, 2017. Appellant explained that on March 16, 2017 he was delivering mail while hiking through snow caused by a recent snowstorm. As he was hiking through deep snow, he experienced pain in his left knee. Appellant stopped work on March 16, 2017.

Appellant had previously filed a traumatic injury claim (Form CA-1) for a left knee injury sustained on January 3, 2015, when he slipped and twisted his knee on a resident's steps while delivering mail in icy conditions. On March 7, 2016 OWCP accepted his claim for a cystic meniscus, posterior horn of medial meniscus, left knee; and a sprain of the lateral collateral ligament of the left knee under OWCP File No. xxxxxx234.

In a February 13, 2018 letter, Dr. William Krywicki, a Board-certified orthopedic surgeon, noted his history of treatment for appellant's left knee in relation to the January 3, 2015 employment incident when he slipped on ice and twisted his knee while delivering mail. He subsequently evaluated appellant on May 9, 2017, relating that appellant informed him that he had been experiencing more pain in his left knee since "March 15 or March 16, 2017." Appellant explained to Dr. Krywicki that, after a large snowstorm, he was required to wear boots and walk differently through the snow in order to deliver his mail. Dr. Krywicki diagnosed stage III arthritic progression and opined that appellant's left knee condition was a direct progression of the

[2] 5 U.S.C. § 8101 *et seq*.

[3] Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). He asserted that oral argument should be granted because the evidence supports his factual explanation of the employment incident. Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

[4] Docket No. 20-1542 (issued April 9, 2021).

January 3, 2015 traumatic injury. He explained that he previously had a ligament injury and that his stage III arthritic changes of the left knee were caused by the added stress of walking through a snowpack, which created stresses and torsions to his left knee.

In an undated statement, appellant recounted the events of the January 3, 2015 employment incident in which he slipped while carrying mail in the performance of duty and injured his left knee. He explained that on March 16, 2017 he aggravated his left knee by walking through deep snow on his mail route. Appellant noted that he was first instructed to file a recurrence claim (Form CA-2a) but OWCP denied his claim. He specifically described the conditions after a blizzard on March 16, 2017 and stated that he had to wear additional clothing and walk with a different motion in order to deliver his mail. Appellant's left knee began to hurt about mid route and gradually worsened.

In response to OWCP's development questionnaire, appellant submitted a November 16, 2018 statement and indicated that his claim was a traumatic injury and not an occupational disease claim. He also provided that he initially reported his injury to his supervisor on the day of the March 16, 2017 employment injury.

In a November 29, 2018 letter, the employing establishment controverted appellant's claim, contending the only reason appellant filed the present claim was because his recurrence claim in OWCP File No. xxxxxx234 was denied on June 26, 2018.

By decision dated December 3, 2018, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish the implicated employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP received additional evidence. On March 21, 2017 Dr. Diane Ciaglia, a Board-certified family practitioner, noted that appellant reported favoring a knee while walking in the snow and that he thought it could have been arthritis. On evaluation, she diagnosed pain in an unspecified knee.

Dr. Krywicki, in a December 10, 2018 letter, again recounted his history of medical treatment for appellant's left knee in relation to his January 3, 2015 injury and subsequent March 16, 2017 employment incidents. He opined, within a reasonable degree of medical certainty, that his findings of arthritic wear were a direct progression of appellant's January 3, 2015 employment injury. Dr. Krywicki continued by offering that appellant was able to navigate on dry surfaces, but walking through the snow on March 16, 2017 caused him to change his walking pattern and created a torsional motion that aggravated his arthritis.

On January 2, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a May 2, 2019 report, Dr. Krywicki opined that the aggravation of appellant's degenerative left knee arthritis related to the findings in a February 2015 magnetic resonance

imaging (MRI) scan showing a complex tear of his medial meniscus and articular surface damage to the femoral condyle and tibial surface related to his January 3, 2015 employment injury.

An oral hearing was held on May 7, 2019. Counsel clarified that appellant's claim was for a traumatic injury and not an occupational disease. Appellant testified that on March 13, 14, and 15, 2017 his locality experienced an extraordinary amount of snow and he did not work because the roads were not passable. When he returned to work on March 16, 2017, the mail was backed up and he was responsible for two- and three-day mail deliveries in one day. Appellant testified that on March 16, 2017 he reported his injury to his supervisor, who instructed him to file a recurrence claim under OWCP File No. xxxxxx234.

In a June 4, 2019 letter, the employing establishment again controverted appellant's claim.

By decision dated July 19, 2019, OWCP's hearing representative converted appellant's occupational disease claim to a traumatic injury claim and affirmed the December 3, 2018 decision, finding that there were sufficient inconsistencies in the evidence that cast serious doubt on the validity of appellant's claim.

On November 25, 2019 appellant, through counsel, requested reconsideration of OWCP's July 19, 2019 decision. He contended that he was initially told by his supervisor to file his claim as a recurrence of his previous injury and that he accidentally entered the wrong date for his recurrence claim, which created confusion.

Appellant submitted a February 7, 2020 statement in which he provided under oath that the date used on his Form CA-2a was used in error and that he was given no guidance or assistance in filing his claim. He asserted that the employing establishment ignored his statements about the weather being the reason he used sick leave the day before the alleged March 16, 2017 injury and that the snow on the ground was the reason he aggravated his left knee.

By decision dated February 25, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim.

On August 20, 2020 appellant appealed to the Board. By decision dated April 9, 2021, the Board set aside the February 25, 2020 decision and remanded the case for further proceedings.[5] The Board found that OWCP improperly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a). The Board found that appellant submitted a February 7, 2020 statement that constituted relevant and pertinent new evidence with regard to whether he sustained a traumatic injury on March 16, 2017. The Board further instructed OWCP to administratively combine OWCP File No. xxxxxx592 and OWCP File No. xxxxxx234.[6]

By decision dated July 1, 2021, OWCP denied modification.

[5] *Supra* note 4.

[6] OWCP administratively combined OWCP File No. xxxxxx592 and OWCP File No. xxxxxx234, with the latter serving as the master file.

LEGAL PRECEDENT

An employee seeking benefits under FECA[7] 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,[8] 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.[9] 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.[10]

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.[11]

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[12] The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence that cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statements in determining whether a *prima facie* case has been established.[13] An employee's statements alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[14]

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[7] *Supra* note 2.

[8] *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).

[9] *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).

[10] *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).

[11] *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).

[12] *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

[13] *K.H.*, Docket No. 22-0370 (issued July 21, 2022); *Betty J. Smith*, 54 ECAB 174 (2002); *see also L.D.*, Docket No. 16-0199 (issued March 8, 2016).

[14] *See K.H., id.*; *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on March 16, 2017, as alleged.

The evidence of record supports that on March 16, 2017 appellant was delivering mail after a snowstorm and hiked through deep snow. In an undated narrative statement, he explained that on March 16, 2017 he aggravated his left knee by walking through deep snow on his mail route. Appellant specifically described the conditions after a blizzard on March 16, 2017 and stated that he had to wear additional clothing and walk with a different motion in order to deliver his mail. During the May 7, 2019 oral hearing, he testified that on March 13, 14, and 15, 2017 his locality experienced an extraordinary amount of snow and he did not work because the roads were not passable. When appellant returned to work on March 16, 2017, the mail was backed up and he was responsible for delivering two- and three-day mail deliveries in one day. Similarly, in a February 7, 2020 statement provided under oath, he asserted that the snow on the ground on March 16, 2017 was the reason he aggravated his left knee.

Additionally, Dr. Krywicki's February 13 and December 10, 2018 reports contained a consistent description of appellant's work injury, relating that after a large snowstorm, he was required to wear boots and walk differently through the snow in order to deliver his mail. He diagnosed stage III arthritic progression and opined that appellant's stage III arthritic changes of the left knee were caused by the added stress of walking through a snowpack, which created stresses and torsions to his left knee. Dr. Krywicki, in a December 10, 2018 letter, related that walking through the snow on March 16, 2017 caused appellant to change his walking pattern and created a torsional motion that aggravated his arthritis. In a May 2, 2019 letter, he opined that appellant's left knee injury was aggravated during the March 16, 2017 employment incident. Similarly, in a March 21, 2017 medical report, appellant informed Dr. Ciaglia that he was favoring a knee while walking in the snow.

The statements from appellant are consistent with his course of action, and the medical evidence submitted. Further, a consistent history of injury was related to Dr. Krywicki and Dr. Ciaglia. The Board thus finds that appellant has met his burden of proof to establish that the March 16, 2017 employment incident occurred in the performance of duty, as alleged.[15]

As appellant has established that the March 16, 2017 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.[16] As OWCP found that appellant had not established fact of injury, it did not evaluate the medical evidence. The Board, therefore, will set aside OWCP's July 1, 2021 decision and remand the case for consideration of the medical evidence.[17] After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden

[15] *See M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

[16] *Id*.

[17] *S.M.*, Docket No. 16-0875 (issued December 12, 2017).

of proof to establish an injury causally related to the accepted March 16, 2017 employment incident.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on March 16, 2017, as alleged. The Board further finds that the case is not in posture for decision regarding whether he has established an injury causally related to the accepted March 16, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 1, 2021 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part; the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 27, 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