

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

_____)
K.W., Appellant)

and)

DEPARTMENT OF THE INTERIOR, U.S.)
GEOLOGICAL SURVEY, Yuma, AZ, Employer)
_____)

Docket No. 22-0276
Issued: September 19, 2022

Appearances:
Appellant, pro se
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 December 14, 2021 appellant filed a timely appeal from a November 3, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 left knee condition causally related to the accepted December 15, 2020 employment incident.

FACTUAL HISTORY

On December 30, 2020 appellant, then a 48-year-old hydrologic technician, filed a traumatic injury claim (Form CA-1) alleging that on December 15, 2020 he injured his left knee

¹ 5 U.S.C. § 8101 *et seq.*

when he slipped on the floor of a boat, twisting his knee while in the performance of duty. He did not stop work.

In a development letter dated January 19, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a January 21, 2021 response, appellant related that he initially felt slight discomfort after the incident and, that, while his knee swelling improved, he had lost strength and range of motion. He reported that he notified his supervisor on December 16, 2020 the day after the employment incident. Appellant also noted that he had no prior injuries. In a witness statement of even date, L.A., appellant's coworker, indicated that appellant was operating a boat while they collected water samples on the date of injury. She further explained that after he walked to the front of the boat, she looked away and when looking back, recalled him complaining about knee pain.

In a medical report dated February 10, 2021, Dr. Gregory Peare, a Board-certified orthopedic surgeon, noted that appellant twisted and felt a pop in his knee on December 15, 2020 while operating a boat. He related that, following the employment incident, appellant experienced ongoing pain, swelling, and tenderness, and that he denied any previous knee injuries. Dr. Peare diagnosed a left knee injury and ordered a magnetic imaging resonance (MRI) scan of the impacted area. In a return to work note of even date, he advised that appellant could return to work with restrictions of no heavy lifting or deep squatting.

By decision dated March 1, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted December 15, 2020 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 5, 2021 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

In an undated statement, appellant contended that Dr. Peare provided a valid medical diagnosis of a medial meniscus tear.

By decision dated June 21, 2021, OWCP's Branch of Hearings and Review affirmed OWCP's March 1, 2021 decision.

OWCP continued to receive evidence. A medical report dated June 14, 2021, from Dr. Peare, related that appellant experienced intermittent popping and catching of the knee when performing physical activities such as twisting and turning. He reviewed an MRI scan of the left knee and diagnosed an acute medial meniscus tear. Dr. Peare opined that the employment incident "certainly could cause this type of injury."

On July 1, 2021 appellant requested reconsideration.

In a statement dated June 24, 2021, appellant contended that the evidence he provided was sufficient to establish causal relationship and that he submitted new evidence substantiating Dr. Peare's medical diagnosis.

By decision dated July 12, 2021, OWCP modified its prior decision, finding that the medical evidence of record was sufficient to establish a diagnosed medical condition. However, it denied appellant's claim, finding that he had not established a left knee condition causally related to the accepted December 15, 2020 employment incident.

On September 20, 2021 appellant requested reconsideration and submitted an addendum report dated June 14, 2021 from Dr. Peare, who opined that the December 15, 2020 employment incident "likely caused" a left knee condition.

By decision November 3, 2021, OWCP denied modification of its July 12, 2021 decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA² 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,³ 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.⁴ 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.⁵

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 whether appellant actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.⁶

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁷ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the

² *Id.*

³ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *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).

nature of the relationship between the diagnosed condition and specific employment factors identified by the claimant.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted December 15, 2020 employment incident.

In a medical report dated June 14, 2021, Dr. Peare concluded that the mechanism of injury of appellant stepping into a boat and twisting his left knee “certainly could cause this type of injury”. In an addendum report, he opined that the employment incident “likely caused” the condition. The Board has held that, while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, it must not be speculative or equivocal.⁹ The opinion should be expressed in terms of a reasonable degree of medical certainty.¹⁰ Dr. Peare’s reports, therefore, are insufficient to establish appellant’s burden of proof.

The remaining medical evidence of record consists of Dr. Peare’s February 10, 2021 medical report wherein he diagnosed a left knee injury and provided work restrictions. This report, however, does not offer an opinion on whether the accepted employment incident was causally related to appellant’s left knee condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of employee’s condition is of no probative value on the issue of causal relationship.¹¹ As such, Dr. Peare’s report is also insufficient to establish appellant’s claim.

As the medical evidence of record is insufficient to establish a left knee condition causally related to the accepted December 15, 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.

CONCLUSION

The Board finds that appellant has not met his burden proof to establish a left knee condition causally related to the accepted December 15, 2020 employment incident.

⁸ *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).

⁹ *L.S.*, Docket No. 18-1494 (issued April 12, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001).

¹⁰ *Id.*

¹¹ *M.E.*, Docket No. 18-0940 (issued June 11, 2019).

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 19, 2022
Washington, D.C.

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