

ISSUE

The issue is whether appellant has met her burden of proof to establish a right knee condition causally related to the accepted December 5, 2016 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.³ 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 December 19, 2016 appellant, then a 57-year-old investigative assistant, filed a traumatic injury claim (Form CA-1) alleging that on December 5, 2016 she heard a click and felt a sharp pain in her right knee when she bent down to place a file in a bottom drawer while in the performance of duty. She stopped work that same date.

Dr. Stephen G. Silver, a Board-certified orthopedic surgeon, treated appellant on December 12, 2016 for right knee pain. Appellant reported that on December 5, 2016, while at work, she bent down and felt a pop in her right knee followed by a sharp pain. She indicated that the next morning her right knee was swollen and she treated it with rest, ice, and anti-inflammatories. Appellant attempted to return to work, but she could not bear weight on her knee. Dr. Silver diagnosed possible internal derangement of the right knee. He recommended a magnetic resonance imaging (MRI) scan of the right knee.

A December 23, 2016 MRI scan of the right knee demonstrated a horizontal tear of the posterior horn of the medial meniscus, fraying of the free edge body of lateral meniscus, mild lateral patellar tilt, mild tricompartmental osteoarthritis, small effusion, and tiny popliteal cyst.

By decision dated April 3, 2017, OWCP denied appellant's claim, finding that she had not met her burden of proof to establish a medical condition causally related to the accepted employment incident.

On April 17, 2017 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 2, 2017.

On June 5 and 15, 2017 Dr. Silver noted that appellant had tried to return to work, but she could not bear weight. He indicated that she continued to make slow and steady improvement, but still required the use of a cane. Dr. Silver released appellant to return to light-duty work. In his July 31, 2017 report, he diagnosed degenerative joint disease of the bilateral knees and referred her for physical therapy. In a September 29, 2017 report, Dr. Silver opined that appellant's conditions were causally related to a work injury, which required her to undergo surgery.

By decision dated November 15, 2017, the hearing representative affirmed OWCP's April 3, 2017 decision.

³ Docket No. 18-0530 (issued February 24, 2020).

On January 18, 2018 appellant, through counsel, appealed to the Board. By decision dated February 24, 2020, the Board affirmed the November 15, 2017 decision, finding that she had not met her burden of proof to establish a right knee injury causally related to the accepted December 5, 2016 employment incident.⁴

OWCP received additional evidence. Appellant submitted reports from Dr. Silver dated September 28, 2015 through August 15, 2016, which predate her right knee injury and pertain to left shoulder and left knee condition.

On February 9, 2017 Dr. Silver performed an unauthorized surgical arthroscopy of the right knee, partial medial meniscectomy, partial lateral meniscectomy, debridement grade 3 chondromalacia of lateral tibial plateau, debridement grade 3 chondromalacia of lateral patellar facet, excision of plica, and synovectomy. He diagnosed right knee meniscal tear, lateral meniscal tear, grade 3 chondral lesion lateral tibial plateau, grade 3 chondral lesion lateral patellar facets, and patellar plica.⁵ On February 23 and April 3, 2017 Dr. Silver noted that appellant was status post right knee arthroscopy. He removed sutures, recommended physical therapy, and returned her to light-duty work on April 3, 2017. In reports dated May 22, 2017 and February 5, 2018, Dr. Silver treated appellant in a follow up noting improvement of the right knee and continued physical therapy.

On April 23, 2019 Dr. Silver recounted that he had initially evaluated her on December 12, 2016. Appellant treated her knee conservatively, but continued to experience pain, swelling, and she was unable to bear weight. Upon physical examination, Dr. Silver noted pain with range of motion and tenderness to palpation of both the medial and lateral joint line. A December 23, 2016 MRI scan of the right knee demonstrated tears of the lateral and medial meniscus. On February 9, 2017 Dr. Silver performed arthroscopic surgery and confirmed medial and lateral meniscal tears and synovitis. He noted appellant's postoperative course was uneventful, but she continued to have pain and limping due to swelling around the knee. Dr. Silver opined with medical certainty that her right knee condition was directly and causally related to the injury sustained at work on December 5, 2016.

In an April 29, 2019 report, Dr. Silver reevaluated appellant for lateral knee pain, right greater than left, and pain behind the right knee. He noted findings of lateral joint line tenderness, mild patellar crepitus, and mild patellar compression inhibition. Dr. Silver recommended injections and physical therapy. On August 26, 2019 appellant presented with bilateral knee pain, swelling, and difficulty with range of motion. Dr. Silver recommended a series of bilateral knee intra-articular injections.

On March 4, 2020 appellant, through counsel, requested reconsideration.

⁴ *Id.*

⁵ On March 31, 2016 Dr. Silver performed a left knee partial lateral meniscectomy, removal of loose chondral bodies with microfracture, debridement of well-circumscribed medial femoral condyle lesion, debridement of grade two or three chondromalacia of the patellofemoral joint, and minor synovitis. He diagnosed left knee complex lateral meniscal tear, early degenerative joint disease, chondral lesion medial femoral condyle, and patellofemoral compartment synovitis.

By decision dated December 17, 2020, OWCP denied modification of its prior decision.

On July 21, 2021 Dr. Silver treated appellant in follow up for bilateral knee pain. Appellant reported pain and disability related to both knees, both shoulders, neck, and back that she felt were all work related. Dr. Silver diagnosed primary osteoarthritis of both knees. He opined that appellant's disabilities were permanent and work related.

On August 11, 2021 appellant, through counsel, requested reconsideration.

By decision dated October 29, 2021, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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,⁷ 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.⁸ 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.⁹

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.¹⁰

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.¹¹ 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

⁶ *Supra* note 2.

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *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).

¹¹ *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).

by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right knee condition causally related to the accepted December 5, 2016 employment incident.

Initially, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's November 15, 2017 decision, which was considered by the Board in its February 24, 2020 decision. Findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.¹³

On February 9, 2017 Dr. Silver performed an unauthorized surgical arthroscopy of the right knee and diagnosed right knee meniscal tear. On February 23 and April 3, 2017 he noted that appellant was status post right knee arthroscopy and could return to light-duty work. In reports dated May 22, 2017 and February 5, 2018, Dr. Silver treated her right knee noting improvement. On April 29 and August 26, 2019 he treated appellant for lateral knee pain, right greater than left, and pain behind the right knee. However, in these reports, Dr. Silver failed to offer an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁴ Thus, the Board finds that these reports are insufficient to meet appellant's burden of proof.

On April 23, 2019 Dr. Silver related treating appellant for a right knee injury that occurred at work on December 5, 2016. He performed arthroscopic surgery and diagnosed medial and lateral meniscal tears and synovitis. Dr. Silver opined with medical certainty that appellant's right knee condition was directly and causally related to the December 5, 2016 work incident. Similarly, on July 21, 2021 he treated appellant for bilateral knee pain. Dr. Silver diagnosed primary osteoarthritis of both knees and opined that her disabilities were permanent and work related. Although he supported causal relationship, he did not offer medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's right knee and the December 5, 2016 work injury.¹⁵ The Board has held that a mere conclusion without the necessary rationale is insufficient to meet a claimant's burden of proof.¹⁶ As such, this evidence is of limited probative value.

¹² *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).

¹³ *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

¹⁴ *See S.H.*, Docket No. 19-1128 (issued December 2, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ *P.L.*, Docket No. 19-1750 (issued March 26, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁶ *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *E.L.*, Docket No. 17-1632 (issued January 3, 2018).

The Board notes that reports from Dr. Silver dated September 28, 2015 through August 15, 2016 are not relevant to the current claim as they predate the claimed December 5, 2016 injury.¹⁷

As the record lacks rationalized medical evidence establishing causal relationship between a medical condition and the accepted December 5, 2016 employment incident, the Board finds that appellant has not met her 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 her burden of proof to establish a right knee condition causally related to the accepted December 5, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹⁷ See generally, *B.P.*, Docket No. 21-0872 (issued December 8, 2021); *D.A.*, Docket No. 21-0939 (issued November 22, 2021).