

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

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| <b>K.S., Appellant</b>                       | ) |                                   |
|  | ) |                                   |
| <b>and</b>                                   | ) | <b>Docket No. 22-0566</b>         |
|  | ) | <b>Issued: September 20, 2022</b> |
| <b>U.S. POSTAL SERVICE, LOCKPORT</b>         | ) |                                   |
| <b>CARRIER ANNEX, Lockport, IL, Employer</b> | ) |                                   |
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*Appearances:*  
Larrissa A. Parde, for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 8, 2022 appellant, through his representative, filed a timely appeal from a January 21, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the January 21, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish a left knee condition causally related to the accepted January 8, 2021 employment incident.

## FACTUAL HISTORY

On January 13, 2021 appellant, then a 48-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 8, 2021 he sustained a left knee sprain while in the performance of duty. In an attached statement, he related that his left leg buckled as he stepped off a porch onto snow and/or ice after delivering mail. Appellant stopped work on January 9, 2021 and returned on January 11, 2021.

In a report dated January 8, 2021, Jamie Wourms, a family nurse practitioner, noted that appellant was seen that day for a left knee injury. Appellant reported that he had slipped going downstairs while delivering mail and that he grabbed a bush to prevent a fall. At this point he felt his knee pop and he experienced immediate pain. Ms. Wourms related that, on physical examination, appellant had abnormal gait, left knee joint tenderness, mildly tender patella, and reduced range of motion. She listed his diagnosis as meniscus tear. In a duty status report (Form CA-17) of even date, Ms. Wourms noted appellant's January 8, 2021 history of injury and diagnosed left medial meniscus tear, which she attributed to the injury.

In CA-17 form reports, Ms. Wourms noted that appellant had slipped on a porch while delivering mail on January 8, 2021. She noted that he slipped on snow/ice on a step while going downstairs and his knee buckled. Ms. Wourms diagnosed left medial meniscus tear, which she attributed to the injury.

A May 3, 2021 magnetic resonance imaging (MRI) scan of the left knee demonstrated a medial meniscus posterior horn complex tear, lateral meniscus body and posterior horn complex tear, medial compartment tricompartmental cartilage disease, anterior cruciate ligament mild mucoid degeneration, and small joint effusion and possible intra-articular fragment in the popliteus tendon sheath.

In a development letter dated May 14, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a factual questionnaire for his completion.

In a May 25, 2021 report, Dr. Robert T. Semba, a Board-certified orthopedic surgeon, noted that on January 8, 2021 appellant slipped while walking on a porch and twisted his knee. Physical findings included left knee effusion, small Baker's cyst, gait derangement, and pain in medial and lateral joints. Dr. Semba reviewed an MRI scan which demonstrated complex tears of the left knee medial and lateral menisci. He recommended left knee arthroscopic surgery.

Dr. Semba, in a June 9, 2021 addendum, advised that the injury as described by appellant included twisting his knee after slipping on a porch. He explained that this twisting injury was a classic mechanism for a tear to occur, which in this case was a medial meniscal tear. Based on the force involved which combined with the blunt injury of landing directly on the leg, Dr. Semba concluded that the twisting involved was the cause of appellant's lateral meniscal tear. In

summary, he explained that appellant's fall off the porch along with the blunt injury involved could easily be the cause of the diagnosed lateral meniscal tear.

By decision dated June 23, 2021, OWCP denied appellant's traumatic injury claim. It found that the medical evidence was insufficient to show that he sustained a medical condition causally related to the accepted employment incident.

On July 1, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on December 1, 2021.

In a report dated December 6, 2021, Dr. Kevin C. Bigart, an orthopedic surgeon, noted appellant's history of injury and medical treatment. He reported that on examination appellant had an antalgic gait, no left knee erythema, mild effusion, and positive McMurray test for medial and lateral joint line pain. Dr. Bigart diagnosed left knee medial and lateral meniscus tear and left knee advanced osteoarthritis, which he attributed to the claimed January 8, 2021 injury.

By decision dated January 21, 2022, OWCP's hearing representative affirmed the June 23, 2021 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> 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,<sup>5</sup> that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>7</sup>

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.<sup>8</sup> Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident at the time and place, and in the manner alleged.<sup>9</sup> The second component is whether the employment incident caused a personal injury.<sup>10</sup> An employee may establish that an injury occurred in the

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *B.T.*, Docket No. 22-0350 (issued May 16, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *B.T.*, *id.*; *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

<sup>7</sup> *B.T.*, *id.*; *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *B.T.*, *id.*; *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

<sup>9</sup> *B.T.*, *id.*; *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>10</sup> *Id.*

performance of duty, as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>11</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>12</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.<sup>13</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment incident.<sup>14</sup>

### ANALYSIS

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

In support of his claim, appellant provided a May 25, 2021 report and June 9, 2021 addendum from Dr. Semba. In his May 25, 2021 report, Dr. Semba noted the accepted January 8, 2021 employment incident in which appellant twisted his knee after slipping on a porch. He opined on June 9, 2021 that the accepted incident was the mechanism of injury which caused left knee medial and lateral meniscal tears. Dr. Semba explained that based on the force involved when combined with the blunt injury of landing directly on the leg, the twisting involved was the cause of appellant's lateral meniscal tear. He noted that the twisting injury was a classic mechanism for medial and meniscal tears.

Dr. Semba provided a consistent, detailed explanation of how appellant's left knee condition resulted from accepted January 8, 2021 employment incident. Although his reports are insufficient to discharge appellant's burden of proving that appellant's current left knee condition was caused or aggravated by the January 8, 2021 employment incident, his opinion is uncontroverted and is sufficient to require further development of the case record by OWCP.<sup>15</sup>

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. However, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>16</sup>

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<sup>11</sup> *D.V.*, Docket No. 19-1642 (issued June 4, 2020); *Shirley A. Temple*, 48 ECAB 404 (1997).

<sup>12</sup> *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *T.H.*, *supra* note 8.

<sup>13</sup> *B.T.*, *supra* note 5; *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>14</sup> *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>15</sup> *J.G.*, Docket No. 21-0651 (issued February 11, 2022); *J.P.*, Docket No. 19-1206 (issued February 11, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *C.W.*, Docket No. 17-1293 (issued February 12, 2018); *see also John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>16</sup> *J.G.*, *id.*; *K.P.*, Docket 18-0056 (issued January 27, 2020); *see also A.P.*, Docket No. 17-0813 (issued January 3, 2018).

On remand OWCP should 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 should provide an evaluation and a rationalized medical opinion as to the relation of the claimed left knee condition to the accepted January 8, 2021 employment incident. If the physician opines that the diagnosed condition is not causally related to the accepted January 8, 2021 employment incident, he or she must explain with rationale how or why their opinion differs from that of Dr. Semba. 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 January 21, 2022 decision of the Office of Workers' Compensation Program is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: September 20, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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