

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

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<b>J.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 21-0852</b>
	)	<b>Issued: April 21, 2023</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Tampa, FL, Employer</b>	)	
_____	)	

*Appearances:*  
Wayne Johnson, Esq., 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  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

**JURISDICTION**

On May 18, 2021 appellant, through counsel, filed a timely appeal from a November 20, 2020 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 November 20, 2020 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 September 24, 2018 employment incident.

## **FACTUAL HISTORY**

On September 24, 2018 appellant, then a 38-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on the same date he strained his left knee due to the continuous motion of walking while in the performance of duty. He explained that he was walking and dumping mail and suddenly felt pain in his left knee. Appellant stopped work that same day.

In an authorization for examination and/or treatment (Form CA-16) of even date, K.B., an authorizing official with the employing establishment, indicated that, while appellant was walking straight and pushing a mail container, he felt pain and impingement when he fully extended his left knee.

In a September 27, 2018 letter, the employing establishment controverted appellant's claim, indicating that he had not sufficiently described how his injury occurred and did not submit medical evidence to validate his claim.

In a September 27, 2018 form report, Kerrie Fields, a nurse practitioner, noted that appellant injured his left knee on September 24, 2018 and diagnosed a left knee sprain.

In a development letter dated October 1, 2018, OWCP advised appellant of the deficiencies of his claim and instructed him as to the factual and medical evidence necessary to establish his claim. It provided a factual questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary information.

In a September 25, 2018 medical report, Dr. Denise Agatep, Board-certified in occupational medicine, observed that appellant experienced left knee pain after walking and pushing a mail container into a dumpster at work on September 24, 2018. She noted that an x-ray scan of his left knee revealed no significant radiologic findings and diagnosed a left knee strain. Dr. Agatep provided a knee brace for appellant's left knee and referred him to physical therapy.

In a duty status report (Form CA-17) of even date, Dr. Agatep diagnosed a left knee strain due to the September 24, 2018 employment incident and advised that appellant was able to return to work with restrictions.

In a September 27, 2018 medical report, Ms. Fields noted that appellant's left knee symptoms were unchanged and diagnosed a left knee sprain. She advised that he should continue using a knee brace, attending physical therapy and working with restrictions.

In an October 2, 2018 medical report, Ms. Fields diagnosed a left knee sprain and referred appellant for a magnetic resonance imaging (MRI) scan of his left knee for further evaluation.

In notes dated October 2 through 12, 2018, Alisha Churchill and Jane Alves, physical therapists, detailed appellant's treatment related to a left knee sprain.

In medical reports dated October 8 and 15, 2018, Dr. Edward Demmi, Board-certified in occupational medicine, observed that appellant injured his left knee on September 24, 2018 and diagnosed a left knee sprain.

In form reports dated from October 8 through 23, 2018, Dr. Demmi indicated that appellant injured his left knee on September 24, 2018 and diagnosed a left knee sprain.

By decision dated November 1, 2018, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as appellant described. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. In an October 10, 2018 physical therapy report, Ms. Alves detailed appellant's treatment for his left knee sprain.

In a November 1, 2018 medical report, Ms. Fields observed that appellant's symptoms continued after his completion of physical therapy. She noted a diagnosis of left knee sprain and advised that he continue to work with advanced work restrictions.

In medical reports dated October 23 and November 8, 2018, Dr. Demmi noted that appellant was still experiencing left knee pain related to his diagnosed left knee sprain. Appellant related to him that he had been having problems with his knee off and on for seven years.

In a January 7, 2019 medical report, Dr. Conrad Tamea, a Board-certified orthopedic surgeon, indicated that appellant injured his left knee on September 24, 2018 while loading and unloading containers of mail at work and stepped down in an awkward fashion. He explained that he felt the bones grind within his left knee and felt a sharp pain. Dr. Tamea reviewed a December 10, 2018 MRI scan of appellant's left knee and diagnosed a partial left knee anterior cruciate ligament tear, derangement of the left knee, infrapatellar bursitis of the left knee, and chronic pain. He opined, with a high level of medical certainty, that appellant's condition was caused by the September 24, 2018 employment incident when he stepped down and felt the bones grind in his left knee.

On February 19, 2019 appellant requested reconsideration of OWCP's November 1, 2018 decision.

In a December 3, 2018 medical report, Dr. Andrés Velasco, Board-certified in family medicine, evaluated appellant for left knee pain related to the September 24, 2018 employment incident in which he was loading and unloading containers of mail and stepped down in an awkward motion. He subsequently felt his bone pop and experienced pain in his left knee. On examination, Dr. Velasco diagnosed derangement of the left knee and infrapatellar bursitis of the left knee. He opined, with a high level of medical certainty, that appellant's injury was caused by the September 24, 2018 employment incident in which he stepped down in the wrong position and overstretched the soft tissue in his left knee. Dr. Velasco ordered an MRI scan of appellant's left knee and referred him to an orthopedic surgeon for further evaluation.

In a December 10, 2018 diagnostic report, Dr. Chintan Desai, a Board-certified radiologist, noted that appellant's injury was caused by a September 24, 2018 motor vehicle accident. He performed an MRI scan of appellant's left knee, which demonstrated an anterior cruciate ligament

sprain with suggestion of a partial tear, a grade one sprain of the medial collateral ligament and trace knee joint effusion.

In a January 15, 2019 medical report, Dr. Evan Zimmer, Board-certified in family medicine, recounted that appellant injured his left knee on September 24, 2018 while loading and unloading mail at work and stepping down in an awkward fashion. He noted his diagnoses of a partial left knee anterior cruciate ligament tear, derangement of the left knee and infrapatellar bursitis of the left knee. Dr. Zimmer recommended that appellant continue his physical therapy.

In response to OWCP's development questionnaire, appellant submitted a January 24, 2019 statement wherein he explained that on September 24, 2018 he started hearing and feeling cracking in his left knee before experiencing a sharp pain. He indicated that he was unable to walk and whenever he fully extended his left leg, he would experience a sharp pain. Appellant was loading and unloading dumpsters by pushing and pulling large containers filled with mail when his injury occurred. He then described his subsequent medical treatment and noted that he had no injuries prior to the September 24, 2018 employment incident.

By decision dated April 11, 2019, OWCP denied modification of its November 1, 2018 decision.

OWCP continued to receive evidence. In an April 1, 2019 medical report, Dr. Tamea related that appellant continued to experience instability in his left knee due to his September 24, 2018 employment injury. He diagnosed a partial tear of the anterior cruciate ligament, a medial collateral ligament sprain, and a contusion/bruising of the infra and superior patellar bursa.

In a May 28, 2019 medical report, Dr. Zimmer continued to evaluate appellant for his left knee conditions and diagnosed a partial left knee anterior cruciate ligament tear, derangement of the left knee, infrapatellar bursitis of the left knee, and chronic pain.

On March 26, 2020 appellant, through counsel, requested reconsideration of OWCP's April 11, 2019 decision. Counsel argued that the medical evidence of record demonstrated a consistent history of injury and clearly indicated that appellant's condition was causally related to his September 24, 2018 employment injury. In an attached affidavit, appellant clarified that he never informed Dr. Demmi that he had been experiencing knee problems for the past seven years and that he had never filed any prior claims related to his left knee. He further explained that he was not involved in a motor vehicle accident on September 24, 2018 and that his MRI scan report incorrectly indicated that he was.

By decision dated June 23, 2020, OWCP modified the April 11, 2019 decision to find that the evidence of record was sufficient to establish that the injury and/or events occurred as appellant described. However, the claim remained denied as the medical evidence of record was insufficient to establish that his diagnosed left knee conditions were causally related to the September 24, 2018 employment incident.

On August 21, 2020 appellant, through counsel, requested reconsideration of OWCP's June 23, 2020 decision.

In an attached July 27, 2020 narrative medical report, Dr. Zimmer reviewed the history of appellant's September 24, 2018 employment injury in which he stepped into an awkward position

and felt the bone pop in his left knee. He explained that appellant's left leg and left knee becomes unstable and indicated that stepping down in an awkward fashion caused a twisting motion in his left knee that tore the anterior cruciate ligament in his left knee.

By decision dated November 20, 2020, OWCP denied modification of its June 23, 2020 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 the fact 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 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.<sup>6</sup> 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.<sup>7</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.<sup>8</sup> 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.<sup>9</sup> Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>10</sup>

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.<sup>11</sup> The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty,

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

<sup>5</sup> *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chidden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Elliott*, 41 ECAB 992 (1990).

<sup>8</sup> *R.B.*, Docket No. 17-2014 (issued February 14, 2019); *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>9</sup> *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Appgar*, 57 ECAB 137 (2005).

<sup>10</sup> *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 8.

<sup>11</sup> *See F.C.*, Docket No. 19-0594 (issued August 13, 2019); *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.<sup>12</sup>

### ANALYSIS

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

Dr. Zimmer, in medical reports dated January 15, 2019 through July 27, 2020, provided a proper factual and medical history of appellant's September 24, 2018 injury. In his July 27, 2020 medical report, he explained that appellant's left leg and left knee became unstable and stepping down in an awkward fashion caused a twisting motion in his left knee that tore the anterior cruciate ligament in his left knee. Dr. Zimmer diagnosed a partial left knee anterior cruciate ligament tear, derangement of the left knee and infrapatellar bursitis of the left knee as a result of the September 24, 2018 employment incident.

The Board finds that the report from Dr. Zimmer is sufficient to require further development of the medical evidence. Dr. Zimmer is a Board-certified physician who is qualified in his field of medicine, and he provided an understanding of the medical record and case history. His report provides a pathophysiological explanation as to how stepping down in an awkward fashion resulted in the diagnoses of appellant's left knee conditions. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rationale, sound, and logical.<sup>13</sup> Accordingly, Dr. Zimmer's medical opinion is, therefore, sufficient to require further development of appellant's claim.<sup>14</sup>

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>15</sup> OWCP has an obligation to see that justice is done.<sup>16</sup>

On remand, OWCP shall 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 shall provide a well-rationalized opinion as to whether appellant's diagnosed medical conditions are causally

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<sup>12</sup> See *F.C., id.; I.J.*, 59 ECAB 408 (2008).

<sup>13</sup> *B.C.*, Docket No. 20-0498 (issued August 27, 2020); *L.P.*, Docket No. 18-1252 (issued June 4, 2020); *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983).

<sup>14</sup> *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>15</sup> See *id.* See also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>16</sup> See *B.C.*, *supra* note 13; *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

related to the accepted September 24, 2018 employment incident. If the referral physician disagrees with the explanation provided by Dr. Zimmer, he or she must provide a fully-rationalized explanation of why the accepted employment incident was insufficient to have caused or aggravated appellant's diagnosed left knee conditions. After this and other such further development as deemed necessary, OWCP 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 November 20, 2020 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision.<sup>17</sup>

Issued: April 21, 2023  
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

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<sup>17</sup> 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); V.S., Docket No. 20-1034 (issued November 25, 2020); J.G., Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).