

ISSUE

The issue is whether appellant has met his burden of proof to establish a left knee condition causally related to the accepted February 3, 2017 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 February 13, 2017 appellant, then a 56-year-old meat cutter, filed a traumatic injury claim (Form CA-1) alleging that on February 3, 2017 he injured his knee when he walked in front of a case of meat and his knee popped, causing severe pain in the knee area while in the performance of duty. On the reverse side of the claim form, the employing establishment controverted the claim, contending that appellant was not injured in the performance of duty because he was walking back to his duty station from his break at the time of the alleged incident.

In a February 17, 2017 report, Dr. Mark Pollard, a Board-certified orthopedic surgeon indicated that appellant related that his knee popped while he was walking on a concrete floor at work on February 3, 2017 and he experienced immediate sharp pain in the medial aspect of his left knee and difficulty weight-bearing. A physical examination of his left knee revealed a possible slight effusion, medial joint line tenderness, and medial pain with McMurray's test. X-rays of appellant's left knee revealed mild degenerative changes and he diagnosed mild degenerative joint disease and a possible medial meniscus tear. Dr. Pollard advised that appellant was totally disabled.⁴

A March 12, 2017 magnetic resonance imaging (MRI) scan of appellant's left knee revealed a displaced tear of the body and posterior horn of the medial meniscus, a displaced flap fragment in the medial gutter, a linear abnormal signal in the anterior horn of the lateral meniscus, mild abnormal signal in the medial compartment articular cartilage, and a small Baker's cyst.

On March 16, 2017 Dr. Pollard treated appellant for continued left knee pain. He reviewed appellant's left knee MRI scan that revealed mild degenerative joint disease, a medial meniscus tear, and a displaced flap in the medial gutter, and thereafter diagnosed left knee medial meniscus tear and degenerative joint disease. In a separate March 16, 2017 note, Dr. Pollard indicated that appellant's left knee medial meniscus tear was causally related to appellant's work incident.

³ Docket No. 20-0384 (issued October 8, 2020).

⁴ In a February 17, 2017 attending physician's report (Form CA-20), Dr. Pollard indicated that appellant was injured at work on February 3, 2017 when he was walking and heard a pop in his left knee and experienced the immediate onset of pain. He reported that there was no evidence of a preexisting condition. Dr. Pollard noted that an x-ray revealed mild degenerative joint disease and he diagnosed acute left knee pain. He diagnosed acute left knee pain and indicated that appellant's acute left knee pain diagnosis was causally related to appellant's work incident.

On April 3, 2017 Dr. Pollard performed a left knee arthroscopy with partial medial meniscectomy, an excision of the patellofemoral plica, and an examination of appellant's left knee under anesthesia. He diagnosed a medial meniscus tear with a large flat tear and a grade 2 and 3 change of the medial femoral condyle and grade 3 change of the patellofemoral joint and a patellofemoral plica. In an accompanying note, Dr. Pollard indicated that appellant could return to work on May 15, 2017.

By decision dated May 12, 2017, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the February 3, 2017 accepted employment incident.

In a June 2, 2017 medical report, Dr. Pollard indicated that appellant's pain had improved and his current left knee examination revealed normal results. He opined that within a reasonable degree of medical probability appellant's meniscus tear was caused by the injury he sustained on February 3, 2017.

On May 14, 2018 appellant requested reconsideration. He attached a timeline of his injury and his medical treatment.

By decision dated August 9, 2018, OWCP denied modification of its May 12, 2017 decision.

In a September 25, 2018 letter, Dr. Pollard noted his review of appellant's history of injury and his treatment. He concluded that mechanically the event of February 3, 2017 caused appellant's injury by direct causation. Dr. Pollard indicated that appellant was previously asymptomatic and sustained a meniscus tear while walking at work. He explained that this type of injury can occur with a twist or other motion while walking. Dr. Pollard further noted that appellant's injury was proximately caused by appellant's workplace incident, and he indicated that his opinions were within a reasonable degree of medical certainty.

On January 10, 2019 appellant, through counsel, requested reconsideration and asserted that the newly submitted September 25, 2018 narrative medical report by Dr. Pollard was based on an accurate medical history and explained how appellant's movements at work had caused his meniscus tear.

By decision dated March 6, 2019, OWCP denied modification of its May 12, 2017 decision.

On July 5, 2019 appellant, through counsel, requested reconsideration. In an attached letter dated July 4, 2019, counsel indicated that a newly submitted June 4, 2019 narrative medical report by Dr. Pollard was rationalized and provided a detailed explanation of how appellant's accepted employment incident caused his diagnosed condition.

In a June 4, 2019 report, Dr. Pollard provided a history of injury and medical treatment. He indicated that on May 16, 2019 appellant presented with mild-to-moderate left knee pain. Dr. Pollard noted that "[t]he targeted opinion of the knee diagnosis of medial meniscus tear is that

it occurred mechanically with the event of February 3, 2017.” He opined that: “[t]he direct causation would be, as [appellant] had previously asymptomatic knee and was reportedly walking and twisted the knee while at work and suffered immediate onset of sharp medial joint tenderness, medial pain with McMurray’s test. Flap type tear of the meniscus was confirmed on MRI [scan].” Dr. Pollard further opined that this type of tear can certainly occur due to a twist or other motion while walking. He opined that appellant’s medial meniscus tear was proximately caused by appellant’s accepted February 3, 2017 employment incident.

By decision dated October 1, 2019, OWCP denied modification of its May 12, 2017 decision.

Appellant, through counsel, appealed to the Board. By decision dated October 8, 2020, the Board affirmed the October 1, 2019 merit decision finding that appellant had not met his burden of proof to establish a left knee condition causally related to the accepted February 3, 2017 employment incident.⁵

On October 7, 2021 appellant, through counsel, requested reconsideration. He asserted that an addendum report from Dr. Pollard dated October 7, 2021 provided the specific biomechanical explanation as to the causation of the diagnosed condition and the accepted February 3, 2017 employment incident.

In an October 7, 2021 report, Dr. Pollard opined that the flap tear of the posterior horn of the left medial meniscus was “in all likelihood caused by the incident that occurred on [February 3,] 2017.” Appellant reported twisting his knee, which caused the lower leg bone or tibia to twist in relation to the thigh bone or femur. He advised that with certain twists, the meniscus tissue is pinched between the two bones and a flap tear can result from this type of twist injury. Dr. Pollard noted the MRI scan was consistent with this finding. He stated his opinion was within a reasonable degree of medical certainty.

By decision dated January 4, 2022, OWCP denied modification of the 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

⁵ *Supra* note 3.

⁶ 5 U.S.C. § 8101 *et seq.*

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).

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. There are two components involved in establishing fact of injury. The first component is that 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. The second component is whether the employment incident caused a personal injury and this component can be established only by medical evidence.¹⁰

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident 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 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 his burden of proof to establish a left knee condition causally related to the accepted February 3, 2017 employment incident.

Initially, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's October 1, 2019 decision, which was considered by the Board in its October 8, 2020 decision. Findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.¹³

In support of his claim appellant submitted an October 7, 2021 report by Dr. Pollard who opined that the flap tear of the posterior horn of the left medial meniscus was "in all likelihood caused by the incident that occurred on [February 3,] 2017." Appellant reported twisting his knee, which caused the lower leg bone or tibia to twist in relation to the thigh bone or femur. Dr. Pollard

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.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).

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).

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).

noted that with certain twists, the meniscus tissue is pinched between the two bones, and a flap tear can result. The Board has held that medical opinions that suggest that a condition was “likely” caused by work activities are speculative or equivocal in character and have limited probative value.¹⁴ An award of compensation may not be based on surmise, conjecture, speculation or upon appellant’s own belief that there is causal relationship between his claimed condition and his employment.¹⁵ As such, this report from Dr. Pollard does not offer a rationalized medical opinion explaining causal relationship and is 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 February 3, 2017 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 of proof to establish a left knee condition causally related to the accepted February 3, 2017 employment incident.

¹⁴ *J.W.*, Docket No. 18-0678 (issued March 3, 2020).

¹⁵ *See id.*

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 6, 2023
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