United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 23-1090**
	)	**Issued: December 20, 2023**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PATROL, Douglas, AZ, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On August 14, 2023 appellant, through counsel, filed a timely appeal from a July 27, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] 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.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether appellant has met his burden of proof to establish a left knee condition causally related to the accepted March 16, 2020 employment incident.

FACTUAL HISTORY

This case has been previously before the Board. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.[3] The relevant facts are as follows.

On March 17, 2020 appellant, then a 44-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on March 16, 2020 he injured his left knee while in the performance of duty. He explained that he loaded an all-terrain vehicle (ATV) onto a trailer and felt pain followed by burning in his left knee while dismounting the ATV. On the reverse side of the claim form, appellant's supervisor, acknowledged that appellant was in the performance of duty when injured. Appellant did not stop work.

On March 18, 2020 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) authorizing appellant to seek medical care related to pain in the left knee. In the accompanying attending physician's report, Part B of the Form CA-16, Dr. Adrienne Yarnish, an emergency medicine specialist, noted that his complaints of left knee pain after stepping down from his ATV. She diagnosed left knee pain and opined that she was unsure whether the condition was caused or aggravated by the employment activity described, as there was no direct trauma to the knee.

In a duty status report (Form CA-17) dated March 19, 2020, Dr. Yarnish noted a history of left knee pain after appellant dismounted his service ATV. She diagnosed left knee pain and released him to return to full-duty work. In emergency room patient discharge forms and aftercare instructions of even date, Dr. Yarnish indicated that appellant complained of left knee pain and swelling. She diagnosed left knee pain and recommended rest, ice, compression, and elevation.

In a development letter dated March 20, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of evidence needed to establish his claim and afforded him 30 days to submit the necessary evidence.

OWCP thereafter received a report of x-rays of the left knee dated March 19, 2020, which were negative for acute fracture or dislocation.

In a medical report dated April 6, 2020, Dr. Suezie Kim, a Board-certified orthopedic surgeon, noted that appellant complained of left knee pain which he attributed to twisting his left knee while loading an ATV on March 16, 2020.[4] She performed a physical examination of the left knee, which revealed tenderness of the medial joint line, a positive medial McMurray's sign,

[3] Docket No. 22-0293 (issued June 15, 2023).

[4] The Board notes that Dr. Kim reported a date of injury of March 6, 2020; however, this appears to be a typographical error.

and patellar crepitus. Dr. Kim reviewed x-rays performed in the office that day and noted mild medial joint space narrowing, but no acute fracture or dislocation. She diagnosed left knee pain and chondromalacia versus medial meniscus tear and recommended physical therapy, light duty for six weeks, and a knee brace. In a Form CA-17 of even date, Dr. Kim indicated that appellant was loading an ATV and twisted his left knee on March 16, 2020. She diagnosed left knee pain and recommended light-duty restrictions with no kneeling or squatting.

OWCP also received a report dated April 14, 2020 by Justin Embry, a physical therapist, who noted that appellant related a history of left knee burning while stepping down from an ATV.

By decision dated April 23, 2020, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted March 16, 2020 employment incident.

OWCP thereafter received an emergency room medical report by Dr. Yarnish dated March 19, 2020, who noted that appellant was complaining of left knee pain and burning after dismounting his ATV on March 16, 2020. Dr. Yarnish indicated that he denied feeling any pop, twist, or crack in the left knee and denied any direct trauma to the knee. She performed a physical examination and observed diffuse mild tenderness to palpation over the medial left knee with no associated swelling, edema, crepitus, or deformity. Dr. Yarnish diagnosed left knee pain.

In a Part B, attending physician's report, dated April 7, 2020, Dr. Kim noted a history that appellant was loading an ATV and twisted his left ankle. In a Form CA-17 of even date, she indicated that he was loading an ATV and twisted his left knee on March 16, 2020 and diagnosed left knee pain.

Physical therapy reports dated April 17 through May 5, 2020 indicated that appellant underwent ongoing therapeutic treatments to the left knee.

A magnetic resonance imaging (MRI) scan of the left knee dated June 12, 2020, noted a history left knee pain since an injury on March 16, 2020 and revealed a degenerative tear of the posterior horn/body of the medial meniscus, minor medial, lateral, and patellofemoral compartment osteoarthritis, and an intraarticular ganglion cyst associated with the posterior cruciate ligament (PCL).

In a follow up report dated July 6, 2020, Dr. Kim noted that appellant related a history of twisting his left knee while loading an ATV on March 16, 2020. On physical examination, she again noted a positive medial McMurray's sign and subpatellar crepitus. Dr. Kim reviewed the June 12, 2020 MRI scan, and diagnosed early left knee osteoarthritis, a degenerative medial meniscus tear involving the posterior horn and body, and intraarticular ganglion associated with the PCL. She indicated that she discussed surgical and nonsurgical options with appellant, and that he elected to proceed with left knee arthroscopy and partial meniscectomy.

On August 17, 2020 appellant requested reconsideration of OWCP's April 23, 2020 decision.

By decision dated November 9, 2021, OWCP modified its April 23, 2020 decision, finding that appellant had not established the factual component of his claim. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 10, 2021 appellant, through counsel, appealed the November 9, 2021 decision to the Board.

By decision dated June 15, 2023,[5] the Board reversed OWCP's November 9, 2021 decision, finding that appellant had established that the March 16, 2020 employment incident occurred, as alleged. The Board remanded the claim to OWCP for consideration of the medical evidence.

By decision dated July 27, 2023, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish that appellant's diagnosed conditions were causally related to the accepted March 16, 2020 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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. 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 an injury which can be established only by medical evidence.[10]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[11] A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a

[5] *Id*.

[6] *Supra* note 1.

[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.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] *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

complete factual and medical background. 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.[12]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[13]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted March 16, 2020 employment incident.

Dr. Kim, in her April 6, 2020 report, noted physical examination findings, reviewed x-rays, and diagnosed left knee pain and chondromalacia versus medial meniscus tear. In a July 6, 2020 follow-up report, she reviewed the June 12, 2020 MRI scan and diagnosed early left knee osteoarthritis, a degenerative medial meniscus tear involving the posterior horn and body, and intraarticular ganglion associated with the PCL. Dr. Kim did not, however, offer an opinion as to whether the diagnosed conditions were causally related to the accepted March 16, 2020 employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[14] Therefore, the April 6 and July 6, 2020 reports of Dr. Kim are insufficient to establish appellant's claim.

In a March 18, 2020 Part B, attending physician's report, Dr. Yarnish diagnosed left knee pain and opined that she was unsure whether the condition was caused or aggravated by the employment activity described. In an emergency room report and Form CA-17 dated March 19, 2020, she diagnosed left knee pain. Similarly, in an April 6, 2020 Form CA-17 and a Part B, attending physician's report and Form CA-17 dated April 7, 2020, Dr. Kim diagnosed left knee pain. The Board has held that pain is a description of a symptom, not a clear diagnosis of a medical condition.[15] Moreover, Dr. Yarnish's opinion that she was unsure whether the condition was caused or aggravated by the employment activity described is equivocal in nature. Medical opinions that are speculative or equivocal in character are of diminished probative value.[16] Accordingly, these reports are also insufficient to establish appellant's claim.

[12] *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[14] *See S.S.*, Docket No. 21-0837 (issued November 23, 2021); *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *L.D.*, Docket No. 20-0894 (issued January 26, 2021); *T.F.*, Docket No. 18-0447 (issued February 5, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[15] *D.R.*, Docket No. 18-1408 (issued March 1, 2019); *D.A.*, Docket No. 18-0783 (issued November 8, 2018).

[16] *D.B.*, Docket No. 18-1359 (issued May 14, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001).

OWCP also received physical therapy notes. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered qualified physicians as defined under FECA.[17] Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[18]

The remainder of the evidence of record consisted of diagnostic study reports. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injury caused any of the additional diagnosed conditions.[19]

As the medical evidence of record is insufficient to establish a left knee condition causally related to the accepted March 16, 2020 employment incident, the Board finds that appellant has not met his burden of proof.[20]

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 March 16, 2020 employment incident.

[17] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, at Chapter 2.805.3a(1) (January 2013); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

[18] *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id*.

[19] *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[20] The Board notes that the employing establishment issued a Form CA-16, dated March 18, 2020. 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).

ORDER

IT IS HEREBY ORDERED THAT the July 27, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 20, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board