

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a right knee condition causally related to the accepted January 9, 2019 employment incident.

FACTUAL HISTORY

On January 11, 2019 appellant, then a 53-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 9, 2019 he injured a muscle in the back of his right leg getting in and out of his long life vehicle (LLV) while in the performance of duty. He stopped work on January 11, 2019.

In a statement dated January 15, 2019, appellant related that when he climbed into his LLV on January 9, 2019 he felt something slip on the right side of his leg.

In a work status report dated January 10, 2019, Dr. Mikaela Bianca Lewis, an osteopath, advised that appellant could perform modified work from January 10 to 18, 2019 and return to his usual employment on January 19, 2019. In a January 17, 2019 work status report, Dr. Dana Robert Johnson, who specializes in occupational medicine, advised that appellant could perform modified employment through February 7, 2019.

In an attending physician's report (Form CA-20) dated January 18, 2019, Dr. Johnson diagnosed right knee joint pain and advised that appellant could perform light duty beginning January 17, 2019. In a narrative report of even date, he obtained a history of appellant experiencing a slipping sensation in his right knee getting into his work vehicle. Dr. Johnson noted that he had experienced mild chronic knee pain for months, but that the pain became severe after the incident of him getting in the truck. He noted that given the information to date, he could not comment on causation and diagnosed right knee joint pain.

In a development letter dated February 1, 2019, OWCP requested that appellant submit further factual and medical information in support of his claim, included a detailed report from his attending physician providing a diagnosis and explaining how the identified employment incident caused or aggravated a diagnosed condition. It afforded him 30 days to provide the requested information.

In a February 7, 2019 form report, Dr. Johnson indicated that appellant had sustained an injury on January 9, 2019 at work. He diagnosed right knee joint pain. Dr. Johnson advised that appellant should perform modified duty through March 4, 2019.³

By decision dated March 6, 2019, OWCP denied appellant's traumatic injury claim. It found that he had factually established the occurrence of the January 9, 2019 employment incident, but had not submitted medical evidence containing a diagnosis in connection with the accepted work incident.

³ In a work status report dated March 4 and 29, and May 3, 2019, Dr. Johnson provided work restrictions.

Thereafter, OWCP received a March 4, 2019 report from Dr. Johnson, who again diagnosed right knee joint pain and provided restrictions.

On March 13, 2019 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

In a form report dated March 29, 2019, Dr. Johnson discussed appellant's complaints of continued knee symptoms, including buckling. He diagnosed right knee joint pain and arthritis of the right knee and referred appellant for a magnetic resonance imaging (MRI) scan.

An MRI scan of the right knee, obtained on April 10, 2019, demonstrated a tear of the lateral meniscus, a tear of the posterior horn of the medial meniscus, and a small suprapatellar effusion.

On May 3, 2019 Dr. Johnson provided the same history of injury and reviewed the MRI scan. He diagnosed current medial and lateral meniscus tears. Dr. Johnson indicated that appellant could perform modified work duties.

By decision dated July 26, 2019, OWCP's hearing representative affirmed the March 6, 2019 decision as modified to reflect that appellant had submitted medical evidence supporting a diagnosed right knee condition. The hearing representative found, however, that the evidence failed to establish that the diagnosed right knee condition was causally related to the accepted January 9, 2019 employment incident.

Thereafter, OWCP received a June 5, 2019 work status report from Dr. Bradley R. Hotchner, an orthopedic surgeon, finding that appellant was disabled from employment.

On July 26, 2019 appellant underwent a right knee arthroscopy with meniscal repair.

In a form report dated August 8, 2019, Dr. Johnson discussed appellant's history of injury and diagnosed current right knee medial and lateral meniscus tears, right knee joint pain, and right knee arthritis. He indicated that appellant remained disabled.

On September 4, 2019 appellant requested reconsideration.

By decision dated December 3, 2019, OWCP denied modification of its July 26, 2019 decision.⁴

On February 10, 2020 appellant requested reconsideration. He resubmitted the progress report from Dr. Johnson dated August 8, 2019. In an addition to the report, Dr. Johnson related, "Barring any information to the contrary, [appellant's] current condition is causally related to the industrial injury described above.... It is the reasonable medical opinion of this physician that given the work duties of [appellant] that it is reasonable to ascribe causality of the knee injury to work."

⁴ Appellant appealed to the Board. In an order dated February 10, 2020, the Board dismissed the appeal at his request. *A.L., Order Dismissing Appeal*, Docket No. 20-0409 (issued February 10, 2020).

By decision dated March 31, 2020, OWCP denied modification of its December 3, 2019 decision.

On March 11, 2021 appellant, through counsel, requested reconsideration. In support of his request, he submitted a January 28, 2021 report from Dr. John B. Dorsey, a Board-certified orthopedic surgeon. Dr. Dorsey obtained a history of appellant sustaining right knee pain in July or August 2018 when he fell at work, with continued occasional mild right knee pain. On January 9, 2019 appellant missed a step climbing into his LLV and twisted his leg. Dr. Dorsey related, “He felt as though the whole side of his right knee had slipped. He states he felt there was something terribly wrong that had not occurred before.” Dr. Dorsey noted that appellant felt intense pain in the medial area and radiating laterally. He noted that an MRI scan obtained after the incident demonstrated a “significant tear in the medial and lateral meniscus.” Dr. Dorsey advised that the January 9, 2019 injury was a major injury that had caused tears in the medial and lateral meniscus. He provided his review of the evidence and diagnosed a right knee medial meniscus tear, status postoperative, and a right knee lateral meniscus tear, status postoperative. Dr. Dorsey asserted that the medical records and the MRI scan supported his diagnosis. He opined that appellant had experienced a new injury on January 9, 2019 entering his LLV, which caused the tears and advised that he could not have continued working without medical treatment if the initial injury had resulted in medial and lateral meniscus tears. Dr. Dorsey related, “Overall, my professional opinion is that [appellant’s] injury on January 9, 2019 was a work-related injury and that is the injury that caused his medial and lateral meniscus tears, which required subsequent surgery.”

By decision dated August 9, 2021, OWCP denied modification of its March 31, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 filed within the applicable time limitation of FECA,⁶ 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.⁷ 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.⁸

⁵ *Supra* note 2.

⁶ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

⁸ *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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.⁹ Generally, 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 that allegedly occurred.¹⁰ The second component is whether employment incident caused a personal injury.¹¹ An employee may establish that an injury occurred in the 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 employment incident.¹²

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹³ 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.¹⁴ 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.¹⁵

ANALYSIS

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

In a report dated January 28, 2021, Dr. Dorsey advised that appellant had sustained a minor knee injury in July or August 2018 when he fell. On January 9, 2019 his right knee slipped when he climbed into his LLV, and he experienced significant pain in the medial area radiating laterally. Dr. Dorsey diagnosed medial and lateral meniscus tears of the right knee treated with surgery. He opined that appellant's injury to his right knee on January 2019 was employment related, and resulted in the tears to the medial and lateral meniscus that required surgical repair. Dr. Dorsey advised that the injury in July or August 2018 was minor, noting that he could not have continued to work without medical treatment if he had sustained medial and lateral meniscal tears.

The Board finds that Dr. Dorsey's report is sufficient to require further development of the medical evidence. Dr. Dorsey provided a comprehensive understanding of the medical record and case history. His opinion is supportive, unequivocal, bolstered by objective findings, and based on an accurate history.¹⁶ Dr. Dorsey referenced objective medical findings demonstrating injury,

⁹ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

¹⁰ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

¹¹ *Id.*

¹² *A.D.*, Docket No. 20-0962 (issued April 13, 2021); *Shirley A. Temple*, 48 ECAB 404 (1997).

¹³ *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *T.H.*, *supra* note 9.

¹⁴ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹⁵ *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁶ *D.B.*, Docket No. 19-0504 (issued July 22, 2020); *V.G.*, Docket No. 17-1418 (issued April 4, 2018).

expressed his opinion on causal relationship, and provided a pathophysiologic explanation as to the mechanism by which the accepted January 9, 2019 employment incident would have resulted in her diagnosed conditions. His medical opinion is therefore sufficient to require further development to determine whether appellant sustained a right knee injury causally related to the accepted employment incident.¹⁷

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.¹⁸ OWCP has an obligation to see that justice is done.¹⁹

On remand OWCP shall refer appellant, a statement of accepted facts, and the medical record to specialist in the appropriate field of medicine. The chosen physician shall provide a rationalized opinion as to whether appellant sustained a right knee condition causally related to the accepted employment incident. Following this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

CONCLUSION

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

¹⁷ *E.G.*, Docket No. 20-1184 (issued March 1, 2021).

¹⁸ *See J.H.*, Docket No. 18-1637 (issued January 29, 2020); *Jimmy A. Hammons*, 51 ECAB 219 (1999).

¹⁹ *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 6, 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