United States Department of Labor
Employees' Compensation Appeals Board

P.M., Appellant	)	
and	)	**Docket No. 22-0943**
	)	**Issued: February 23, 2023**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTION, PHOENIX, Phoenix, AZ, Employer	)	

Appearances:
Alan J. Shapiro, 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 June 3, 2022 appellant, through counsel, filed a timely appeal from a May 10, 2022 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 diagnosed medical condition in connection with the accepted September 19, 2021 employment incident.

FACTUAL HISTORY

On September 28, 2021 appellant, then a 49-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on September 19, 2021 he struck his left knee on a hard concrete floor when he placed a noncompliant inmate on the floor while in the performance of duty. He asserted that he sustained a bone bruise of the left knee. Appellant stopped work on September 20, 2021.

In a September 19, 2021 inmate injury assessment report, a provider with a illegible signature, indicated that on September 19, 2021 appellant "landed on left knee during use of force," and noted findings of superficial abrasion, erythema, and slight swelling of the left knee, as well as slight gait limp. The provider diagnosed left knee injury during use of force.

In a September 20, 2021 note, Dr. Tamara Djurisic, a Board-certified family medicine specialist, indicated that appellant should be excused from work for the period September 20 through 25, 2021 and could return to work on September 26, 2021. In a September 28, 2021 note, she advised that he should be excused from work for the period September 20 through October 10, 2021 due to his current medical conditions and could return to work on October 10, 2021.

In an October 15, 2021 development letter, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed. OWCP afforded appellant 30 days to submit the requested evidence. No evidence was received.

By decision dated November 15, 2021, OWCP accepted that appellant had established the occurrence of the September 19, 2021 employment incident, as alleged. However, it denied his claim, finding that he had not submitted sufficient evidence to establish the medical component of fact of injury because the medical evidence did not show that a medical condition was diagnosed in connection with the accepted September 19, 2021 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On February 9, 2022 appellant, through counsel, requested reconsideration of the November 15, 2021 decision.

Appellant submitted September 20 and 27, 2021 reports from Dr. Djurisic who advised that he had visited "in order to get more time off from work." In the September 20, 2021 report, Dr. Djurisic indicated that he reported that, on the prior day, he fell and landed on his left knee on a concrete floor at work. She indicated that appellant complained of left knee pain, detailed physical examination findings, and diagnosed acute pain of the left knee. Dr. Djurisic reported

that x-ray testing was negative, and noted that he was unable to work from September 20 through October 10, 2021.[3]

In an October 27, 2021 report, Dr. Djurisic noted that appellant reported that he was supposed to return to work on November 20, 2021, but was concerned about his ability to navigate stairs. She diagnosed hyperthyroidism and diabetes mellitus with hyperglycemia, as well as other conditions related to diabetes. On November 4, 2021 Dr. Djurisic provided the same diagnoses as contained in her October 27, 2021 report, but also indicated "knee pain" in the section for diagnosed conditions.

In a November 4, 2021 note, Dr. Djurisic indicated that, due to his current medical conditions, appellant needed to be on limited-duty work from November 29, 2021 through January 1, 2022, which did not require using stairs or running. She advised that he could return to work on January 1, 2022.

In a December 27, 2021 report, Dr. Djurisic reported physical examination findings and diagnosed resolved knee pain, hyperthyroidism, and diabetes mellitus with hyperglycemia, as well as other conditions related to diabetes. She indicated that appellant had swelling of the left tibial tuberosity, and noted that he could return to work without any restrictions. In a December 27, 2021 form report, Dr. Djurisic indicated that she first diagnosed him with knee pain on September 20, 2021 and that the pain had resolved. She advised that appellant's "healing plateau" had been reached on December 27, 2021.

Appellant also submitted a September 20, 2021 x-ray of the left knee, which contained an impression of "no fracture detected," and the results of bloodwork conducted on October 27, 2021.

By decision dated May 10, 2022, OWCP denied modification of its November 15, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,[4] 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

[3] Dr. Djurisic also provided a contradictory opinion in the September 19 and 27, 2021 reports that appellant could return to work on October 1, 2021 without restrictions.

[4] *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.[5] 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.[6]

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. 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.[7] The second component is whether the employment incident caused a personal injury.[8]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 the specific employment incident.[9] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted September 19, 2021 employment incident.

Appellant submitted September 19 and 27, 2021 reports from Dr. Djurisic who diagnosed acute pain of the left knee and noted that he was unable to work from September 20 through October 10, 2021. In a September 20, 2021 report, Dr. Djurisic indicated that he reported that, on the prior day, he fell and landed on his left knee on a concrete floor at work. She diagnosed acute pain of the left knee and noted that appellant would be off work until September 26, 2021. In a September 20, 2021 note, Dr. Djurisic indicated that he should be excused from work for the period September 20 through 25, 2021 and could return to work on September 26, 2021. In a September 28, 2021 note, she advised that appellant should be excused from work for the period September 20 through October 10, 2021 due to his current medical conditions, and could return to work on October 10, 2021. In an October 27, 2021 report, Dr. Djurisic diagnosed hyperthyroidism and diabetes mellitus with hyperglycemia, as well as other conditions related to diabetes. On November 4, 2021 she provided the same diagnoses as contained in her October 27, 2021 report, but also indicated "knee pain" in the section for diagnosed conditions. In a November 4, 2021

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[10] *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

note, Dr. Djurisic indicated that, due to his current medical conditions, appellant needed to be on limited-duty work from November 29, 2021 through January 1, 2022, which did not require using stairs or running. Subsequently, in a December 27, 2021 report, she diagnosed resolved knee pain, hyperthyroidism, and diabetes mellitus with hyperglycemia, as well as other conditions related to diabetes. Dr. Djurisic indicated that appellant had swelling of the left tibial tuberosity, and noted that he could return to work without any restrictions. In a December 27, 2021 form report, she indicated that she first diagnosed him with knee pain on September 20, 2021 and that the pain had resolved. However, these reports do not indicate that appellant suffered a diagnosed medical condition in connection with the September 19, 2021 employment incident. The Board has held that pain alone is a symptom, not a medical diagnosis.[11] Therefore, these reports fail to establish the medical component of fact of injury.[12]

Appellant submitted a September 19, 2021 inmate injury assessment report in which a provider with a illegible signature noted findings of superficial abrasion, erythema, and slight swelling of the left knee, as well as slight gait limp, and diagnosed left knee injury during use of force. However, this document does not constitute medical evidence under FECA as there is no indication that the author is a physician.[13]

Appellant also submitted a September 20, 2021 x-ray of the left knee, which contained an impression of "no fracture detected," and the results of bloodwork conducted on September 27, 2021. However, these reports do not indicate a diagnosed medical condition. Moreover, even a diagnostic study which contains a diagnosed condition, standing alone, lacks probative value on causal relationship as it does not address whether employment factors caused the diagnosed condition.[14]

As the medical evidence of record does not contain medical evidence associating a diagnosed medical condition to the accepted September 19, 2021 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 diagnosed medical condition in connection with the accepted September 19, 2021 employment incident.

[11] *See F.U.*, Docket No. 18-0078 (issued June 6, 2018).

[12] *See supra* notes 6 and 7.

[13] *See S.D.*, Docket No. 21-0292 (issued June 29, 2021); *C.B.*, Docket No. 09-2027 (issued May 12, 2010) (a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[14] *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

ORDER

IT IS HEREBY ORDERED THAT the May 10, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 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