

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

_____)	
H.L., Appellant)	
)	
and)	Docket No. 22-1369
)	Issued: July 19, 2023
U.S. POSTAL SERVICE, JIM FALLS POST)	
OFFICE, Jim Falls, WI, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On September 29, 2022 appellant, through counsel, filed a timely appeal from an August 30, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 medical condition causally related to the accepted October 26, 2019 employment incident.

FACTUAL HISTORY

On October 28, 2019 appellant, then a 60-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 26, 2019 he sprained his right knee when he tripped and fell on a rug while in the performance of duty. He did not immediately stop work.

On November 12, 2019 Dr. Scott E. Cameron, a Board-certified orthopedist, treated appellant for bilateral knee pain. Appellant reported that approximately one month prior he tripped and twisted his left foot, causing bilateral knee pain. His history included a right knee arthroscopy in 2008 to repair a tear of the medial meniscus. Findings on physical examination revealed bilateral knee medial joint line tenderness and bilateral knee crepitation. Dr. Cameron diagnosed right knee medial compartment osteoarthritis, left knee probable medial meniscus tear, and knee pain. He performed an intra-articular injection into the right knee. In a return-to-work note dated November 22, 2019, Dr. Cameron restricted appellant to working six hours per day. In a form report dated January 8, 2020, he continued appellant's restrictions of working six hours per day. On January 21, 2020 Dr. Cameron saw appellant for routine preoperative evaluation for a left knee arthroscopy.

November 12, 2019 x-rays of the knees revealed moderate arthropathy of the right knee, most notably involving the medial compartment, and scattered atherosclerotic vascular calcifications in both knees. A November 13, 2019 magnetic resonance imaging (MRI) scan of the left knee revealed a complex tear of the medial meniscal posterior horn and body including large horizontal undersurface cleavage tear and small radial tear new since 2008, intrasubstance degeneration of the lateral meniscus without a tear, chondromalacia patellae with high-grade chondral defects and edema, incipient pes anserinus bursitis, new since 2008, popliteus tendinosis, large joint effusion, and trace Baker's cyst.

On February 3, 2020 Dr. Cameron performed diagnostic left knee arthroscopy with medial meniscectomy and synovectomy. He diagnosed knee pain and medial meniscus tear with low-grade chondromalacia patella and synovitis.

In a February 13, 2020 report, Dr. Cameron treated appellant for a two-week postoperative evaluation following left knee arthroscopy and noted that the surgical incision was healing nicely without erythema, there was no pain upon palpation, good range of motion, and no instability. He removed the sutures and diagnosed status post left knee arthroscopy.

On March 17, 2020 Nicholas Strang, a physician assistant, continued appellant's restrictions of working six hours per day.

In an April 30, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP thereafter received a return-to-work note dated May 15, 2020, wherein Dr. Cameron continued appellant's restrictions of working six hours per day.

By decision dated June 17, 2020, OWCP denied appellant's traumatic injury claim, finding that the medical evidence submitted was insufficient to establish causal relationship between his diagnosed conditions and the accepted October 26, 2019 employment incident.

OWCP subsequently received additional evidence. In a January 22, 2020 report, Dr. Peter A. Halverson, a Board-certified internist, noted performing a preoperative evaluation, clearing appellant for the left knee arthroscopy.

On June 3, 2020 Mr. Strang treated appellant four months after left knee arthroscopy and noted mild swelling. An x-ray of the left knee dated June 3, 2020 revealed mild loss of medial joint space. Mr. Strang diagnosed status post left knee arthroscopy and bilateral knee pain and performed bilateral intra-articular knee injections. In a form report of even date, he returned appellant to work six hours per day.

In a report dated July 7, 2020, Dr. Cameron noted that appellant underwent arthroscopic surgery for a torn left medial meniscus in February 2020 and his right knee remained symptomatic. He opined that appellant probably had some acceleration of degenerative changes of the right knee in addition to a right knee injury on October 26, 2019. Dr. Cameron diagnosed status post left medial meniscectomy and synovectomy on February 3, 2020.

On July 17, 2020 appellant requested reconsideration.

By decision dated November 27, 2020, OWCP denied modification of the June 17, 2020 decision.

On March 11, 2021 appellant, through counsel, requested reconsideration.

By decision dated April 8, 2021, OWCP denied modification of the November 27, 2020 decision.

On July 1, 2021 appellant, through counsel, requested reconsideration.

On April 27, 2021 Dr. Cameron treated appellant for an osteoarthritic right knee exacerbated by a work-related injury and an osteoarthritic left knee caused by a work-related injury. He performed bilateral intra-articular injections.

By decision dated July 19, 2021, OWCP denied modification of the April 8, 2021 decision.

On January 5, 2021 Mr. Strang diagnosed bilateral knee pain and performed bilateral intra-articular knee injections. In a form report of even date, he returned appellant to work seven hours per day.

In a form report dated September 21, 2021, Dr. Cameron noted that appellant fell at work on October 26, 2019 and twisted both knees. He diagnosed bilateral knee post-traumatic arthritis and noted with a checkmark "Yes" that the work event directly caused the disability.

On October 25, 2021 appellant requested reconsideration.

By decision dated December 6, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

OWCP received a March 2, 2022 report wherein Dr. Cameron related that on October 26, 2019 appellant caught his left foot on a rug and fell twisting and injuring both knees while at work. Dr. Cameron opined to a reasonable degree of medical and surgical certainty that the diagnosed tear of the medial meniscus of the left knee and aggravation of the osteoarthritis of the right knee was more likely than not caused by the work incident. He explained that the tear resulted from a torque injury when the rotational force overwhelmed the loadbearing capacity of the left knee joint causing soft tissues of the medial meniscus to tear. Dr. Cameron further indicated that the meniscus tear also altered the mechanics of the knee causing trauma to the knee joint. He noted that the articular surfaces of the left knee showed signs of wear and were further injured by the employment incident. Dr. Cameron indicated that the right knee had underlying osteoarthritic changes to the cartilage that were further injured in the torquing of the right knee. He opined that the work trauma to the knee on October 26, 2019 led to the tear of the medial meniscus in the left knee and aggravation of arthritis in the right knee. Dr. Cameron advised that neither knee would be in the current condition if it were not for the violent fall that occurred at work that day.

On March 16, 2022 appellant, through counsel, requested reconsideration.

By decision dated August 30, 2022, OWCP denied modification of its July 19, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 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 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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the

³ *Id.*

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).

⁵ *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).

⁶ *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).

employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁷

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.⁸ 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.⁹

ANALYSIS

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

In his March 2, 2022 report, Dr. Cameron indicated that on October 26, 2019 while at work appellant caught his left foot on a rug and fell twisting and injuring both knees. He explained that the tear resulted from a torque injury when the rotational force overwhelmed the loadbearing capacity of the left knee joint causing soft tissues of the medial meniscus to tear. Dr. Cameron further indicated that the meniscus tear also altered the mechanics of the knee causing trauma to the knee joint. He noted that the articular surfaces of the left knee showed signs of wear and were further injured by the employment incident. Dr. Cameron also opined that the right knee had underlying osteoarthritic changes to the cartilage that was further injured in the torquing of the right knee. He opined to a reasonable degree of medical and surgical certainty that the diagnosed tear of the medial meniscus of the left knee and aggravation of the osteoarthritis of the right knee was more likely than not caused by the employment incident. Dr. Cameron concluded that these findings were due to the violent fall that occurred during the accepted October 26, 2019 employment incident.

Dr. Cameron, in his report, demonstrated a comprehensive understanding of the medical record and case history and provided a pathophysiological explanation as to how tripping and falling on a rug and twisting both knees resulted in appellant's meniscal tear. 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

⁷ *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *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).

⁹ *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).

convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹⁰ Accordingly, Dr. Cameron's medical opinion is sufficient to require further development of appellant's claim.¹¹

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.¹² OWCP has an obligation to see that justice is done.¹³

On remand, OWCP shall refer appellant, the medical record and a statement of accepted facts, to a specialist in the appropriate field of medicine for a second opinion examination and rationalized medical opinion as to whether the accepted employment incident either caused or aggravated his diagnosed conditions.¹⁴ If the second opinion physician disagrees with the explanations provided by Dr. Cameron, he or she must provide a fully-rationalized explanation explaining why the accepted employment incident was insufficient to have caused or aggravated his diagnosed conditions of medial meniscus to tear to the left knee and aggravation of osteoarthritic changes of the right knee. 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.

¹⁰ *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) and cases cited therein.

¹¹ *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).

¹² *See id.* *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹³ *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).

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2022 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: July 19, 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