

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

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<b>J.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-0293</b>
	)	<b>Issued: June 15, 2023</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>CUSTOMS &amp; BORDER PATROL, Douglas, AZ,</b>	)	
<b>Employer</b>	)	
_____	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On December 10, 2021 appellant, through counsel, filed a timely appeal from a November 9, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic incident in the performance of duty on March 16, 2020 as alleged.

## FACTUAL HISTORY

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 6, 2020. She performed a physical examination of the left knee, which revealed tenderness of the medial joint line, a positive medial McMurray's sign, 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, which revealed 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 intra-articular 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 6, 2020. On physical examination, she again noted a positive medial McMurray's sign and sub patellar 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 intra-articular 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.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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

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<sup>3</sup> *Id.*

limitation of FECA,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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 whether the employee actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>7</sup>

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.<sup>8</sup> In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on the employee's statements. The employee has not met his or her burden of proof when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>9</sup> An employee's statements alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has met his burden of proof to establish that a traumatic incident occurred in the performance of duty on March 16, 2020 as alleged.

In his Form CA-1, appellant indicated that he experienced left knee pain and burning while dismounting his ATV on March 16, 2020. His supervisor, acknowledged on the reverse side of the claim form that appellant was injured in the performance of duty on March 16, 2020.

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<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> *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).

<sup>7</sup> *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).

<sup>8</sup> *S.W.*, Docket No. 17-0261 (issued May 24, 2017).

<sup>9</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>10</sup> *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

In an emergency room report dated March 19, 2020, Dr. Yarnish noted that appellant reported experiencing burning and pain behind his left kneecap while dismounting an ATV at work. In her April 7, 2020 report, Dr. Kim noted that he related a history of left knee pain due to twisting the knee while loading an ATV on March 16, 2020. In an attending physician's report of even date, she noted a history that appellant was loading an ATV and twisted his left ankle. A physical therapy evaluation report dated April 14, 2020 noted a history that he stepped down from an ATV and felt burning in the left knee cap.

Appellant has maintained that his injury occurred when he dismounted his ATV trailer on March 16, 2020 which was acknowledged by his supervisor and consistently reported by his attending physicians and physical therapist. Therefore, the Board finds that appellant has met his burden of proof to establish that a traumatic incident occurred in the performance of duty on March 16, 2020 as alleged.

Consequently, the question becomes whether the incident caused an injury.<sup>11</sup> As OWCP found that appellant had not established fact of injury, it did not evaluate the medical evidence. The case must, therefore, be remanded for consideration of the medical evidence of record.<sup>12</sup> After such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden of proof to establish an injury causally related to the accepted March 16, 2020 employment incident.<sup>13</sup>

### CONCLUSION

The Board finds that appellant has met his burden of proof to establish that a traumatic incident occurred in the performance of duty on March 16, 2020 as alleged.

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<sup>11</sup> *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019)

<sup>12</sup> *Supra* note 9; *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

<sup>13</sup> The Board notes that 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 November 9, 2021 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 15, 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