



## ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on August 8, 2022, as alleged.

## FACTUAL HISTORY

On August 11, 2022 appellant, then a 55-year-old computer specialist, filed a traumatic injury claim (Form CA-1) alleging that on August 8, 2022 he sustained a lesion on his right leg femur when he stood up from his desk, turned to walk out of his cubicle, and his knee “just gave out” while in the performance of duty. He indicated that his right knee had been hurting for about a week due to excessive walking at work. Appellant further explained that he was returning to work after a total knee replacement of his left knee. On the reverse side of the claim form, the employing establishment indicated that appellant was not injured in the performance of duty. It explained that appellant was on duty when injured; but he did not indicate what he was doing when he stood.

In a letter dated August 19, 2022, an employing establishment human resources specialist controverted appellant’s claim, asserting that he had not submitted evidence to establish that his disabling condition was caused by a relatively minor incident.

In an August 22, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for completion. OWCP afforded appellant 30 days to provide the necessary evidence.

Appellant submitted an August 8, 2022 employee health injury initial note, wherein Dr. Charles E. Morris, an employing establishment physician Board-certified preventive and occupational medicine specialist, who noted that appellant recently returned to work from left total knee repair surgery and now presented for right knee injury. Dr. Morris related that appellant rose from his chair and as he turned to walk, he felt his right knee shift sideways. On physical examination, he observed pain on palpation to the medial and posterior right knee and limited range of motion. Dr. Morris diagnosed right knee sprain.

An x-ray report dated August 9, 2022 showed sclerotic lesion in the distal right femoral diaphysis.

In an employee health injury progress follow-up note dated August 22, 2022, Dr. Morris related that appellant sustained a right knee injury on August 8, 2022 after standing up, turning, and twisting his right knee. He noted that appellant felt a “pop and instant pain.” Dr. Morris provided examination findings and diagnosed right knee sprain.

An August 31, 2022 right knee magnetic resonance imaging (MRI) scan demonstrated diffuse marrow edema throughout the tibial plateau, intrasubstance edema of the anterior cruciate ligament (ACL), chronic changes of the posterior cruciate ligament (PCL) consistent with a previous injury, a fairly large complex Baker’s cyst, and significant patellofemoral chondromalacia and arthritic changes.

In an employee health injury follow-up note dated September 20, 2022, Deanna L. Smith, a certified nurse practitioner, indicated that appellant was treated for an August 8, 2022 right knee injury. She reported examination findings of minimal range of motion and no bruising or swelling. Ms. Smith diagnosed right knee strain.

By decision dated September 26, 2022, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the August 8, 2022 employment incident and/or events occurred as alleged. It noted that the evidence on file did not contain a sufficient description of how the alleged injury occurred or what type of injury he was claiming. OWCP 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 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 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 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> The employee has not met his or her

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *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); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

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

burden of proof establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statement in determining whether a *prima facie* case has been established.<sup>9</sup> An employee's statement 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 August 8, 2022, as alleged.

On his August 11, 2022 Form CA-1, appellant described that on August 8, 2022 he stood up from his desk, turned to walk out of his cubicle, and felt his knee give out. In a contemporaneous employee health injury initial note dated August 8, 2022, Dr. Morris, an employing establishment physician, related that appellant got up from his chair, turned, and felt his right knee shift sideways. In an employee health injury progress note follow-up note dated August 22, 2022, Dr. Morris again related that appellant sustained a right knee injury on August 8, 2022 after standing up, turning, and twisting his right knee. He noted that appellant felt a "pop and instant pain."

As noted, an employee's statement 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>11</sup> Appellant consistently stated that his injury occurred when he got up from his desk, turned, and felt his knee give out. 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 August 8, 2022, as alleged.<sup>12</sup>

Consequently, the question becomes whether the incident caused an injury.<sup>13</sup> As OWCP found that he 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>14</sup> After any further development deemed necessary, OWCP shall issue a *de novo* decision addressing whether

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<sup>9</sup> *C.M.*, Docket No. 20-1519 (issued March 22, 2019); *S.A.*, Docket No. 19-0613 (issued August 22, 2019); *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>10</sup> *A.C.*, Docket No. 18-1567 (issued April 9, 2019); *D.B.*, 58 ECAB 529 (2007); *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>11</sup> *Id.*

<sup>12</sup> *See J.V.*, Docket No. 21-0029 (issued April 15, 2022); *C.B.*, Docket No. 21-0670 (issued January 27, 2022).

<sup>13</sup> *C.B.*, Docket No. 21-0554 (issued June 21, 2022); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

<sup>14</sup> *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

appellant has met his burden of proof to establish an injury causally related to the accepted August 8, 2022 employment incident.

**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 August 8, 2022, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 26, 2022 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 14, 2023  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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