

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

D.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Coppell, TX, Employer)
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**Docket No. 23-0218
Issued: June 26, 2023**

Appearances:
Appellant, pro se
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 1, 2022 appellant filed a timely appeal from July 26 and September 7, 2022 merit decisions¹ 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.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a left knee condition causally related to the accepted December 30, 2021 employment incident; and (2) whether appellant has met his burden of proof to establish disability from work commencing January 3, 2022.

¹ On his application for review (AB-1 Form), appellant indicated that he was appealing from a September 16, 2022 OWCP decision. The Board notes, however, that there is no OWCP final adverse decision dated September 16, 2022. The last final adverse OWCP decisions of record issued within 180 days from the date of docketing of the current appeal are dated July 26 and September 7, 2022. See 20 C.F.R. § § 501.2(c) and 501.3.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 5, 2022 appellant, then a 52-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 30, 2021 he twisted his left knee and tweaked his back after delivering a package when he saw a dog in a yard and he stepped in a hole covered with leaves while in the performance of duty. He stopped work on December 31, 2022 and returned to work on the same day.

In a letter dated January 11, 2022, the employing establishment controverted appellant's claim, noting that he had filed numerous claims for injuries to his knees, and that it was probable that the present claim was nonwork related. It contended, that he had not submitted medical evidence to establish employment-related injury.

In a development letter dated January 20, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and afforded him 30 days to submit the necessary evidence.

OWCP received medical evidence from Dr. Diane S. Litke, an attending orthopedic surgeon. In a duty status report (Form CA-17) dated January 20, 2022, Dr. Litke noted a date of injury as September 25, 2020. She diagnosed sprain and degenerative joint disease of the knee due to injury. Dr. Litke advised that appellant was unable to resume his regular work.

In an attending physician's report (Form CA-20) of even date, Dr. Litke related a history of injury that on September 25, 2020 appellant fell into a hole. She diagnosed internal derangement, chondromalacia, and superficial injury of the left knee. Dr. Litke checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by an employment activity of stepping into a hole. She opined that appellant was totally disabled for the period January 20 through February 28, 2022 and advised that he could resume regular work on March 1, 2022.

By decision dated February 23, 2022, OWCP accepted that the December 30, 2021 employment incident occurred, as alleged. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish that his diagnosed medical condition was causally related to the accepted employment incident.

Appellant subsequently filed claims for compensation (Form CA-7) for disability from work for the periods January 31 through February 11, 2022 and February 14 through 25, 2022.

On March 22, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the February 23, 2022 denial of his traumatic injury claim.

OWCP subsequently received an additional Form CA-20 report dated April 4, 2022 from Dr. Litke who related a history of injury that on December 30, 2021, appellant fell into a hole. She noted her diagnoses of internal derangement, chondromalacia, and superficial injury of the left knee and opinion that appellant could resume light work on July 1, 2022. Dr. Litke checked a box marked "Yes" indicating that the diagnosed conditions were caused by the employment activity of stepping into a hole.

On July 7, 2022 OWCP converted appellant's request for an oral hearing to a request for a review of the written record because he failed to attend a telephonic hearing scheduled for July 7, 2022 at 1:15 p.m. Eastern Standard Time.

Thereafter, OWCP received a March 3, 2022 report from Dr. Litke. Dr. Litke provided her findings on physical examination of appellant's left knee. She diagnosed chondromalacia patellae and unspecified internal derangement of the left knee. Dr. Litke noted that appellant had a chronic left knee injury that worsened due to a repeated twisting injury. She advised that she had increased appellant's work restrictions and that he should proceed with a total knee arthroplasty.

On July 20, 2022 appellant filed an additional Form CA-7, claiming disability from work for the period January 3 through July 15, 2022.

By decision dated July 26, 2022, OWCP denied appellant's claims for disability from work commencing January 3, 2022, finding that the medical evidence of record was insufficient to establish disability from work due to an accepted employment-related medical condition.

In an undated narrative report, Dr. Litke noted that, prior to the accepted December 30, 2021 employment incident, appellant sustained two left knee injuries at work on February 1, 2011 and November 19, 2013. He underwent a patellofemoral joint arthroplasty on September 16, 2015 and an arthroscopy on March 11, 2016 for scar tissue and the progression of arthritis to the medial and lateral components. Dr. Litke noted that appellant's claims for these two injuries were closed. Additionally, she noted that appellant had been unable to work as a mail carrier since the December 30, 2021 work incident and had been on light duty and off work on an intermittent basis. Dr. Litke noted her prior diagnoses of chondromalacia patella, which had resolved with the patellofemoral arthroplasty, and internal derangement of the knee. She also diagnosed fibrosis of an ortho implant and full left knee arthritis. Dr. Litke related that appellant's arthritis was caused by his initial injury, the December 30, 2021 employment incident, and his history of gout. She concluded that his left knee arthritis necessitated revision from partial knee to total knee arthroplasty.

By decision dated September 7, 2022, an OWCP hearing representative affirmed the February 23, 2022 decision.³

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ 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

³ The hearing representative instructed OWCP to administratively combine appellant's left leg claims assigned OWCP File Nos. xxxxxx711, xxxxx689, xxxxxx271, and xxxxxx708 upon return of the case record. The record reflects that OWCP has administratively combined OWCP File Nos. xxxxxx711, xxxxxx689, xxxxxx271, xxxxxx708, and xxxxxx464, with the latter serving as the master file.

⁴ *Id.*

limitation of FECA,⁵ 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.⁶ 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.⁷

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 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.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ 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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted December 30, 2021 employment incident.

In support of his claim, appellant submitted a series of medical reports from Dr. Litke. Dr. Litke diagnosed internal derangement, chondromalacia, superficial injury, and arthritis of the left knee. In a Form CA-20 report dated April 4, 2022, she checked a box marked "Yes" indicating that appellant's internal derangement, chondromalacia, and superficial injury of the left knee were caused or aggravated by the December 30, 2021 employment incident. The Board has held that reports that address causal relationship only by affirmative checkmark, without

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *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).

medical rationale explaining how the employment incident caused or aggravated the diagnosed condition, are of diminished probative value.¹¹

Dr. Litke's remaining Form CA-17 and Form CA-20 reports dated January 20, 2022, found that appellant's diagnosed conditions of sprain, degenerative joint disease, internal derangement, chondromalacia, and superficial injury of the left knee were causally related to his fall into a hole on September 25, 2020. However, she did not provide medical rationale in these reports explaining how the accepted December 30, 2021 incident caused or aggravated the diagnosed conditions.¹²

Likewise, Dr. Litke, in her March 3, 2022 report, and in her undated narrative report, opined that appellant's diagnosed conditions were causally related to the accepted December 30, 2021 employment incident. However, she did not provide a rationalized medical explanation as to how the accepted December 30, 2021 incident physiologically caused the diagnosed left knee conditions. The Board has held that the physician must offer a rationalized explanation of causal relationship.¹³ The medical evidence from Dr. Litke is, therefore, insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a left knee condition causally related to the accepted December 30, 2021 employment incident, the Board finds that appellant has not met his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA¹⁴ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.¹⁵ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹⁶ Whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues, which must be proven by a preponderance of the reliable, probative, and substantial medical evidence.¹⁷

¹¹ See *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *J.O.*, Docket No. 22-0240 (issued June 8, 2022); *R.C.*, Docket No. 20-1525 (issued June 8, 2021); *D.A.*, Docket No. 20-0951 (issued November 6, 2020); *K.R.*, Docket No. 19-0375 (issued July 3, 2019); *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹² *Id.*

¹³ *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

¹⁴ *Supra* note 2.

¹⁵ *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁶ *Id.*; *William A. Archer*, 55 ECAB 674 (2004).

¹⁷ *V.H.*, Docket No. 18-1282 (issued April 2, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

Under FECA the term “disability” is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.¹⁸ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹⁹

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.²⁰

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.²¹

ANALYSIS -- ISSUE 2

As appellant has not established that he sustained the alleged left knee condition causally related to the December 30, 2021 incident, he has also not established that he is entitled to wage-loss compensation for an accepted work-related injury. OWCP’s regulations provide that benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee’s work-related medical condition prevents him or her from earning the wages earned before the work-related injury.²² As found above, appellant has not established a work-related condition causally related to the December 30, 2021 employment incident. He therefore has not met his burden of proof to establish entitlement to FECA compensation benefits.

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.

¹⁸ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-0412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹⁹ *G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Robert L. Kaaumoana*, 54 ECAB 150 (2002).

²⁰ *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

²¹ *See B.K.*, Docket No. 18-0386 (issued September 14, 2018); *Amelia S. Jefferson*, *supra* note 17; *see also C.S.*, Docket No. 17-1686 (issued February 5, 2019).

²² 20 C.F.R. § 10.500.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted December 30, 2021 employment incident. The Board further finds that appellant has not established disability from work commencing January 3, 2022.

ORDER

IT IS HEREBY ORDERED THAT the July 26 and September 7, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 26, 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