

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

| | | |
|------------------------------------|---|------------------------|
| F.S., Appellant |) | |
| |) | |
| and |) | |
| |) | |
| DEPARTMENT OF JUSTICE, FEDERAL |) | Docket No. 21-1040 |
| BUREAU OF PRISONS, COLEMAN FEDERAL |) | Issued: March 10, 2023 |
| CORRECTIONAL COMPLEX, Coleman, FL, |) | |
| Employer |) | |
| |) | |

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 18, 2021 appellant filed a timely appeal from an April 12, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish that an injury occurred in the performance of duty, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On February 6, 2021 appellant, then a 43-year-old corrections officer, filed an occupational disease claim (Form CA-2) alleging that she developed severe pain in her left knee³ as a result of factors of her federal employment. She indicated that she had a prior left knee injury in 2010 and had experienced severe pain in her left knee after being assigned from a single-level unit to a multi-level unit where she worked 16-hour shifts and walked up and down stairs every 30 minutes in order to complete her rounds. Appellant noted that she first became aware of her condition and realized its relationship to her federal employment on January 31, 2021. She did not stop work.

In support of her claim, appellant submitted an undated prescription note for a magnetic resonance imaging (MRI) scan of the left knee from an unknown provider.

In a development letter dated March 4, 2021, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence required and attached a questionnaire for her completion. By separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor on the accuracy of appellant's statements. It afforded both parties 30 days to respond.

Thereafter, OWCP received an MRI scan report of the left knee dated March 23, 2021, by Dr. John D. Boon, a Board-certified radiologist, noting a history of left knee pain medially and posteriorly beginning in December 2020. Dr. Boon further related a history of "overuse injury excessive walking" and "previous knee surgery 10 years ago." He listed impressions of prior partial meniscectomy of the posterior horn and body of the medial meniscus and prepatellar bursitis without localized drainable fluid collection.

In a note dated March 30, 2021, Dr. Robert L. Hood, an emergency medicine specialist, indicated that appellant could return to work with very limited stair climbing. He noted a diagnosis of acute left prepatellar bursitis due to overuse from excessive stair climbing at work.

By decision dated April 12, 2021, OWCP denied appellant's occupational disease claim, finding that she had not established the implicated factors of her federal employment. Consequently, it concluded that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

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 OWCP previously accepted a September 5, 2010 traumatic injury claim (Form CA-1) for a left knee sprain under OWCP File No. xxxxxx882 and a November 30, 2010 traumatic injury claim for a left knee sprain and derangement of lateral meniscus under OWCP File No. xxxxxx398. Appellant filed subsequent traumatic injury claims alleging that she sustained left knee conditions on October 21, 2011, January 4, and May 22, 2020 under OWCP File Nos. xxxxxx304, xxxxxx829 and xxxxxx813, respectively, which were denied. The claims have not been administratively combined by OWCP.

⁴ *Supra* note 1.

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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁸

An employee's statement 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.⁹ The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. 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 doubt on an employee's statement in determining whether a *prima facie* case has been established.¹⁰

ANALYSIS

The Board finds that appellant has met her burden of proof to establish that the employment factors occurred in the performance of duty, as alleged.

Appellant filed a Form CA-2 alleging that she developed a left knee condition as a result of factors of her federal employment, including walking up and down stairs every 30 minutes and working 16-hour shifts. Thereafter, she submitted a March 23, 2021 MRI scan report which documented a history of excessive walking and a March 30, 2021 note by Dr. Hood, who noted a history of overuse from excessive stair climbing at work.

The employing establishment did not respond to OWCP's March 4, 2021 development letter, or otherwise refute appellant's description of her job duties. As there are no inconsistencies

⁵ *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.S.*, Docket No. 18-0657 (issued February 26, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *L.J.*, Docket No. 19-1343 (issued February 26, 2020); *R.R.*, Docket No. 18-0914 (issued February 24, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁹ *K.F.*, Docket No. 18-0485 (issued February 18, 2020); *M.S.*, Docket No. 18-0059 (issued June 12, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹⁰ *Y.G.*, Docket No. 20-0688 (issued November 13, 2020).

sufficient to cast serious doubt on the type of duties she alleged that she performed,¹¹ the Board finds that appellant has established the implicated factors of her federal employment.

As appellant has established that the employment factors occurred in the performance of duty as alleged, the question becomes whether the employment factors caused an injury.¹² Therefore, the case shall be remanded to OWCP to determine whether appellant sustained an injury causally related to the accepted factors of her federal employment.¹³ On remand OWCP shall also consider whether a full and fair adjudication of the issues would require that it administratively combine the current case record with any of appellant's prior left knee claims, as noted above.¹⁴ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's occupational disease claim.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that the employment factors occurred in the performance duty, as alleged. The Board further finds, however, that the case is not in posture for decision as to whether she sustained an injury causally related to the accepted factors of her federal employment.

¹¹ *See generally* T.A., Docket No. 19-1525 (issued March 4, 2020); J.C., Docket No. 18-1803 (issued April 19, 2019); L.S., Docket No. 13-1742 (issued August 7, 2014).

¹² D.F., Docket No. 21-0825 (issued February 17, 2022); M.A., Docket No. 19-0616 (issued April 10, 2020); C.M., Docket No. 19-0009 (issued May 24, 2019).

¹³ I.J., Docket No. 20-0599 (issued November 22, 2022); T.M., Docket No. 20-0712 (issued November 10, 2020); *see also* T.A., *supra* note 11.

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c(1) (February 2000); T.H., Docket No. 22-0658 (issued September 1, 2022); W.W., Docket No. 19-0884 (issued June 16, 2020); L.P., Docket Nos. 18-1558, 18-1568 (issued June 21, 2019); L.S., Docket Nos. 17-1863, 17-1867, 17-1868 (issued April 18, 2018); W.S., Docket No. 15-0969 (issued October 5, 2015); C.C., Docket No. 14-1576 (issued March 9, 2015).

ORDER

IT IS HEREBY ORDERED THAT the April 12, 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: March 10, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board