

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

M.H., Appellant)	
)	
and)	Docket No. 23-0189
)	Issued: March 17, 2023
DEPARTMENT OF THE AIR FORCE,)	
HICKAM AIR FORCE BASE, HI, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On November 22, 2022 appellant filed a timely appeal from a September 7, 2022 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 over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted May 10, 2022 employment incident.

FACTUAL HISTORY

On May 16, 2022 appellant, then a 51-year-old security specialist, filed a traumatic injury claim (Form CA-1) alleging that on May 10, 2022 she sustained bilateral knee injuries, headache, and hip pain when she fell while in the performance of duty. She explained that she was walking

¹ 5 U.S.C. § 8101 *et seq.*

down the stairs, slipped, missed some stairs, and “landed with my knees up under me.” On the reverse side of the claim form, an employing establishment supervisor, acknowledged that appellant was in the performance of duty when injured, and that his knowledge about the facts of the injury agreed with statements of the employee and/or witnesses. Appellant stopped work on the claimed date of injury and returned to work on May 16, 2022.

In a report dated May 11, 2022, Dr. Roderick Alfonso, a Board-certified emergency medicine physician, noted that appellant related complaints of headache and pain in the knees, upper thighs, and buttock area, which she attributed to missing four steps, and falling onto her buttocks on May 10, 2022. Appellant reported a history of migraines and chronic knee pain. Dr. Alfonso performed a physical examination, which was normal, and ordered x-rays of the hips, pelvis, sacrum, and coccyx, which were negative for fracture. He also ordered x-rays of the knees, which revealed bilateral mild tricompartmental osteoarthritis and a small joint effusion on the left. Dr. Alfonso diagnosed headache and hip and bilateral knee pain. In a note of even date, he advised that appellant remain out of work until May 14, 2022.

In a note dated June 27, 2022, Dr. Scott J. Miscovich, a family physician, provided a date of injury of May 10, 2022 and diagnosed knee and leg strains, bilaterally. He advised that appellant remain out of work from May 28 through July 25, 2022. In an attending physician’s report (Form CA-20) of even date, Dr. Miscovich noted a “fall from stairs,” diagnosed bilateral knee strains, and checked a box marked “Yes” that the conditions were caused or aggravated by an employment activity.

A report of magnetic resonance imaging (MRI) scan of the right knee dated July 14, 2022 revealed a horizontal tear at the posterior horn of the medial meniscus root attachment, meniscal extrusion, soft tissue edema, cartilage fibrillation at the patellar undersurface, and partial-thickness cartilage loss at the medial tibial plateau. A report of MRI scan of the left knee of even date revealed effusion and a tear of the posterior horn of the medial meniscus.

In a development letter dated July 25, 2022, OWCP informed appellant of the deficiencies of her claim. It advised the type of additional factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received hospital records, including discharge instructions, dated May 10, 2022, which indicated that appellant presented with complaints of bilateral knee and thigh pain after falling that morning.

In a June 27, 2022 medical report, Dr. Miscovich noted that appellant complained of pain in the knees and headache, which she attributed to falling down the stairs at work on May 10, 2022. He noted that she missed a step while walking down a spiral staircase, fell, and landed on her knees. Dr. Miscovich performed a physical examination of the right knee, which revealed reduced extension due to pain, tenderness to palpation of over the lateral ligament, and positive patellar instability and McMurray’s tests. On examination of the left knee, he documented tenderness to palpation over the medial ligament and superior patella ligament and a positive patellar instability test. Dr. Miscovich diagnosed strains of the knee and leg, bilaterally.

In a duty status report (Form CA-17) dated June 27, 2022, Dr. Miscovich opined that appellant was unable to work, and that she had physical examination findings suggestive of an injury and osteoarthritis.

In a follow-up note dated July 9, 2022, Dr. Miscovich diagnosed strains of the knee and leg, bilaterally. He reviewed appellant's medications and indicated that she was scheduled to undergo bilateral knee MRI scan studies on July 14, 2022.

In a July 14, 2022 form report, Dr. Miscovich noted that appellant fell down the stairs at work. He diagnosed strains of the right and left lower legs and checked a box marked "Yes" that the employment accident was the only cause of her diagnosed conditions. Dr. Miscovich further indicated that the accident resulted in disability from work.

In a July 25, 2022 medical report, Dr. Miscovich examined appellant and reviewed the MRI scan results. He diagnosed strains of the knees and lower legs. In a note of even date, Dr. Miscovich advised that appellant remain out of work until August 24, 2022.

On August 1, 2022 Dr. Miscovich referred appellant for physical and massage therapy.

In an August 22, 2022 response to OWCP's development questionnaire, appellant indicated that on May 10, 2022 she took a break and walked down the stairs in her office to get coffee at the shop located on the first floor. She missed a couple of stairs, which caused her to fall. Immediately, after falling, appellant felt pain in her knees and hips and stayed sitting down. She then went back to her desk and noticed the pain increasing and she also started to feel a headache. Appellant indicated that she continued working and sought medical attention after work. She noted that she had symptoms prior to falling due to arthritis in her knees, but denied any other injury on or off duty between when the incident occurred and she reported it to her supervisor. Appellant indicated that there was a witness to her fall who stated that she hit the railing when she fell.

In an undated statement, K.L., appellant's coworker, related that on May 10, 2022 she witnessed appellant slip and fall in the stairwell. She noted that appellant fell forward and hit her head on the railing.

In form reports dated August 10, 2022, Dr. Albert S. Yeung, a radiologist, noted that appellant had undergone MRI scan studies of her knees.

In a form report dated August 11, 2022, Dr. Miscovich related that appellant fell down the stairs at work. He diagnosed strains of the lower legs and checked a box marked "Yes" that the employment accident was the only cause of her diagnosed conditions. Dr. Miscovich further indicated that the accident resulted in disability from work.

OWCP also received an August 24, 2022 report by Kenneth Edwards, a physician assistant, and a form report dated August 29, 2022 by Dr. Miscovich.

By decision dated September 7, 2022, OWCP accepted that the May 10, 2022 employment incident occurred in the performance of duty, as alleged. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical

condition in connection with the accepted employment incident. 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 FECA² 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,³ 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.⁴ 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.⁵

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.⁶

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁷ 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.⁸

² *Id.*

³ *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).

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted May 10, 2022 employment incident.

Dr. Miscovich, in his June 27, 2022 note and June 27, July 14, and August 11, 2022 medical reports, noted the history of the accepted May 10, 2022 employment incident and diagnosed strains of the knees and lower legs. The Board, therefore, finds that the record establishes diagnosed medical conditions in connection with the accepted employment incident.⁹

The Board further finds, however, that this case is not in posture for decision with regard to whether the diagnosed medical conditions are causally related to the accepted May 10, 2022 employment incident. As the medical evidence of record establishes diagnosed medical conditions, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship.¹⁰ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted May 10, 2022 employment incident. The Board further finds, however, that the case is not in posture for decision as to whether a diagnosed condition is causally related to the accepted May 10, 2022 employment incident.

⁹ See *S.A.*, Docket No. 20-1498 (issued March 11, 2021); *A.H.*, Docket No. 20-0730 (issued October 27, 2020); *B.C.*, Docket No. 20-0079 (issued October 16, 2020).

¹⁰ See *F.D.*, Docket No. 21-1045 (issued December 22, 2021).

ORDER

IT IS HEREBY ORDERED THAT the September 7, 2022 decision of the Office of Workers' Compensation Programs is reversed, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 17, 2023
Washington, DC

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

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

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