United States Department of Labor
Employees' Compensation Appeals Board

C.A., Appellant	)	
and	)	**Docket No. 23-0511**
	)	**Issued: November 8, 2023**
DEPARTMENT OF THE AIR FORCE, JOINT BASE SAN ANTONIO, TINKER AIR FORCE BASE, OK, 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
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On March 2, 2023 appellant filed a timely appeal from a September 6, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 his burden of proof to establish a right knee condition causally related to the accepted August 1, 2020 employment incident.

FACTUAL HISTORY

On August 3, 2020 appellant, then a 46-year-old firefighter, filed a traumatic injury claim (Form CA-1) alleging that on August 1, 2020 he injured his right knee when he was entering and

[1] 5 U.S.C. § 8101 *et seq.*

exiting the cab of an aircraft rescue and firefighting (ARFF) vehicle and twisted his right knee while in the performance of duty. He stopped work on August 2, 2020.

Appellant submitted a work status note and clinical summary report dated August 2, 2020 by Dr. Ralph Nelson, an osteopath Board-certified in family medicine, who indicated that on August 1, 2020 appellant experienced right medial knee pain when he stepped out of his truck at work. Dr. Nelson noted a diagnosis of right knee internal derangement and provided work restrictions.

In an August 5, 2020 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 respond.

In a work status note and patient clinical summary note dated August 11, 2020, Dr. Jennifer L'Hommedieu, a Board-certified emergency medicine physician, indicated that appellant was seen for follow up of intermittent right knee pain with an onset of August 1, 2020. She noted a diagnosis of right knee unspecified internal derangement and provided work restrictions.

In a report dated August 13, 2020, Dr. Richard Kirkpatrick, a Board-certified orthopedic surgeon, noted that appellant was seen for right knee pain after an August 2, 2020 work injury. On physical examination of the right knee, he observed marked medial joint line tenderness and positive McMurray's and Apley's testing. Dr. Kirkpatrick diagnosed complex tear of medial meniscus of the right knee and right knee patella chondromalacia.

By decision dated September 8, 2020, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the August 1, 2020 employment incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 21, 2020 appellant requested reconsideration.

Appellant submitted a report dated August 12, 2020, wherein Dr. Philip Beck, an osteopath Board-certified in family medicine, described that on August 1, 2020 appellant was laying in the cab area while working when he reached for something and felt a tweak to his right knee. On physical examination of the right knee, Dr. Beck observed no tenderness on palpation and normal range of motion. He diagnosed right knee sprain.

On September 28, 2020 appellant completed OWCP's development questionnaire. He described that on August 1, 2020 he was entering and re-entering the cab of the ARFF vehicle to activate and deactivate the fire pump switch. Appellant indicated that his right leg was stationary on the "diamond plate" and he placed his left leg slightly forward on the cab floor to enter the cab, and that he then rotated his upper torso, reached toward the dashboard to deactivate the fire pump switch, and felt a "pop" on the right knee.

In a work status note dated November 3, 2020, Chris Travis, a certified physician assistant, indicated that appellant was evaluated in the office and could perform sedentary-duty work.

By decision dated December 1, 2020, OWCP modified its prior decision, finding that the evidence of record was sufficient to establish that the August 1, 2020 incident occurred as alleged. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed right knee condition and the accepted August 1, 2020 employment incident.

On April 11, 2021 appellant requested reconsideration. By decision dated April 13, 2021, OWCP denied his request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

OWCP subsequently received a right knee magnetic resonance imaging (MRI) scan dated September 28, 2020, which demonstrated a grade 1 medial collateral ligament (MCL) sprain, posterior horn medial meniscus tear, and mild patellofemoral chondromalacia.

Appellant also submitted a September 29, 2020 report by Dr. Kirkpatrick who indicated that appellant had an injury at work on August 2, 2020. On physical examination of appellant's right knee, Dr. Kirkpatrick observed medial joint line tenderness and positive McMurray's and Apley's testing. He diagnosed complex tear of the medial meniscus of the right knee and chondromalacia of the right knee and continued appellant on light-duty work.

An operative report dated October 16, 2020 revealed that appellant underwent an unauthorized right knee arthroscopy with partial medial and lateral meniscectomy.

In reports dated October 30 and November 13, 2020, Mr. Travis indicated that appellant was status post right knee arthroscopy with no major problems reported. He provided examination findings and diagnosed complex tear of the medial meniscus of the right knee and chondromalacia patella of the right knee.

On April 30, 2021 appellant requested reconsideration. By decision dated June 7, 2021 decision, OWCP denied modification of the December 1, 2020 decision.

On September 16, 2021 appellant requested reconsideration.

In an undated letter received by OWCP on September 16, 2021, Dr. Kirkpatrick indicated that appellant had a work-related injury to his right knee on August 1, 2020. He noted that he evaluated appellant on August 13, 2020 and scheduled surgery for October 16, 2020. Dr. Kirkpatrick reported that appellant sustained another right knee injury at work on April 19, 2021. He indicated that he reevaluated appellant on April 29 and May 27, 2021 and released him back to work.

On September 28, 2021 OWCP received an additional undated letter from Dr. Kirkpatrick, who reported that he had treated appellant for a right knee injury that he sustained on August 1, 2020 at work. Dr. Kirkpatrick noted that an MRI scan demonstrated a medial meniscus tear that was "directly related to his work injury." He concluded that appellant's injury and need for surgery were directly related to and caused by his work injury.

By decision dated December 14, 2021, OWCP denied modification of the June 7, 2021 decision.

On June 8, 2022 appellant requested reconsideration.

Appellant submitted a May 31, 2022 report by Dr. Kirkpatrick who noted that on August 1, 2020 appellant was on duty and manipulating fire hoses. Dr. Kirkpatrick described that appellant stepped up into the cab of a truck with his left leg, leaving his right leg planted, twisted to flip a switch on the dashboard, and twisted his right knee. Appellant reported that he noticed increased pain to the right knee later that day. Dr. Kirkpatrick noted that appellant went to urgent care the following day and was diagnosed with unspecified internal derangement of the right knee. He reported that, based on diagnostic testing and examination, he diagnosed medial meniscal tear with chondromalacia patella. Dr. Kirkpatrick explained that appellant had no prior injury or complaints to his right knee until the August 1, 2020 employment incident. He opined that appellant's right knee injury was sustained while on duty as a firefighter with the employing establishment on August 1, 2020.

By decision dated September 6, 2022, OWCP denied modification of the December 14, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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, OWCP must first determine whether fact of injury has been established.[6] There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the

[2] *Id*.

[3] *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *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); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

time and place, and in the manner alleged. Second, the employee must submit probative medical evidence to establish that the employment incident caused a personal injury.[7]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence.[8] 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 the specific employment incident identified by the employee.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted August 1, 2020 employment incident.

Appellant submitted medical evidence dated August 13, 2020 through May 31, 2022 by Dr. Kirkpatrick who referenced an August 1, 2020 employment incident and provided examination findings. Dr. Kirkpatrick diagnosed complex tear of medial meniscus of the right knee and right knee patella chondromalacia. In an undated letter received by OWCP on September 28, 2021, he concluded that appellant's right knee medial meniscus tear and need for surgery were directly related to and caused by the August 1, 2020 employment incident. In a May 31, 2022 report, Dr. Kirkpatrick described that appellant was at work on August 1, 2020 when he stepped up into the cab of a truck, twisted to flip a switch on the dashboard, and twisted his right knee. He discussed the medical treatment that appellant received, including surgery, and noted that appellant had no prior injuries or complaints to his right knee. Dr. Kirkpatrick opined that appellant's right knee injury was sustained on August 1, 2020. However, he did not explain with adequate rationale or pathophysiological explanation of how the accepted employment incident caused appellant's diagnosed right knee condition. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[10] Accordingly, Dr. Kirkpatrick's reports are insufficient to establish the claim.

Appellant also submitted an August 11, 2020 report by Dr. L'Hommedieu who noted the August 1, 2020 employment incident, and diagnosed right knee unspecified internal derangement. Dr. L'Hommedieu did not, however, provide an opinion addressing the cause of appellant's right knee condition. The Board has held that medical evidence that does not offer an opinion regarding

[7] *T.H.,* Docket No. 19-0599 (issued January 28, 2020); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

[9] *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[10] *G.W.*, Docket No. 22-0301 (issued July 25, 2022); *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *see V.T.*, Docket No. 18-0881 (issued November 19, 2018); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[11] Therefore, this report is insufficient to establish the claim.

In an August 12, 2020 report by Dr. Beck and an August 2, 2020 clinical summary note by Dr. Nelson, appellant was diagnosed with right knee sprain and right knee internal derangement, respectively. However, these reports did not offer an opinion on causal relationship. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[12] Therefore, these reports are insufficient to establish appellant's burden of proof.

Appellant also submitted reports dated October 30 through November 13, 2020 from Mr. Travis, a physician assistant. The Board has held that certain healthcare providers such as physician assistants are not considered physicians as defined under FECA.[13] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

The remaining evidence of record consists of a September 28, 2020 diagnostic report. The Board has held that reports of diagnostic tests, standing alone, lack probative value as they do not provide an opinion as to whether the accepted employment factors caused the diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.[14]

As the medical evidence of record is insufficient to establish causal relationship between a medical condition and the accepted factors of federal employment, the Board finds that appellant has not met his burden of proof to establish his claim.

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.

[11] *R.O.*, Docket No. 20-1243 (issued May 28, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[12] *Id.*; *see also K.R.*, Docket No. 21-0822 (issued June 28, 2022); *M.G.*, Docket No. 19-1863 (issued December 15, 2020.

[13] Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

[14] *V.Y.*, Docket No. 18-0610 (issued March 6, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted August 1, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 6, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 2023
Washington, DC

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

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

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