

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

R.S., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
JOHN J. PERSHING VA MEDICAL CENTER,)
Poplar Bluff, MO, Employer)
-----)

**Docket No. 23-0668
Issued: November 17, 2023**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 10, 2023 appellant, through counsel, filed a timely appeal from a March 29, 2023 merit decision 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.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a right knee condition causally related to the accepted March 9, 2022 employment incident.

FACTUAL HISTORY

On May 13, 2022 appellant, then a 53-year-old hospital housekeeping management employee, filed a traumatic injury claim (Form CA-1) alleging that on March 9, 2022 he sustained a torn meniscus of the right knee when he was processing biohazard material for delivery, attempting to stack a tote weighing approximately 40 pounds, lost his grip and it fell onto his right knee while in the performance of duty. He reported that his right knee was already tender from over usage in the past two years. Appellant did not stop work.

Appellant submitted March 9, 2022 x-rays of his right knee, which revealed no acute fracture, malalignment, or significant joint space narrowing. A March 31, 2022 right knee magnetic resonance imaging (MRI) scan showed an impression of trabecular injury at the medial femoral condyle, tear of posterior horn of the medial meniscus, moderate-to-large joint effusion, and no appreciable ligamentous injury.

In a June 6, 2022 report, Dr. James M. Edwards, a Board-certified orthopedic surgeon, reported that appellant had a long-standing history of right knee pain. He noted a history of injury from February 2022 when appellant was trying to kick some ice off an area while at work and experienced pain following the incident. Dr. Edwards indicated that appellant “[s]eemed to do okay” after this incident, but had another incident at work when he was lifting a bio container and his right knee gave way, causing him to drop the container on the knee. He advised that, following the incident, appellant complained of pain along the medial aspect of the knee and was using a brace and cane to manage his injury. Physical examination findings for the right knee revealed tenderness along the medial joint line, mild retropatellar tenderness, and trace effusion. Dr. Edwards noted the possibility of a right knee medial meniscal tear, performed arthrocentesis of the right knee, and recommended sedentary work. In June 6, 2022 progress notes, he diagnosed acute medial meniscal tear of the right knee.

In July 5 and August 2, 2022 reports, Dr. Edwards reported similar examination findings for the right knee and diagnosed right knee with medial meniscal tear, mild underlying degenerative changes, and possible lateral patellar compression syndrome. In an August 30, 2022 report, he diagnosed right knee mild osteoarthritis with medial meniscal tear and lateral patellar compression syndrome. Dr. Edwards reported that appellant was moving forward with surgery for a right knee arthroscopy with partial medial meniscectomy as conservative treatment had been unsuccessful. In another August 30, 2022 report, he released appellant to work on that date with restrictions. Dr. Edwards recommended referral for surgery to further evaluate appellant’s right knee condition.

In a September 7, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a September 15, 2022 response to OWCP's development letter, appellant described the circumstances surrounding his injury. He reported that his right knee injury was very painful, causing him limited mobility and preventing him from carrying out his normal employment duties. Appellant noted that due to a previous strain, the pain became unbearable after dropping the tub on his right knee. He notified the employing establishment on March 9, 2022, the date of injury, and reported to the employee health center where he was evaluated by Shelly Hudson, a nurse practitioner. Appellant further reported that he had previously sustained a right knee injury in February 2022 during an ice storm when he slipped and fell numerous times.

In support of his claim, appellant submitted laboratory tests dated September 12, 2022.

By decision dated October 13, 2022, OWCP accepted that the March 9, 2020 employment incident occurred, as alleged, but denied appellant's claim, finding that the medical evidence of record was insufficient to establish a right knee condition causally related to the accepted March 9, 2022 employment incident.

On February 15, 2023 appellant, through counsel, requested reconsideration. Counsel noted submission of Dr. Edwards' February 3, 2023 report in support of appellant's traumatic injury claim.

In the February 3, 2023 report, Dr. Edwards explained that appellant was initially evaluated in his office on June 6, 2022. Appellant reported sustaining two separate injuries while at work in February 2022. His initial work injury occurred when he was trying to kick a piece of ice and experienced knee pain. Dr. Edwards noted that appellant seemed to improve but a couple of weeks later he was trying to lift a bio container when his knee started to give way, causing him to drop the box on his knee which resulted in pain mostly on the medial side. He noted that appellant continued to have pain posteriorly and medially, with examination revealing tenderness over the medial joint line, as well as tight lateral retinaculum with mild stiffness and mild effusion. Dr. Edwards noted findings from a right knee MRI scan, which demonstrated chondromalacia, medial meniscal tear at the root, and some edema within the bone consistent with bruising. He explained that x-ray studies revealed mild degenerative changes and appellant's diagnosis was consistent with a medial meniscal tear with possibility of lateral patellar compression syndrome. Dr. Edwards noted, "[t]he patient did state that he was not having any significant issues with the knee prior and his pain that he is suffering from began with the injury he sustained at work. I do feel that this allows [him] to state causal relationship." He advised that appellant was last evaluated on August 30, 2022, and planned to undergo surgical intervention to his knee.

By decision dated March 29, 2023, OWCP denied modification of its October 13, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 *Id.*

limitation of FECA,⁴ 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.⁵ 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.⁶

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. First, 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. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁷

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is 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 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 March 9, 2022 employment incident.

Dr. Edwards, in his February 3, 2023 report, observed that appellant injured his right knee at work when he was lifting a bio container and his knee gave way causing him to drop the container on his knee. He diagnosed right knee with medial meniscal tear, mild underlying degenerative changes, and possible lateral patellar compression syndrome. Dr. Edwards noted, “The patient did state that he was not having any significant issues with the knee prior and his pain that he is suffering from began with the injury he sustained at work. I do feel that this allows [him] to state causal relationship.” However, although Dr. Edwards supported causal relationship, he failed to provide medical rationale explaining the basis of his conclusory opinion. Without explaining, physiologically, how appellant’s dropping the biohazard tub on his knee caused or

⁴ *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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).

⁵ *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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).

⁶ *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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).

⁷ *H.M.*, Docket No. 22-0343 (issued June 28, 2022); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *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).

⁹ *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *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).

contributed to the diagnosed conditions, Dr. Edwards' medical report is of limited probative value and insufficient to establish appellant's claim.¹⁰

In a June 6, 2022 report, Dr. Edwards discussed the incident when a bio container fell on appellant's right knee and noted the possibility of a right knee medial meniscal tear. In June 6, 2022 progress notes, he diagnosed acute medial meniscal tear of the right knee. In July 5 and August 2, 2022 reports, Dr. Edwards diagnosed right knee with medial meniscal tear, mild underlying degenerative changes, and possible lateral patellar compression syndrome. In an August 30, 2022 report, he released appellant to work on that date with restrictions. In another August 30, 2022 report, Dr. Edwards diagnosed right knee mild osteoarthritis with medial meniscal tear and lateral patellar compression syndrome. None of this evidence, however, contains an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value.¹¹ Therefore, this evidence is insufficient to establish appellant's claim.

The remaining medical evidence of record consists of diagnostic reports and laboratory test results dated March 9 through September 12, 2022. The Board has held, however, that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused or aggravated any of the diagnosed conditions.¹² For this reason, this remaining evidence is insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish a right knee condition causally related to the accepted March 9, 2022 employment incident, the Board finds that appellant has not met his burden of proof.

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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted March 9, 2022 employment incident.

¹⁰ *R.N.*, Docket No. 21-0884 (issued March 31, 2023); *S.K.*, Docket No. 20-0102 (issued June 12, 2020); *M.M.*, Docket No. 20-0019 (issued May 6, 2020).

¹¹ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *F.D.*, Docket No. 19-0932 (issued October 3, 2019).

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy 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