United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 23-0438**
	)	**Issued: October 17, 2023**
DEPARTMENT OF VETERANS AFFAIRS, LOUIS A. JOHNSON VA MEDICAL CENTER, Clarksburg, WV, Employer	)	

Appearances:
Michael Overman, Esq., for the appellant[1]
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 February 9, 2023 appellant, through counsel, filed a timely appeal from an August 25, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 medical condition causally related to the accepted March 20, 2021 employment incident.

FACTUAL HISTORY

On May 18, 2021 appellant, then a 57-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on March 20, 2021 he suffered a hairline fractured left kneecap when he slipped while descending the last two steps on a staircase in the performance of duty. He stopped work on April 30, 2021. Appellant resigned from the employing establishment on July 13, 2021.

In support of his claim, appellant submitted a March 22, 2021 report from Dr. Matthew Verona, an osteopath and Board-certified emergency medicine specialist, who treated him for a left knee injury reported to have occurred at work on March 20, 2021. He reported slipping on steps and twisting his left knee and experiencing pain and swelling. Appellant further advised that he had no prior history of left knee pain or injury. Dr. Verona noted findings on physical examination of effusion of the anterior and medial knee with limited range of motion. An x-ray of the left knee revealed an effusion with no fracture. Dr. Verona diagnosed left knee sprain and returned appellant to work with restrictions. In a March 22, 2021 form report, he noted that appellant sustained a work-related injury and could return to regular duty on March 29, 2021.

Appellant was also treated on March 22, 2021 by Shawna Wine, a registered nurse, for an acute onset of left knee pain that occurred on March 20, 2021 when he twisted his left knee while descending stairs.

On April 4, 2021 Dr. Michael Ferrebbe, Board-certified in emergency medicine, treated appellant for left knee pain. He noted that appellant reported twisting his left knee at work. Appellant indicated that he had been wearing a bandage wrap, but still experienced persistent pain. Dr. Ferrebbe detailed findings on examination, including left knee pain and limited range of motion, and diagnosed left knee pain.

In an April 26, 2021 report, Dr. Khan Tanveer, Board-certified in family medicine, treated appellant for left knee pain that reportedly began at work a month prior when he fell while descending stairs. He reviewed a magnetic resonance imaging (MRI) scan of the left knee and diagnosed left patellar chondral fissures without evidence of ligamentous or osseous injury. Dr. Tanveer recommended use of a bandage and referred appellant for an orthopedic evaluation.

On April 30, 2021 Dr. George Andrews, a Board-certified orthopedist, examined appellant in consultation for left knee pain that reportedly began at work on March 20, 2021. Appellant reported that he was descending stairs at work and experienced left knee pain when he missed a step. Dr. Andrews noted findings on physical examination of tenderness of the left patellofemoral joint and positive McMurray's test medially. He reviewed an April 23, 2021 MRI scan of the left knee that revealed mild patellar compartment chondral fissures and small knee fusion. Dr. Andrews diagnosed chondral injury to the left patella. He noted that appellant was disabled

from work for one month and then could return to light-duty work. In an undated note, Dr. Andrews returned appellant to light-duty work effective May 31, 2021.

In a development letter dated May 26, 2021, 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 his completion. OWCP afforded appellant 30 days to provide the necessary information.

In response to the development letter, appellant submitted an incident report dated June 1, 2021 and noted that on March 20, 2021 he was descending stairs at work when he missed the last two steps and fell backwards on his buttocks. He experienced persistent left knee pain and sought medical treatment. Appellant reported that he was diagnosed with a fractured kneecap and continued to work limited duty wearing a knee wrap and brace.

On June 2, 2021 appellant accepted a temporary light-duty position with the employing establishment as a custodian, working eight hours per day with Saturdays and Sundays as his scheduled days off. The physical requirements noted no carrying equipment up or down stairs, use of an elevator, and no overtime work.

In an undated note, Dr. Andrews returned appellant to regular-duty work on July 12, 2021.

By decision dated July 8, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence submitted was insufficient to establish causal relationship between his diagnosed conditions and the accepted March 20, 2021 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP received additional evidence. Dr. Andrews treated appellant in follow up on June 11, 2021 for persistent left knee pain beginning March 20, 2021. He noted findings on physical examination of tenderness at the patellofemoral joint, limited range of motion, and positive McMurray's test medially. Dr. Andrews diagnosed chondral injury to the left patella and took appellant off work for four weeks due to increased symptoms.

On July 23, 2021 appellant requested reconsideration of the July 8, 2021 decision. He resubmitted documentation that was previously of record.

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

OWCP received additional evidence. Dr. Andrews related in a March 23, 2022 report that appellant returned to work on a full-time basis and experienced increasing pain in the anterior aspect of the left knee. He diagnosed chondral injury to the left patella. Dr. Andrews recommended that appellant avoid bending the left knee beyond 90 degrees, climbing, and carrying heavy objects. Appellant was treated by Dr. Andrews on June 9, 2022 who noted a history of injury and subsequent medical treatment. He reported persistent pain in the anterior aspect of the left knee. Dr. Andrews explained that the MRI scan revealed a cartilage injury to the patella and that, due to the nature of the injury, appellant would continue to experience pain in the knee with increased activity. He opined that the clinical evaluation and MRI scan findings support a chondral injury to the left patella, which occurred when appellant fell on March 20, 2021. Dr. Andrews

advised that appellant would continue to be symptomatic because of the poor healing potential of the patellar cartilage.

Appellant submitted an x-ray of the left knee dated March 23, 2022, which contained an impression of unremarkable examination of the left knee.

On June 14, 2022 appellant through counsel, requested reconsideration of the August 11, 2021 decision.

By decision dated August 25, 2022, OWCP denied modification of the July 8, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[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 a causal relationship 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

[3] *Id*.

[4] *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] *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] *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] *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.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).

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 medical condition causally related to the accepted March 20, 2021 employment incident.

Appellant submitted a March 22, 2021 report from Dr. Verona who diagnosed left knee sprain. Dr. Verona noted that appellant reported slipping on steps at work and twisting his left knee. In a March 22, 2021 form report, he noted that appellant sustained a work-related injury. On April 4, 2021 Dr. Ferrebbe diagnosed left knee pain after a twisting injury at work. On April 26, 2021 Dr. Tanveer diagnosed left patellar chondral fissures. He noted that appellant had reported falling when descending stairs at work. On April 30, 2021 Dr. Andrews diagnosed chondral injury to the left patella that occurred on March 20, 2021 when appellant fell while descending stairs at work. On June 9, 2022 he opined that the clinical evaluation and MRI scan findings supported a chondral injury to the patella, which occurred when appellant fell on March 20, 2021. While Drs. Verona, Ferrebbe, Tanveer, and Andrews opined that appellant's left knee condition was work related, they failed to provide medical sufficient rationale explaining the basis of their opinions. Without explaining, physiologically, how the March 20, 2021 employment incident caused or aggravated the diagnosed condition, the opinions on causal relationship of Drs. Verona, Ferrebbe, Tanveer, and Andrews are of limited probative value and are insufficient to establish appellant's claim.[10]

In undated notes, Dr. Andrews returned appellant to light-duty work on May 31, 2021, and to regular duty on July 12, 2021. In these notes, he did provide an opinion as to whether a diagnosed condition was causally related to the accepted March 20, 2021 employment incident. The Board has held that medical evidence that does not include an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[11] These notes from Dr. Andrews are therefore insufficient to establish appellant's claim.

Dr. Andrews treated appellant in follow up on June 11, 2021 for persistent left knee pain since March 20, 2021. He diagnosed chondral injury to the left patella and took appellant off work. Similarly, on March 23, 2022, Dr. Andrews reported that appellant experienced increasing pain in the anterior aspect of the left knee and diagnosed chondral injury to the left patella. However, he did not relate the diagnosed conditions to the accepted March 20, 2021 employment incident. As noted above, medical evidence that does not offer an opinion regarding the cause of a diagnosed

[9] *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).

[10] *G.L.,* Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

condition or disability is of no probative value on the issue of causal relationship.[12] Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant submitted a report from a registered nurse. However, certain healthcare providers such as registered nurses[13] are not considered "physician[s]" as defined under FECA.[14] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[15]

Appellant also submitted an x-ray of his left knee. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the employment incident caused any of the diagnosed conditions.[16] This evidence is therefore insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted March 20, 2021 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 medical condition causally related to the accepted March 20, 2021 employment incident.

[12] *Id*.

[13] *B.B.*, Docket No. 09-1858 (issued April 16, 2010) (nurse's reports are of no probative medical value as nurses are not physicians under FECA).

[14] 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 B.D.*, Docket No. 22-0503 (issued September 27, 2022) (nurse practitioners are not considered physicians as defined under FECA and their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits); *L.S.*, Docket No. 19-1231 (issued March 30, 2021) (a nurse practitioner is not considered a physician as defined under FECA).

[15] *Id*.

[16] *C.B.*, Docket No. 20-0464 (issued July 21, 2020).

ORDER

IT IS HEREBY ORDERED THAT the August 25, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 17, 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