

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

J.L., Appellant)	
)	
and)	Docket No. 23-0733
)	Issued: October 12, 2023
U.S. POSTAL SERVICE, TOLEDO POST)	
OFFICE, Toledo, OH, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 27, 2023 appellant, through counsel, filed a timely appeal from an April 17, 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 met his burden of proof to establish a right knee condition causally related to the accepted January 14, 2022 employment incident.

FACTUAL HISTORY

On January 20, 2022 appellant, then a 58-year-old mail handler working in postal distribution, filed a traumatic injury claim (Form CA-1) alleging that on January 14, 2022 he sustained a right knee injury while in the performance of duty. He indicated that his right knee popped while he was walking back to his desk. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. Appellant stopped work on January 14, 2022.

On January 14, 2022 appellant was seen in a hospital emergency department by Dr. David M. Johnson, a Board-certified emergency medicine physician. He related a "popping sensation" that happened in his right knee at work. Dr. Johnson noted that appellant had a past medical history of bilateral knee arthritis. An x-ray report of appellant's right knee signed by Dr. Francis M. Castellano, a Board-certified diagnostic radiologist, showed no acute osseous abnormality but mild tricompartmental osteoarthritis. Appellant was diagnosed with acute right knee pain. A work status note of even date and signed by Dr. Evan Seamons, resident physician under the supervision of Dr. Johnson, reiterated appellant's diagnosis and allowed appellant to return to work with restrictions.

On January 24, 2022 appellant was seen by Dr. Mohammad A. Farris, a Board-certified occupational medicine physician. Dr. Farris related that appellant felt a pop in the back of his right knee while dispatching mail. Appellant's physical examination showed tenderness to palpation over medial and posterior knee. Dr. Farris noted that he was "not certain" this was a work injury and that there was "no clear mechanism of injury" that occurred at work. An x-ray report of the right knee was reviewed, which showed no acute osseous abnormality of the right knee and mild tricompartmental osteoarthritis. Dr. Farris diagnosed a right knee sprain. A duty status report (Form CA-17) of even date by Dr. Farris advised appellant to return to work with restrictions. In a work status note of even date, Dr. Farris indicated appellant's work restrictions.

On January 24, 2022 Dr. Farris completed an attending physician's report, Part B of an authorization for examination and/or treatment (Form CA-16). He indicated a prior history of tricompartmental osteoarthritis and reiterated appellant's work restrictions. On January 31, 2022 appellant was seen by Dr. Farris for a follow-up visit and related no improvement in his pain. He repeated his diagnosis. Dr. Farris again noted appellant's work restrictions on a Form CA-17 of even date.

On February 7, 2022 Dr. Van B. Boggus, a Board-certified orthopedic surgeon, related that appellant had sustained an indirect right knee injury with posterior pain. He assessed right knee sprain, tricompartment osteoarthritis of the right knee, and lateral meniscus tear in the right knee. By a work status note of even date Dr. Boggus placed appellant off work until March 20, 2022. A duty status report of the same date from Dr. Boggus placed appellant off work.

In a development letter dated March 2, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a completed development questionnaire dated March 12, 2022, appellant provided additional details regarding his job duties at the time of the alleged injury, indicating that his duties required lifting, walking, as well as unloading and loading shipping containers. He further indicated that he did not have any prior injuries to his right knee.

On March 23, 2022 appellant was seen by Dr. Farris for a follow-up visit. He related no improvement and that he had not worked since his injury. Appellant also indicated that he had no problems with this right knee prior to the alleged employment injury. A magnetic resonance imaging (MRI) report of the right knee dated March 22, 2022 was reviewed by Dr. Farris, which showed: (1) radial tear of the posterior root of the medial meniscus and minimal medial meniscal body extrusion; (2) advanced patellofemoral cartilage loss and degenerative change; (3) moderate medial femoral condyle cartilage degeneration; (4) small knee joint effusion; (5) mild prepatellar bursitis; and (6) semimembranosus bursitis. Dr. Farris continued to diagnose right knee sprain and placed appellant on restricted duty until April 20, 2022. A Form CA-17 and a work status note of even date from Dr. Farris noted appellant's work restrictions.

By decision dated April 7, 2022, OWCP accepted that the January 14, 2022 employment incident occurred as alleged and that a medical condition was diagnosed in connection with the incident. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted January 14, 2022 employment incident.

On April 20, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the April 7, 2022 decision.

Appellant submitted a state workers' compensation form report dated January 14, 2022, wherein Dr. Seamons reiterated appellant's history of injury and his diagnosis of acute right knee pain.

On April 18, 2022 appellant was seen by Amy E. Pfund, a physician assistant, for another orthopedic consultation. An x-ray report of appellant's right knee showed mild degenerative changes. Right knee sprain was assessed.

On April 20, 2022 appellant was seen by Dr. Farris for a follow-up visit and related that his knee pain was worsening, and his diagnosis remained the same. In a Form CA-17 and work status note of even date, Dr. Farris placed appellant on restricted duty through May 18, 2022.

On August 17, 2022 a telephonic hearing was held before a representative of OWCP's Branch of Hearings and Review.

By decision dated October 19, 2022, OWCP hearing representative affirmed OWCP's April 7, 2022 decision.

On March 23, 2023 appellant, through counsel, requested reconsideration. In support of his reconsideration request, appellant submitted a report dated March 8, 2023 from Dr. Neil Allen, a Board-certified neurologist and internist. He related his injury history to Dr. Allen, noting that he has pushed bulk mail containers weighing 350 to 1,200 pounds across concrete floors as part of dispatching mail approximately 7 hours of his shift. Appellant further indicated that he felt a “pop” in his right knee toward the end of the shift while walking. Dr. Allen reviewed appellant’s medical records and opined that the diagnosis should include a left knee medial meniscus tear and acceleration of patellofemoral arthritis in the left knee. He further indicated that, when appellant planted weight on his fatigued right knee, he increased the “compression within his patellofemoral joint and produced a strong contraction” of his quadriceps muscle, which caused strain and inflammation. Further, the “repetitive” and “forceful knee flexion” required from appellant’s job duties on January 14, 2022 “slowly deteriorated and weakened” the medial meniscus of his right knee. Dr. Allen noted that appellant’s subjective complaints and the objective findings were consistent with meniscal injury, and meniscal tears which were confirmed in the March 22, 2022 MRI scan report. He further opined that appellant’s right knee conditions directly resulted and/or were accelerated by the work incident and are both reasonable and expected based upon the mechanism described by appellant. Dr. Allen noted that the conditions were consistent with the objective findings in appellant’s records.

By decision dated April 17, 2023, OWCP denied modification of its October 19, 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 limitation of FECA, 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

³ *Id.*

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *B.H.*, Docket No. 20-0777 (issued October 21, 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).

employee actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment injury must be based on a complete factual and medical background.⁸ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.⁹ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

ANALYSIS

The Board finds that this case is not in posture for decision.

In support of his claim, appellant submitted a report dated March 8, 2023 from Dr. Allen. Dr. Allen reviewed appellant's medical records and opined that the diagnosis should include a left knee medial meniscus tear and acceleration of patellofemoral arthritis in the left knee. He further indicated that, when appellant planted weight on his fatigued right knee, he increased the "compression" within his patellofemoral joint and produced a "strong contraction" of his quadriceps muscle, which caused strain and inflammation. Further, the "repetitive" and "forceful knee flexion" required from appellant's job duties on January 14, 2022 slowly "deteriorated" and "weakened" the medial meniscus of his right knee. Dr. Allen noted that appellant's subjective complaints and the objective findings were consistent with meniscal injury, and that meniscal tears were confirmed in the March 22, 2022 MRI scan report. He further opined that appellant's right knee conditions directly resulted and/or were accelerated by the work incident and are both reasonable and expected based upon the mechanism described by appellant. Dr. Allen noted that the conditions were consistent with the objective findings in appellant's records.

The Board finds that the report from Dr. Allen is sufficient to require further development of the medical evidence.¹¹ Dr. Allen's report provided a pathophysiological explanation as to how

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 *R.P.*, Docket No. 21-1189 (issued July 29, 2022); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *R.P.*, *id.*; *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *Id.*

¹⁰ *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

¹¹ *C.S.*, Docket No. 22-1087 (issued May 1, 2023); *see I.S.*, Docket No. 20-0216 (issued August 15, 2022).

appellant's work on January 14, 2022 caused the medial meniscus of his right knee to deteriorate and weaken. Further, the instance of his right knee popping and accelerating the patellofemoral arthritis was explained by Dr. Allen through a strong contraction from weight planted on his fatigued knee. Dr. Allen provided an accurate history and opined that appellant's right knee conditions were both reasonable and expected based upon subjective complaints and were also consistent with objective findings in the records.¹²

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹³ OWCP has an obligation to see that justice is done.¹⁴

The Board will, therefore, remand the case to OWCP for further development of the medical evidence. On remand, OWCP shall refer appellant, a statement of accepted facts and the medical evidence of record to a specialist in the appropriate field of medicine for an opinion as to whether appellant has a right knee condition causally related to the accepted January 14, 2022 employment incident. If the physician opines that a right knee condition is not causally related, he or she must explain with rationale how or why the opinion differs from that of Dr. Allen. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.¹⁵

¹² *C.S. id.*; *C.J.*, Docket No. 22-0478 (issued August 30, 2022); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹³ *S.G.*, Docket No. 22-0330 (issued April 4, 2023); *see M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978).

¹⁴ *S.G.*, *id.*; *see C.M.*, Docket No. 17-1977 (issued January 29, 2019); *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹⁵ The Board notes that the employing establishment executed a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *S.G.*, Docket No. 23-0552 (issued August 28, 2023); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2023 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 12, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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