

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

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J.A., Appellant))	
))	
and))	Docket No. 23-0256
))	Issued: December 10, 2024
U.S. POSTAL SERVICE, SOUTH SUBURBAN))	
PROCESSING & DISTRIBUTION CENTER,))	
Bedford Park, IL, Employer))	
_____))	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 12, 2022 appellant filed a timely appeal from an August 19, 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the August 19, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include a consequential left knee condition causally related to his accepted May 16, 2015 employment injury.

FACTUAL HISTORY

On May 27, 2015 appellant, then a 49-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on May 16, 2015 he injured his right knee when he stepped off a truck while cleaning windows and twisted his knee in the performance of duty. OWCP accepted his claim for right knee sprain, old disruption of right anterior cruciate ligament tear, tear of the right medial meniscus, old disruption of the right medial collateral ligament, right articular cartilage tears, and right knee derangement of the medial meniscus due to old tear or injury. Appellant stopped work on May 16, 2015 and did not return.

Appellant underwent extensive medical treatment for his accepted right knee conditions including right knee arthroscopy, partial lateral meniscectomy, chondroplasty with microfracture of the medial femoral condyle, and anterior cruciate ligament reconstruction on July 24, 2015; microfracture and Bio Cartilage procedure of the right knee medial femoral condyle on June 3, 2016; and right knee revision of the anterior cruciate ligament reconstruction with patellar tendon allograft with partial medial and lateral meniscectomy, and removal of retained hardware on February 9, 2017. He continued to receive physical therapy and work hardening treatment for his right knee conditions.

A physical therapy note dated September 21, 2017 related that appellant reported pain in both knees, but that his right knee remained his primary concern. He continued to note left knee pain in intermittent physical therapy notes through November 20, 2017.

A progress report dated October 31, 2017, indicated that appellant was seen by provider Dr. Michael Maday, a Board-certified orthopedic surgeon. The report related that appellant had developed left knee pain in physical therapy, which he felt occurred because of his reliance on his left knee. A report dated November 21, 2017, from provider Dr. Maday, indicated that appellant's left knee had improved significantly.

Appellant continued to note left knee pain during physical therapy sessions on December 26 and 27, 2017, January 2, February 13, May 7, 9, 11, 14, 16, and 17, and June 4, 11, 14, 18, 20, 22, and 25, 2018.

OWCP continued to receive progress notes from Dr. Maday's office. A June 5, 2019 progress note related that appellant was concerned that he might have bilateral knee arthritis. An x-ray of his left knee revealed well-preserved joint space with retained hardware in the left knee and evidence of old fracture. In a progress note dated August 28, 2019, appellant had noted a new onset of left knee pain, most likely from favoring his left knee. A progress report dated November 6, 2019 related that he had noted that, because of his chronic right knee symptoms, he had been applying more and more pressure on the left knee, with increasing left knee pain.

Physical therapy reports dated January 6, February 25 and 27, March 3, 5, 23, and 30, April 2, 6, 9, 13, 16, 21, 27, and 30, and May 4, 2020, noted that appellant had complaints of pain in both knees.

A bone scan report dated October 1, 2021 noted findings of mild degenerative changes in the bilateral knee joints, with no evidence of osteomyelitis in the knee joints.

A physical therapy note dated February 4, 2022 related a history that appellant fell on February 2, 2022 when he was shoveling snow, he turned on his right knee, which buckled, so he placed his weight on his left lower extremity, and he then slipped on ice and fell on his back. He experienced back and right knee pain following the fall. A note dated February 14, 2022 indicated that appellant had bilateral knee pain since the February 2, 2022 fall. A physical therapy note dated March 21, 2022 noted that he had soreness in his right knee, but that he had been resting it more since his left knee was also bothering him. Appellant's left knee and shin were noted to be swollen. April 26 and 28, 2022 physical therapy notes indicated that his left knee was bothering him more than his right knee.

A progress note dated April 6, 2022, from Dr. Maday's office noted appellant's symptoms of increased pain in the left leg, secondary to compensation for his right leg.³ It related that he had seen Dr. Telly Psaradellis, an orthopedic surgeon, concerning his left leg and had obtained an MRI scan. Appellant related that Dr. Psaradellis was concerned that appellant may have developed osteomyelitis. On June 15, 2022 it was noted that he had an onset of left knee pain secondary to increased activity in physical therapy.

A memorandum of telephone call (Form CA-110) on June 24, 2022 related that appellant requested that his left knee conditions be accepted under the present claim.

In a development letter dated July 19, 2022, OWCP noted that it had received notification of a possible consequential condition of "increased pain in left knee". It informed appellant of the deficiencies regarding his request for expansion of his claim. OWCP noted that "pain" was a symptom, not a firm diagnosis. It requested that appellant submit a firm diagnosis from a physician, a history of injury regarding his left knee pain and an explanation of the development of the condition. OWCP afforded him 30 days to submit additional evidence.

A progress note dated July 27, 2022, from Dr. Maday related that appellant had an episode in therapy approximately two months prior during which he was squatting and experienced increased left knee pain. A further work up of appellant's left knee was recommended.

By decision dated August 19, 2022, OWCP denied appellant's request to expand the acceptance of his claim to include a consequential left knee condition causally related to his accepted May 16, 2015 employment injury.

³ *Id.*

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁴

To establish causal relationship between the condition as well as any additional conditions claimed and the employment injury, an employee must submit rationalized medical evidence.⁵ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 factors identified by the claimant.⁶

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury.⁷ The basic rule is that, a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁸ When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own conduct.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a consequential left knee condition causally related to his accepted May 16, 2015 employment injury.

The record establishes that appellant sustained a right knee injury on May 16, 2015 which required several surgical corrections. Following the last surgical procedure on February 9, 2017 appellant underwent years of physical therapy.

OWCP received physical therapy records dated from September 21, 2017 to April 28, 2022, which noted that appellant had developed left knee pain complaints. The Board has held that medical reports signed solely by a physical therapist are of no probative value, as such healthcare providers are not considered physicians as defined under FECA, and therefore are not

⁴ *V.S.*, Docket No. 19-1370 (issued November 30, 2020); *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁶ *T.K., id.; I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *M.N.*, Docket No. 22-0488 (issued February 15, 2023); *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

⁸ *Id.*

⁹ *A.M.*, Docket No. 18-0685 (issued October 26, 2018); *Mary Poller*, 55 ECAB 483, 487 (2004).

competent to provide a medical opinion.¹⁰ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to compensation benefits.¹¹

In support of his claim, appellant submitted treatment notes from Dr. Maday dated from October 31, 2017 through July 27, 2022. These notes contained diagnoses of left leg pain. Under FECA, the assessment of pain is not considered a diagnosis, as pain merely refers to a symptom of an underlying condition.¹² These notes also did not provide an opinion as to how appellant's left knee condition was physiologically a consequence of his accepted right knee condition. Such rationale is particularly necessary as the record suggest that he had a preexisting left knee condition. In any case where a preexisting condition involving the same part of the body is present, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury and the preexisting condition.¹³ A such, these treatment notes are insufficient to meet appellant's burden of proof to establish that a left knee condition was consequential to his accepted right knee injury.

The record also contains diagnostic test reports pertaining to appellant's left knee. The Board has held, however, that diagnostic testing reports, standing alone, and lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment injury and a diagnosed condition.¹⁴ For this reason, this evidence is also insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish a left knee condition as a consequence of the accepted employment injury, 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.

¹⁰ Section 8101(2) of FECA provides that 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. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *see 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 V.R.*, Docket No. 19-0758 (issued March 16, 2021) (a physical therapist is not considered a physician under FECA); *J.R.*, Docket No. 19-0812 (issued September 29, 2020) (an occupational therapist is not considered a physician under FECA).

¹¹ *See C.S.*, Docket No. 20-1354 (issued January 29, 2021); *B.B.*, Docket No. 18-0732 (issued March 11, 2020).

¹² *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, not a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

¹³ *Supra* note 10 at Chapter 2.805.3e (January 2013); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

¹⁴ *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a consequential left knee condition causally related to his accepted May 16, 2015 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 10, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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