

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

O.G., Appellant)	
)	
and)	Docket No. 23-1034
)	Issued: February 12, 2024
U.S. POSTAL SERVICE, NORTH TEXAS)	
PROCESSING & DISTRIBUTION CENTER,)	
Coppell, TX, 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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 27, 2023 appellant filed a timely appeal from a February 3, 2023 merit decision and a May 10, 2023 nonmerit 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 appellant submitted additional evidence on appeal. 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.*

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a right knee condition causally related to the accepted July 18, 2022 employment incident; and (2) whether OWCP properly denied appellant's request for an oral hearing or a review of the written record.

FACTUAL HISTORY

On July 20, 2022 appellant, then a 61-year-old city carrier, filed a traumatic injury (Form CA-1) alleging that on July 18, 2022 his knee became swollen when he tripped delivering mail while in the performance of duty. He stopped work on that date. On the reverse side of the claim form, appellant's supervisor checked a box marked "No" indicating that the alleged injury did not occur in the performance of duty.

In a letter dated July 21, 2022, K.M., an occupational health management specialist for the employing establishment, indicated that the employing establishment was challenging appellant's claim. She alleged that the facts did not support that the alleged injury occurred in the performance of duty. K.M. also contended that appellant failed to submit medical evidence, which established a diagnosed condition causally related to the alleged event.

In a July 26, 2022 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 his completion. OWCP afforded appellant 30 days to respond.

Appellant submitted a report dated July 20, 2022, by Naimah Harris, a physician assistant, who recounted that on July 18, 2022 appellant tripped, caught himself, and heard his right knee pop. On examination of his right knee, Ms. Harris observed tenderness diffusely over the anterior knee, antalgic gait, and positive anterior edema. She diagnosed right knee sprain and recommended physical therapy. Ms. Harris completed a duty status report (Form CA-17), which indicated that appellant could return to work with restrictions.

In Part B of an authorization for examination and/or treatment (Form CA-16) signed on July 20, 2022, Ms. Harris indicated that appellant twisted his right knee when walking and noted a diagnosis of right knee sprain. She checked a box marked "Yes" indicating that his condition was caused by the employment activity.

In response to the development letter, appellant submitted a completed questionnaire on August 3, 2022 indicating that while delivering mail he stepped across a driveway into the next yard, tripped, and pulled his right leg underneath him to keep from falling to the ground. He thought he had hyperextended his knee because he heard a pop. Appellant indicated that he did not know of anyone who saw the incident. He reported that he continued to deliver mail, but told a supervisor that his leg was hurting. Appellant explained that the next morning he could not bend his knee and informed a supervisor that he could not go into work. He noted that he did have similar disabilities or symptoms before the injury, but noted that everything was fine until he tripped.

In a work status report dated July 22, 2022, Ms. Harris indicated that appellant could return to work with restrictions.

In a progress report dated July 25, 2022, Dr. Terry Madsen, a Board-certified orthopedic surgeon, noted appellant's complaints of right knee pain. He recounted that appellant was walking and delivering mail when appellant's foot got caught in the pavement, causing a hyperextension injury to his right knee. Dr. Madsen related that appellant's right knee swelled up the next day and he experienced sharp aching pain and was not able to work. On examination of appellant's right knee, he observed moderate effusion, positive McMurray's sign, and negative Lachman sign. Dr. Madsen diagnosed acute meniscal tear of the right knee and pes anserine bursitis.

In a work status note dated August 2, 2022, Ms. Harris requested that appellant be excused from work on July 25, 2022 pending his follow up appointment on August 11, 2022.

OWCP received a work capacity evaluation (Form OWCP-5c) dated August 11, 2022 from Dr. Madsen who indicated that appellant could work with restrictions.

By decision dated September 1, 2022, OWCP denied appellant's traumatic injury claim, finding that he had not established that his diagnosed condition was causally related to the accepted July 18, 2022 employment incident. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

On September 27, 2022 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

Appellant submitted a June 7, 2021 report by Dr. Madsen, who indicated that appellant was evaluated for complaints of right knee and left hip pain, which began two months ago. He noted that he had "non-known injury" to the right knee and left hip. On physical examination, Dr. Madsen observed tenderness of the medial joint line and positive medial facet pain. He diagnosed left hip osteoarthritis and tear of the medial meniscus of the left knee.

A right knee magnetic resonance imaging (MRI) scan dated August 5, 2022 demonstrated a medial meniscus with complex tearing extending throughout the junction of the body with the posterior horn, moderate tendinitis of the popliteus tendon, inflammation of the iliotibial band and lateral femoral condyle, chondromalacia of the lateral and patellofemoral compartments, and moderate mucoid degeneration of the anterior cruciate ligament without a focal tear.

Appellant submitted an August 11, 2022 progress note by Dr. Madsen who noted that appellant was treated for complaints that his knee was hurting again. Dr. Madsen related that appellant was delivering mail when his foot "went into a lock in the [sic] on the pavement causing a hyperextension injury to [appellant's] right knee." On examination of appellant's right knee, he observed moderate effusion in the medial joint often greater than the lateral joint line. Dr. Madsen diagnosed acute meniscal tear of the right knee and pes anserine bursitis.

In progress notes dated September 8 through November 3, 2022, Dr. Madsen noted appellant's complaints of right knee pain and described that appellant felt a pop and experienced immediate swelling in his knee radiating down the front. He conducted an examination and

diagnosed acute meniscal tear of the right knee and pes anserine bursitis. Dr. Madsen completed a Form CA-17 and Form OWCP-5c indicating that appellant was unable to work.

A procedure report dated November 9, 2022, indicated that appellant underwent an unauthorized meniscal debridement of the right knee by Dr. Madsen. The report noted a diagnosis of acute meniscal tear of the right knee and pes anserine bursitis.

In reports dated November 21, 2022 and January 9, 2023, Hajra Motiwala, a physician assistant, described the July 18, 2022 incident and related appellant's current complaints of minimal pain with weight-bearing activities. She provided examination findings and diagnosed history of right knee meniscectomy and "work-related condition."

By decision dated February 3, 2023, OWCP's hearing representative affirmed the September 1, 2022 decision.

In a letter dated April 24, 2023, appellant indicated that he was appealing the decision made. He alleged that he had additional medical evidence that may not have been added in previous correspondence.

Appellant resubmitted Dr. Madsen's July 25, 2022 progress report.

By decision dated May 10, 2023, OWCP determined that appellant was not entitled to an oral hearing or a review of the written record as a matter of right, because he had already received a decision from the Branch of Hearings and Review on February 3, 2023 on the same issue. It further exercised its discretion and determined that the issue in the case could equally well be addressed by a request for reconsideration before OWCP along with the submission of new evidence supporting his claim for disability.

LEGAL PRECEDENT -- ISSUE 1

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,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

³ *Supra* note 1.

⁴ *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).

⁵ *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).

⁶ *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).

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁷

To establish causal relationship between a diagnosed condition, as well as any attendant disability claimed, and the accepted employment 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 -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted July 18, 2022 employment incident.

Appellant submitted reports dated July 25 through November 3, 2022 from Dr. Madsen. In his initial examination, Dr. Madsen described that appellant was delivering mail when his foot got caught in the pavement, causing a hyperextension injury to his right knee. On examination, he observed moderate effusion and negative Lachman and McMurray's signs. Dr. Madsen diagnosed acute meniscal tear of the right knee and pes anserine bursitis. Although his reports contain an accurate description of the July 18, 2022 employment incident and an affirmative opinion on causal relationship, they do not contain sufficient explanation, based on medical rationale, of how getting appellant's foot caught while delivering mail caused a hyperextension injury of appellant's right knee. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.¹⁰ Thus, the Board finds that these reports are insufficient to meet appellant's burden of proof.¹¹

Appellant also submitted treatment notes from Ms. Harris and Ms. Motiwala, both physician assistants. The Board has held that certain healthcare providers such as physician

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 *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *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 *H.D.*, Docket No. 22-0419 (issued February 22, 2023); *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹¹ *See P.B.*, Docket No. 23-0449 (issued July 28, 2023).

assistants are not considered physicians as defined under FECA.¹² 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 an August 5, 2022 MRI scan. 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.¹³

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted July 18, 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.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides that "a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his [or her] claim before a representative of the Secretary."¹⁴ Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.¹⁵ A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.¹⁶ Although there is no right to a review of the written record or an oral hearing, if not requested within the 30-day time period, OWCP may, within its discretionary powers, grant or deny appellant's request and must exercise its discretion.¹⁷

¹² 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).

¹³ *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).

¹⁴ 5 U.S.C. § 8124(b)(1).

¹⁵ 20 C.F.R. §§ 10.616, 10.617.

¹⁶ *Id.* at § 10.616(a).

¹⁷ *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *P.C.*, Docket No. 19-1003 (issued December 4, 2019); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

The Board has held that OWCP, in its broad discretionary authority in the administration of FECA, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that OWCP must exercise this discretionary authority in deciding whether to grant a hearing.¹⁸ Although a claimant who has previously sought reconsideration is not, as a matter of right, entitled to a hearing or review of the written record,¹⁹ the Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing following reconsideration.²⁰ Similarly, the Board has held that the Branch of Hearings and Review may exercise its discretion to conduct a hearing or review the written record where a claimant requests a second hearing or review of the written record on the same issue.²¹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for an oral hearing or a review of the written record.

In a letter dated April 24, 2023, and mailed to OWCP's Branch of Hearings and Review, appellant indicated that he was appealing the February 3, 2023 decision issued by an OWCP hearing representative. By that decision, OWCP's hearing representative affirmed a September 1, 2022 denial decision. Consequently, appellant was not entitled to a hearing or another review of the written record by OWCP's Branch of Hearings and Review as a matter of right as he had previously requested a review of the written record by an OWCP hearing representative.²²

The Board further finds that OWCP, in its May 10, 2023 decision, properly exercised its discretionary authority, explaining that it had considered the matter and denied appellant's request for a hearing or a review of the written record as his claim could equally well be addressed through a reconsideration request.²³

The Board has held that the only limitation on OWCP's authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken, which are contrary to both logic and probable deductions from established facts.²⁴ In this case, the evidence of record does not indicate that OWCP abused its discretion by denying appellant's request for an oral hearing or a review of the written record.

¹⁸ *L.S.*, Docket No. 18-0264 (issued January 28, 2020).

¹⁹ 20 C.F.R. § 10.616(a).

²⁰ *K.L.*, Docket No. 18-1018 (issued April 10, 2019).

²¹ *Id.*

²² *R.M.*, Docket No. 19-1088 (issued November 17, 2020); *K.L.*, Docket No. 18-1018 (issued April 10, 2019).

²³ *See E.H.*, Docket No. 23-0503 (issued July 20, 2023).

²⁴ *See S.I.*, Docket No. 22-0538 (issued October 3, 2022); *T.G.*, Docket No. 19-0904 (issued November 25, 2019); *Daniel J. Perea*, 42 ECAB 214 (1990).

Accordingly, the Board finds that OWCP properly denied his request for an oral hearing or review of the written record.²⁵

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted July 18, 2022 employment incident. The Board also finds that OWCP properly denied his request for an oral hearing or a review of the written record.

ORDER

IT IS HEREBY ORDERED THAT the May 10 and February 3 2023 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 12, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²⁵ The Board notes that the employing establishment issued a Form CA-16, dated July 20, 2022. 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); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).