United States Department of Labor
Employees' Compensation Appeals Board

M.G., Appellant	)	
and	)	**Docket No. 23-0656**
	)	**Issued: January 26, 2024**
DEPARTMENT OF THE ARMY, U.S. ARMY INSTALLATION MANAGEMENT COMMAND, DIRECTORATE OF EMERGENCY SERVICES, Fort Hood, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On April 5, 2023 appellant filed a timely appeal from a February 23, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 February 23, 2023 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 met his burden of proof to establish a lower right extremity condition causally related to the accepted September 30, 2022 employment incident.

FACTUAL HISTORY

On July 7, 2022 appellant, then a 57-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on June 30, 2022 he sustained a right knee sprain when climbing up into the passenger side of his patrol truck and felt a "sharp pain" in his right knee while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty.

A magnetic resonance imaging (MRI) scan report of appellant's right knee dated December 12, 2022 and signed by Dr. Gregory Connor, a Board-certified diagnostic radiologist, related findings of radial tear through the root of the posterior horn medial meniscus with partial extrusion of the medial meniscal body from the medial tibiofemoral compartment; foci of degenerative chondral loss along the anterior weightbearing surface of the medial tibial plateau and the lateral weightbearing surface and lateral slope of the medial femoral condyle with adjacent subchondral reactive marrow change; and small knee joint effusion.

In a development letter dated January 18, 2023, 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 him 30 days to respond.

OWCP subsequently received an undated letter, wherein Dr. Jeffrey Padalecki, a Board-certified orthopedic surgeon, noted his treatment of appellant on December 19, 2022. Dr. Padalecki related that, in June 2022, appellant was stepping down on the right knee while getting into his patrol truck at work and began to feel significant pain afterwards. He noted that appellant was given a steroid injection after the December 2022 MRI scan. Dr. Padalecki opined that the work injury exacerbated appellant's knee symptoms and had been a significant component to the development of his knee arthritis.

On June 30, 2022 appellant was seen in an emergency department by Justin Stevenson, a registered nurse. The discharge note indicated a diagnosis of right knee injury.

On December 19, 2022 appellant was treated by Thea Libbos, a physician assistant, who related that appellant was stepping into a patrol truck when he stepped down hard on the right knee and felt sharp pain. Appellant received a right knee injection. Ms. Libbos diagnosed acute pain of right knee.

OWCP received a narrative statement from a coworker, dated January 26, 2023, indicating that appellant was climbing into his vehicle when the alleged incident took place. He reiterated appellant's history of injury.

By decision dated February 23, 2023, OWCP denied appellant's traumatic injury claim, finding that he had not established that his diagnosed condition was causally related to the accepted employment incident.

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, 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 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 an 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]

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[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).

[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).

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a lower right extremity condition causally related to the accepted June 30, 2022 employment incident.

Appellant submitted an undated letter wherein Dr. Padalecki opined that appellant's work injury exacerbated his knee symptoms and had been a significant component to the development of his knee arthritis. While Dr. Padalecki offered an opinion on the relationship between the diagnosed condition and the employment incident, he did not provide sufficient medical rationale explaining how the employment incident physiologically caused or contributed to the lower back condition. Medical opinion evidence must offer a medically-sound explanation of how the specific employment incident or work factors physiologically caused or contributed to an injury.[12] This letter is, therefore, insufficient to establish the claim.

On June 30, 2022 appellant was treated by Mr. Stevenson, a registered nurse. On December 19, 2022 he was seen by Ms. Libbos, a physician assistant. However, certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA and their reports do not constitute competent medical evidence.[13] This evidence is, therefore, of no probative value and is insufficient to establish the claim.

An MRI scan report of the right knee dated December 12, 2022 was also received. However, the Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[14]

Appellant further submitted narrative statements in support of his claim. As noted above, causal relationship is a medical question that requires rationalized medical opinion evidence to

[11] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship,* Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[12] *O.E.*, Docket No. 20-0554 (issued October 16, 2020); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

[13] 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* 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); *H.S.*, Docket No. 20-0939 (issued February 12, 2021) (physician assistants are not considered physicians as defined under FECA).

[14] *A.O.*, Docket No. 21-0968 (issued March 18, 2022); *see M.S.*, Docket No. 19-0587 (issued July 22, 2019).

resolve the issue.[15] A lay opinion regarding causal relationship does not constitute probative medical evidence.[16] These statements are therefore insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between a diagnosed medical condition and the accepted June 30, 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 lower right extremity condition causally related to the accepted June 30, 2022 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 26, 2024
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

[15] *Supra* note 7.

[16] *See E.H.*, Docket No. 19-0365 (issued March 17, 2021).