

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

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D.T., Appellant)	
)	
and)	Docket No. 23-1094
)	Issued: January 5, 2024
U.S. POSTAL SERVICE, LOUISVILLE POST)	
OFFICE, Louisville, KY, Employer)	
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Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On August 17, 2023 appellant, through counsel, filed a timely appeal from an August 9, 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 November 30, 2021 employment incident.

FACTUAL HISTORY

On December 16, 2021 appellant, then a 59-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on November 30, 2021 he sustained a right knee injury when his foot slipped on a metal floor plate while loading mail onto a trailer in the performance of duty. He stopped work on November 30, 2021.

In a December 20, 2021 development letter, OWCP informed appellant of the deficiencies of his claim and requested additional factual and medical evidence. It attached a development questionnaire for completion and afforded him 30 days to respond.

Thereafter, appellant submitted a November 30, 2021 right knee x-ray reflecting right knee medial compartment narrowing and mild lateral patella subluxation.

By decision dated January 26, 2022, OWCP denied the claim, finding that the evidence of record was insufficient to establish that the incident occurred on November 30, 2021, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 22, 2022 appellant, through counsel, requested reconsideration.

In support thereof, appellant submitted a November 29, 2021 employing establishment hazard report, which indicated that floor patch screws were a tripping hazard. He also submitted a picture of the floor patch where he fell.

In an operative report dated April 7, 2022, Dr. Logan E. Mast, a Board-certified orthopedic surgeon, diagnosed osteoarthritis and indicated that appellant had undergone right knee total arthroplasty.

In an ultrasound test dated April 12, 2022, Dr. Ryan P. Currier, a Board-certified radiologist, found no right lower extremity deep vein thrombosis.

In an April 28, 2022 surgical pathology report, Dr. Mohammad N. Nazek, a Board-certified pathologist reported that appellant had undergone a right knee irrigation debridement and synovectomy for a preoperative diagnosis of right knee wound infection. Appellant's diagnoses were listed as hematoma, subcutaneous tissue excision, and tibial explant.

In an April 29, 2022 ultrasound test, Dr. Albert Seow, a Board-certified radiologist, found no right lower extremity deep venous thrombosis.

Dr. Mast, in an April 30, 2022 report, reviewed diagnostic tests and noted that appellant would be discharged the next day with antibiotics.

By decision dated February 9, 2023, OWCP modified the prior decision, finding that appellant had established the factual portion of his claim. However, the claim remained denied as the medical evidence submitted was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted November 30, 2021 employment incident.

On June 16, 2023 appellant, through counsel, requested reconsideration.

In progress notes dated May 2, 2023, Dr. Mast noted appellant's history that he was scheduled to undergo a right knee replacement, but then knee replacement procedures were discontinued. In the interval, appellant slipped and fell at the employing establishment, increasing the amount of pain he was experiencing. He then underwent the right knee replacement in April 2022, with a good outcome. Dr. Mast noted appellant's current physical examination findings.

By decision dated August 9, 2023, OWCP denied modification.

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,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. There are two components involved in establishing fact of injury. The first component is that 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. The second component is whether the employment incident caused an injury and can be established only by medical evidence.⁷

³ *Id.*

⁴ *S.B.*, Docket No. 23-0307 (issued August 25, 2023); *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 *S.B., id.*; *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 *S.B., id.*; *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 *S.B., id.*; *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).

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident 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 by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident.⁹

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.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right knee condition causally related to the accepted November 30, 2021 employment incident.

In an operative report dated April 7, 2022, Dr. Mast noted a diagnosis of osteoarthritis and indicated that appellant had undergone right knee total arthroplasty. On April 28, 2022 Dr. Nazek, reported that appellant had undergone a right knee irrigation debridement and synovectomy for a preop diagnosis of right knee wound infection. Appellant's diagnoses were listed as hematoma, subcutaneous tissue excision, and tibial explant. This evidence, however, did not provide an opinion addressing whether his need for surgery and how it was causally related to the accepted employment incident. Medical reports lacking an opinion regarding causal relationship are of no probative value and, accordingly, are insufficient to establish appellant's claim.¹¹

On May 2, 2022 appellant was seen by Dr. Mast who diagnosed right artificial knee joint and right ankle and foot pain. He related that appellant had previously been scheduled for total knee replacement, which was postponed. Appellant then aggravated his right knee pain at work on November 21, 2021. However, the Board has also held that medical opinion evidence must offer a medically-sound explanation of how the specific employment incident or work factors physiologically caused the injury.¹² Dr. Mast's medical report is, therefore, of limited probative value. Further, as noted above, 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,

⁸ *S.B., id.*; *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).

⁹ *S.B., id.*; *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 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).

¹¹ *See L.H.*, Docket No. 23-0480 (issued August 1, 2023); *E.K.*, Docket 22-1130 (issued December 30, 2022); *L.K.*, Docket No. 21-1155 (issued March 23, 2022); *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, Docket No. 19-0285 (issued September 24, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *See H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

acceleration, or precipitation, the medical evidence must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition. As Dr. Mast did not differentiate between appellant's preexisting condition and the effects of his accepted employment incident his reports are insufficient to establish causal relationship.¹³

The remaining evidence of record consisted of ultrasound reports of the right lower extremity, pathology reports, and x-ray interpretation of the right lower extremity. As the Board has held, diagnostic studies, standing alone, lack probative value, and are insufficient to establish the claim.¹⁴ Consequently, this additional evidence is insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish a right knee condition causally related to the accepted November 30, 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 right knee condition causally related to the accepted November 30, 2021 employment incident.

¹³ *Supra* note 10.

¹⁴ *M.W.*, Docket No. 23-0687 (issued August 29, 2023); *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2024
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