United States Department of Labor
Employees' Compensation Appeals Board

J.I., Appellant	)	
and	)	**Docket No. 23-1122**
	)	**Issued: March 11, 2024**
U.S. POSTAL SERVICE, POST OFFICE, New Orleans, LA, Employer	)	

Appearances:
Paul H. Felser, Esq., for the appellant[1]
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 25, 2023 appellant, through counsel, filed a timely appeal from a March 2, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 has met his burden of proof to establish a left knee condition causally related to the accepted August 7, 2021 employment incident.

FACTUAL HISTORY

On August 7, 2021 appellant, then a 51-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he twisted his left knee when he stepped out of his postal vehicle while in the performance of duty. He stopped work on August 12, 2021.

In an August 7, 2021 statement, appellant indicated that he stepped out of his postal truck and his left knee folded in the wrong direction. He reported the incident to C.S., his supervisor, and told her that he would complete his route and "see how it felt in a day or so."

On August 7, 2021 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) authorizing appellant to seek medical care related to pain in the left knee.

In an August 12, 2021 note, Dr. Harrison Brown, a Board-certified emergency medicine physician, noted that appellant related complaints of left knee pain, which he attributed to stepping out of his truck and his knee folded backward. He prescribed topical pain medication and indicated that appellant was not able to stand for longer than 10 minutes.

In an August 24, 2021 attending physician's report, Part B of the Form CA-16, Dr. Brian Ladner, a Board-certified orthopedic surgeon, diagnosed a ruptured posterior cruciate ligament (PCL) and osteoarthritis of the left knee. He checked a box marked "Yes" indicating that he believed that these conditions were caused or aggravated by an employment activity. In a duty status report (Form CA-17) of even date, Dr. Ladner released appellant to return to sedentary-duty work with limited standing and walking and no lifting or carrying greater than five pounds.

In a development letter dated September 28, 2021, OWCP advised appellant of the deficiencies of his claim. It informed him of the type of factual and medical evidence necessary to establish his claim and provided a development questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary information.

OWCP thereafter received an August 12, 2021 emergency room report by Dr. Brown, who noted that appellant related complaints of diffuse pain and aching over the posterior aspect of the left knee, which appellant attributed to awkwardly bending and hyperextending appellant's left knee while exiting his postal truck. Dr. Brown performed a physical examination and documented mild anterior and medial tenderness in the left knee. He obtained x-rays, which revealed postsurgical changes with no evidence of hardware abnormality or acute fracture. Dr. Brown diagnosed a left knee sprain.

In an October 5, 2021 Form CA-17, Dr. Ladner released appellant to part-time work with use of crutches.

By decision dated October 27, 2021, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed left knee condition and the accepted August 7, 2021 employment incident.

OWCP continued to receive evidence. In an August 19, 2021 medical report, Dr. Ladner noted that appellant related complaints of left knee pain, which he attributed to a hyperextension injury at work on August 7, 2021. He further noted a history of six prior surgeries to the left knee. Dr. Ladner performed a physical examination of the left knee, which revealed point tenderness to palpation about the medial joint line and pes anserine, positive tibial sag, and instability with posterior tibial stress. He reviewed x-rays and diagnosed primary osteoarthritis of the left knee and rupture of the PCL. Dr. Ladner aspirated and injected the left knee.

An August 19, 2021 magnetic resonance imaging (MRI) scan indicated a history of left knee pain and anterior cruciate ligament (ACL) reconstruction. The MRI scan demonstrated changes consistent with ACL reconstruction and extensive complex tearing and maceration of the posterior horn of the body of the medial meniscus, moderate chondromalacia of the medial patellar facet, moderate-to-severe cartilage thinning of the medial tibiofemoral compartment, and mild thinning of the lateral tibiofemoral compartment.

In a follow-up report dated December 2, 2021, Dr. Ladner examined appellant's left knee and noted a positive McMurray's sign in the medial aspect and positive apprehension tests for the PCL. His examination of the right knee was normal. Dr. Ladner diagnosed post-traumatic osteoarthritis of the left knee and performed a large joint aspiration and injection.

On December 9, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated December 21, 2021, OWCP denied appellant's request for an oral hearing as untimely filed, finding that his request was not made within 30 days of the October 27, 2021 OWCP decision. It further exercised discretion and determined that the issue in this case could equally well be addressed by requesting reconsideration and submitting evidence not previously considered.

On February 15, 2022 appellant requested reconsideration of OWCP's October 27, 2021 decision.

By decision dated February 17, 2022, OWCP denied modification of its October 27, 2021 decision.

On February 15, 2023 appellant, through counsel, requested reconsideration of OWCP's February 17, 2022 decision. In support of the request, appellant submitted a June 24, 2022 medical report by Dr. Roderick Chandler, a Board-certified orthopedic surgeon, who noted that appellant related complaints of left knee pain, which he attributed to an incident at work when he stepped awkwardly out of his truck, hyperextended his left knee, and then fell into the truck. Dr. Chandler noted appellant's history of six prior knee surgeries, including two ACL reconstructions, a medial collateral ligament reconstruction, and an arthroscopic partial meniscectomy and debridement. He further noted that appellant had been doing well from a functional standpoint prior to the employment incident, but that appellant's knee felt very unstable, painful, and he had not been

able to return to work since the incident. On physical examination of the left knee, Dr. Chandler noted limited flexion, medial and lateral tenderness, laxity with Lachman's maneuver, swelling, and a positive anterior drawer test. He obtained x-rays and reviewed appellant's MRI scan findings. Dr. Chandler diagnosed left knee pain, osteoarthritis of the left knee, left ACL sprain, and tears of the meniscus and ACL of the left knee. He opined that, when appellant "planted his foot and his knee hyperextended, he really tore his ACL graft" and that he "now has clinical instability related to that." Dr. Chandler indicated that he was not doing well functionally since the employment incident, and that his best option would be to proceed with total knee arthroplasty. He explained that appellant had underlying arthritic changes, but that the employment incident accelerated his need for an arthroplasty by 5 to 10 years. Dr. Chandler opined that "the proximate cause of [appellant] requiring arthroplasty at this time is the injury to [appellant's] knee that he sustained at work."

In a September 13, 2022 follow-up report, Dr. Chandler diagnosed osteoarthritis of the left knee, sprain of the left ACL, and tears of the meniscus and ACL of the left knee. He released appellant to return to sedentary work with walking for no more than 10 percent of the workday and no climbing ladders or stairs, bending, squatting, or stooping.

By decision dated March 2, 2023, OWCP denied modification of its February 17, 2022 decision.

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,[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, place, and in the manner alleged. The second component is

[3] *Id*.

[4] *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] *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] *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).

whether the employment incident caused an injury and can be established only by medical evidence.[7]

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 factors identified by the employee.[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 this case is not in posture for decision.

In his June 24, 2022 medical report, Dr. Chandler diagnosed osteoarthritis of the left knee, left ACL sprain, and tears of the meniscus and ACL of the left knee. He noted that appellant had underlying arthritic changes and a history of six prior knee surgeries, but that appellant had been doing well from a functional standpoint prior to the employment incident. Dr. Chandler documented abnormal physical examination findings including limited flexion, medial and lateral tenderness, laxity with Lachman's maneuver, swelling, and a positive anterior drawer test. He opined that, when appellant "planted his foot and his knee hyperextended, he really tore his ACL graft" and that he "now has clinical instability related to that." Dr. Chandler recommended a total knee arthroplasty and explained that the employment incident accelerated his need for an arthroplasty by 5 to 10 years. He further noted that "the proximate cause of him requiring arthroplasty at this time is the injury to [appellant's] knee that he sustained at work."

The Board finds that, while the June 24, 2022 report from Dr. Chandler is not fully rationalized, it is sufficient to require further development of the medical evidence in this claim. He exhibited a comprehensive understanding of appellant's history of injury and provided a rationalized explanation as to how the accepted employment incident resulted in his diagnosed left

[7] *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).

[8] *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] *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 (May 2023); *M.B.*, Docket No. 20-1275 (issued January 29, 2021).

knee conditions and differentiated between the effects of the work-related injury and the preexisting condition.

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility for the development of the evidence.[11] OWCP has an obligation to see that justice is done.[12]

On remand, OWCP shall refer appellant to a specialist in the appropriate field of medicine, along with the case record, and a statement of accepted facts, for an examination and a rationalized medical opinion as to whether the accepted employment incident either caused or aggravated his diagnosed conditions.[13] If the second opinion physician disagrees with Dr. Chandler's opinion, he or she must provide a fully-rationalized explanation as to why the accepted employment incident was insufficient to have caused or aggravated appellant's diagnosed conditions. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.[14]

CONCLUSION

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

[11] *See id.*; *see also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy Hammons*, 51 ECAB 219, 223 (1999).

[12] *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, *supra* note 7.

[13] *Supra* note 10 at Chapter 2.805.3e (May 2023); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

[14] The Board notes that 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).

ORDER

IT IS HEREBY ORDERED THAT the March 2, 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: March 11, 2024
Washington, DC

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

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

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