

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

G.K., Appellant

and

**DEPARTMENT OF DEFENSE, DEFENSE
LOGISTICS AGENCY, ROBINS AIR FORCE
BASE, GA, Employer**

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**Docket No. 24-0012
Issued: March 26, 2024**

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 October 6, 2023 appellant filed a timely appeal from a June 27, 2023 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

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition in connection to the accepted August 5, 2022 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the June 27, 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.*

FACTUAL HISTORY

On August 30, 2022 appellant, then a 45-year-old distribution process worker, filed a traumatic injury claim (Form CA-1) alleging that on August 5, 2022 she developed left elbow, lower back, and right knee pain when she tripped over her luggage on an escalator and fell backward.

In a development letter dated September 16, 2022, OWCP indicated that, when appellant's claim was first received it appeared to be a minor injury that resulted in minimal or no lost time from work, payment of a limited amount of medical expenses was administratively approved. It explained that it had reopened the claim for consideration because the employer submitted a late challenge to her claim. OWCP requested additional factual and medical evidence in support of her claim, and provided a questionnaire for her completion. It afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted an August 22, 2022 MRI scan of her right knee finding mild tricompartmental joint space narrowing. An August 22, 2022 MRI scan of appellant's lumbar spine demonstrated findings of moderate degenerative disc disease at L4-5, and L5-S1. OWCP received an x-ray of the right shoulder signed by Dr. Christopher John Cornille, a Board-certified diagnostic radiologist, which demonstrated findings of mild acromioclavicular arthropathy, no evidence of acute fracture or dislocation, and mixed sclerosis and lucency projective over the glenoid, which might be attributable to degenerative joint disease and subchondral cyst formation. An October 20, 2022 right shoulder MRI scan demonstrated glenohumeral osteoarthritis and high grade partial articular distal supraspinatus tendon surface tear.

OWCP received physical therapy notes dated October 26, 2022 from Charles E. Bass, Jr., a physical therapist, and Sabrina Honeywell, a registered occupational therapist, diagnosing right knee and right shoulder pain.

By decision dated November 3, 2022, OWCP denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish that a medical condition was diagnosed in connection with the accepted August 5, 2022 employment incident. Consequently, it found that the requirements had not been met to establish an injury as defined by FECA.

On November 10, 2022 appellant requested a hearing before an OWCP hearing representative. The hearing was held on April 12, 2023.

OWCP subsequently received progress notes dated August 22, 2022 from Dr. Lee Collier, a Board-certified internist, who noted appellant's history of injury history, and related that appellant complained of right knee and back pain since the fall of August 5, 2022. Dr. Collier related appellant's physical examination findings, and diagnosed low back pain without sciatica, unspecified chronicity, and right knee pain, unspecified chronicity.

In a report dated April 17, 2023, Dr. Collier opined that appellant's preexisting arthritis had been aggravated by the accepted August 5, 2022 incident. In support of this conclusion, he explained that appellant experienced right shoulder and right knee swelling following the August 5, 2022 fall.

By decision dated June 27, 2023, an OWCP hearing representative affirmed the November 3, 2022 decision. In reviewing Dr. Collier's April 17, 2023 report, the hearing representative found that pain and swelling were not diagnoses, therefore the evidence of record was insufficient to establish the essential elements of the claim.

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. First, 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. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁷

The medical evidence required to establish a causal relationship 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 identified by the employee.⁹

ANALYSIS

The Board finds that appellant has established a diagnosed medical condition.

³ *Id.*

⁴ *S.P.*, Docket No. 23-0436 (issued September 18, 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.P.*, *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.P.*, *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.P.*, *id.*; *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *S.P.*, *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.P.*, *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).

In a report dated August 22, 2022, Dr. Collier noted appellant's complaints of back pain. The Board has held that pain is a symptom and not a compensable medical diagnosis.¹⁰ In his April 17, 2023 report, however, Dr. Collier opined that appellant's preexisting arthritis had been aggravated by the accepted August 5, 2022 employment incident based on her right knee and shoulder swelling. As Dr. Collier's diagnoses of aggravation of arthritis of the right knee and right shoulder were corroborated by the diagnostic studies of record, the Board finds that appellant has established diagnosed medical conditions. Consequently, the case must be remanded for consideration of the medical evidence as to whether appellant has met her burden of proof to establish that her diagnosed medical conditions are causally related to the accepted August 5, 2022 employment incident. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision on the issue of causal relationship.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2023 decision of the Office of Workers' Compensation Programs is set aside, and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 26, 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

¹⁰ See *B.A.*, Docket No. 22-0213 (issued July 26, 2022); *T.B.*, Docket No. 20-0255 (issued March 11, 2022).