

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted February 23, 2019 employment incident.

FACTUAL HISTORY

This case had previously been before the Board. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.³ The relevant facts are as follows.

On October 10, 2019 appellant, then a 64-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on February 23, 2019 she injured her hip pushing a cart loaded with two full water cooler bottles while in the performance of duty. She did not stop work.

Accompanying appellant's claim was a September 6, 2019 magnetic resonance imaging (MRI) scan noting a clinical history right hip pain for several months. Under impression, her diagnoses were listed as degenerative tendinopathy of the right gluteus medius and minimis tendons at the trochanteric insertion without evidence of significant tear; right hip osteoarthritis, and tear of the anterosuperior aspect of the right acetabular; edema and fatty atrophy of the quadratus femoris, which raised the possibility of ischiofemoral impingement syndrome.

An August 16, 2019 x-ray interpretation of appellant's pelvis noted a clinical history of chronic right-sided radiculopathy and related a finding of normal pelvic radiograph. An August 16, 2019 right knee x-ray revealed primary localized right knee osteoarthritis. An October 4, 2019 x-ray interpretation indicated mild lateral and patellofemoral osteoarthrosis and no acute fracture.

In a report dated October 24, 2019, Dr. Vincent K. McInerney, a Board-certified orthopedic surgeon, diagnosed right hip trochanteric bursitis and acute medial meniscal tear. In a duty status report (Form CA-17) dated October 24, 2019, he diagnosed trochanteric bursitis, noted an injury date of February 23, 2019, and provided work restrictions. Dr. McInerney noted that she had injured her hip while pushing a cart loaded with supplies and two water cooler bottles.

In an attending physician's report (Form CA-20) dated October 25, 2019, Dr. McInerney, noted that appellant fell at work on February 23, 2019. He diagnosed right hip greater trochanteric bursitis. In another Form CA-20 of even date, Dr. McInerney noted that appellant fell onto her right knee at work on September 18, 2019. He diagnosed right knee medial meniscal tear. In a Form CA-20 dated October 31, 2019, Dr. McInerney noted an injury date of September 18, 2019 and diagnosed right hip and knee injuries. In these forms, he indicated by a check mark that the diagnosed conditions were causally related to the alleged employment activity.

By decision dated November 22, 2019, OWCP accepted that the February 23, 2019 employment incident occurred, as alleged, but denied appellant's claim finding that causal

³ Docket No. 21-1135 (issued April 4, 2022).

relationship had not been established between appellant's diagnosed medical conditions and the accepted employment incident.⁴ It noted that she had been under medical care for right knee and right hip conditions prior to September 18, 2019.

On November 19, 2020 appellant, through counsel requested reconsideration. OWCP received progress notes from Dr. McInerney dated September 3, 2019 wherein he noted appellant's right hip pain, and provided diagnoses of right acetabular labrum tear and right knee localized osteoarthritis. It also received October 4 and December 6 and 20, 2019 reports, wherein Dr. McInerney noted appellant's right knee pain and diagnosed trochanteric bursitis of the right hip. In the October 4, 2019 report, Dr. McInerney also diagnosed acute right knee meniscal tear, which he related was a new injury sustained on September 18, 2019. In the December 20, 2019 report, he noted that appellant had continued right hip pain since her February 23, 2019 injury and that her continued tenderness along the greater trochanteric region was consistent with trochanteric bursitis from the original February 23, 2019 employment injury.

By decision dated February 1, 2021, OWCP denied modification.

On July 16, 2021 appellant, through counsel, appealed OWCP's February 1, 2021 decision to the Board. By decision dated April 4, 2022,⁵ the Board affirmed the February 1, 2021 decision. The Board found that appellant had not established a medical condition causally related to the accepted February 23, 2019 employment incident.

On March 3, 2023 appellant, through counsel, requested reconsideration.

In support of the request, counsel submitted a February 14, 2023 report from Dr. McInerney, who noted that appellant strained her right hip on February 23, 2019 while pushing a cart loaded with two water cooler bottles and that she injured her right knee in a separate work injury on September 18, 2019 when she tripped on uneven ground. Appellant's physical examination of the right hip revealed tenderness over the trochanteric bursa area and good hip ROM. A review of right hip x-rays was negative for any acute fracture. He also detailed right knee examination findings from October 24, 2019 through April 29, 2021, noting that appellant was released to return to full duty effective January 16, 2021. Dr. McInerney attributed appellant's right knee medial meniscal tear to a September 18, 2019 fall at work.

By decision dated May 31, 2023, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the

⁴ OWCP noted that appellant had been under medical care for right knee and hip conditions prior to September 18, 2019 and that she had filed a prior claim for a right knee injury in OWCP File No. xxxxxx552. The claims have not been administratively combined by OWCP.

⁵ *Supra* note 3.

United States within the meaning of FECA,⁶ that the claim was timely filed within the applicable time limitation period 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.⁷ 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.⁸

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 and can be established only by medical evidence.⁹

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹⁰ 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.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted February 23, 2019 employment incident.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of the February 1, 2021 decision because the Board

⁶ *R.P.*, Docket No. 23-0638 (issued November 30, 2023); *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *R.P.*, *id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *R.P.*, *id.*; *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *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).

⁹ *R.P.*, *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).

¹⁰ *R.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).

¹¹ *R.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).

considered that evidence in its April 4, 2022 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹²

Dr. McInerney, in his February 14, 2023 report, opined that appellant strained her right hip on February 23, 2019 while pushing a cart with two water cooler bottles. Although Dr. McInerney generally supported causal relationship, he did not provide a rationalized medical opinion explaining a pathophysiological process of how the accepted employment incident caused or contributed to the diagnosed condition. The Board has held that the physician must offer a rationalized explanation of how the specific employment incident or work factors physiologically caused injury.¹³ This evidence is, therefore, insufficient to establish the claim.

As appellant has not submitted rationalized medical evidence to establish a medical condition causally related to the accepted February 23, 2019 employment incident, the Board finds that she has not met her 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 her burden of proof to establish a medical condition causally related to the accepted February 23, 2019 employment incident.

¹² *R.P., id.*; *A.D.*, Docket No. 20-0553 (issued April 19, 2021); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

¹³ *D.S.*, Docket No. 23-0218 (issued June 26, 2021); *G.R.*, Docket No. 21-1196 (issued March 16, 2022); *K.J.*, Docket No. 21-0020 (issued October 22, 2021); *L.R.*, Docket No. 16-0736 (issued September 2, 2016); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 28, 2024
Washington, DC

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

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

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