

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

_____	)	
<b>F.L., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 12-1623</b>
	)	<b>Issued: December 27, 2012</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DELIVERY CENTER, Jacksonville, FL,</b>	)	
<b>Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 25, 2012 appellant filed a timely appeal of the February 3, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for compensation. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant established that he sustained an injury in the performance of duty on May 21, 2011, as alleged.

On appeal, appellant described the employment incident and alleged that errors were made in the reporting and follow-up of workplace incidents.

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On May 25, 2011 appellant, then a 54-year-old electronic technician, filed a traumatic injury claim alleging that, on May 21, 2011, during the course of his federal employment, his left knee became swollen and painful. On that date, he noted that a roller on the reader motor had shifted. Another employee put his finger on the machine and appellant told the employee that they were starting the machine and pulled the other employee's finger away on multiple occasions. When he walked in front of the machine his left knee developed a stabbing-like pain that increased with each step. The employing establishment controverted the claim.

In a May 25, 2011 note, Dr. Paul Moir, a Board-certified family practitioner, saw appellant in the emergency department. He stated that appellant was unable to work for a period of five days and could resume normal work as of May 30, 2011. Dr. Moir prescribed medication to be taken every four hours as needed.

By letter dated June 8, 2011, OWCP informed appellant that further documentation was needed in support of his claim.

In a May 24, 2011 report, Dr. Samy F. Bishai, an orthopedic surgeon,<sup>2</sup> reviewed appellant's medical records. He noted that appellant had pain in his neck, right and left knees and low back with radiculopathy as well as numbness in the ring and little fingers of the left hand. Dr. Bishai diagnosed a chronic cervical strain, chronic thoracic strain, chronic lumbar strain, cervical disc syndrome, thoracic disc syndrome, lumbosacral disc syndrome, degenerative arthritis of the right and left knee joints, torn meniscus of the right knee joint, chondromalacia right knee, myxoid degeneration of the posterior horn of the medial meniscus of the left knee, posterolisthesis of L5 on S1 and disc bulge and spondylosis at C6-7. He noted that appellant had suffered multiple injuries to his neck, back, both knees and other joints in his body over the course of his employment. Dr. Bishai stated that the type of work appellant performed was the type that caused and aggravated injuries due to the physical demands of the job. He opined that all of the activities appellant had performed in the course of his employment predisposed him to injury. There was no doubt that appellant's injuries, including both right and left knees as well as injuries to his neck and back, were permanently aggravated as a direct result of his work for the employing establishment.

Appellant submitted his medical records from a visit to St. Vincent's Medical Center on May 25, 2011. He complained of sharp pain in his left knee which commenced the prior Saturday. In an x-ray report dated May 25, 2011, Dr. Michael T. Donohue, a Board-certified radiologist, stated that the left knee demonstrated no fracture, subluxation or joint effusion. A venous sonography of the left lower extremity, also completed on May 25, 2011, was interpreted by Dr. Donohue as evincing no evidence of deep venous thrombosis.

In a note dated June 11, 2011, a physician's assistant noted that appellant told him that when he was at work around May 24, 2011, he made a sudden move to prevent someone from falling and felt pain in his left knee. Appellant described a history of chronic bilateral knee pain,

---

<sup>2</sup> The Board cannot determine that Dr. Bishai is Board-certified.

but stated that the pain was very sharp on that date. The physician's assistant diagnosed bilateral knee osteoarthritis, right worse than left and left knee pain exacerbation.

By decision dated July 12, 2011, OWCP denied appellant's claim for compensation. It found that the evidence did not establish that the employment incident occurred as alleged.

On August 6, 2011 appellant requested an oral hearing before an OWCP hearing representative. At the November 14, 2011 hearing, he noted a history of knee problems. On the date of the incident, appellant prevented his supervisor's finger from going into a machine that was starting. He noted that, after he walked around the machine, his pain increased with each step. Appellant described treatment of his knees.

In a September 13, 2011 report, Dr. Bishai reviewed appellant's medical records and conducted a physical examination. He noted that appellant continued to complain of pain in his neck, right and left knee joints, back and left arm. Dr. Bishai opined generally that appellant was being treated unfairly because the current symptoms in his back, neck and knee joints were directly related to his work. He noted that appellant's symptoms resulted from his work activities. Dr. Bishai stated that work-related activities were essentially the cause of appellant's symptoms, whether they originated completely from the repetitive movements and repetitive activities at work or were aggravated by those repetitive movements and work-related activities. He based his opinion on the orthopedic evaluation of appellant which included sophisticated tests, a physical examination and a comprehensive history. In an October 13, 2011 report, Dr. Bishai reiterated his opinion that appellant's symptoms were directly related to his work and work-related activities.

By decision dated February 3, 2012, OWCP's hearing representative determined that the evidence was sufficient to establish the May 21, 2011 incident. She denied appellant's claim finding that the medical record did not establish that appellant sustained a diagnosed medical condition arising from this incident.

### **LEGAL PRECEDENT**

OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.<sup>3</sup> An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact 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 period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.<sup>4</sup>

---

<sup>3</sup> 20 C.F.R. § 10.5(e).

<sup>4</sup> *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>5</sup> In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place and in the manner alleged.<sup>6</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>7</sup> The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the specific employment factors identified by the claimant.<sup>8</sup>

### ANALYSIS

In the February 3, 2012 decision, the hearing representative determined that the evidence was sufficient to establish that an employment incident occurred on May 21, 2011. The issue is whether the medical evidence is sufficient to establish a left knee condition causally related to the accepted incident. To establish causal relationship, the medical evidence must be based on a complete factual and medical background and must explain the nature of the relationship between the diagnosed condition and the employment factors.

The Board finds that the medical evidence of record is insufficient to establish that appellant sustained a left knee condition caused or aggravated by an employment incident of May 21, 2011. The Board notes that the hospital records from appellant's May 25, 2011 visit to the emergency department do not establish his claim. Dr. Donahue did not obtain a history of an employment injury in interpreting appellant's x-ray and venous sonography. Furthermore, Dr. Donahue did not make any positive findings of a diagnosed medical condition. He noted that appellant's left knee demonstrated no fracture, subluxation or joint effusion by x-ray and that the venous sonography showed no evidence of deep venous thrombosis. Dr. Moir did not discuss the employment incident or provide a diagnosis; rather he briefly noted that appellant was unable to work. The Board notes that the opinion of the physician's assistant is of no probative value

---

<sup>5</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>6</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>8</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

since a physician's assistant is not considered a physician under FECA.<sup>9</sup> With regard to the reports of Dr. Bishai, he did not address the May 21, 2011 incident, even though he examined appellant on May 24, 2011. Dr. Bishai opined in general that appellant's multiple physical conditions were employment related, due to the repetitive value of his work. He did not address the May 21, 2011 incident that was the basis for appellant's claim. Accordingly, Dr. Bishai's medical opinion is not sufficient to establish that appellant sustained a left knee injury causally related to the May 21, 2011 employment incident.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his claimed knee injury and the May 21, 2011 accepted employment incident.<sup>10</sup> An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his conditions were caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>11</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

OWCP advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Consequently, appellant has not met his burden of proof in establishing that he sustained an injury to his knee causally related to his employment.

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 established that he sustained an injury in the performance of duty on May 21, 2011, as alleged.

---

<sup>9</sup> *George H. Clark*, 56 ECAB 162 (2004); *see also P.B.*, Docket No. 12-960 (issued September 25, 2012).

<sup>10</sup> *M.C.*, Docket No. 12-1304 (issued November 13, 2012).

<sup>11</sup> *William C. Thomas*, 45 ECAB 591 (1994).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 3, 2012 is affirmed.

Issued: December 27, 2012  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board