



## **FACTUAL HISTORY**

The Office accepted that, on February 2, 2000, appellant, then a 36-year-old sheet metal mechanic, sustained a torn medial meniscus of the right knee with meniscectomy performed on January 15, 2001. Appellant returned to work following the January 15, 2001 meniscectomy and subsequently claimed a February 7, 2002 recurrence of disability while on light duty.

On April 9, 2003 appellant filed a recurrence of disability claim (Form CA-2a) alleging that, on March 20, 2003, he experienced “intensified” pain in his right knee while kneeling and climbing up and down stairs to install floor patches in an airplane. Appellant asserted that “[i]n the process of installing the patches ... on one particular occasion while attempting to kneel [he] experienced a sudden pull on the right side of [his] right knee” followed by “constant pulsating pain” and a pinching sensation. Appellant then reported the incident to his supervisor, Venny Lupore. Appellant stated that he sought medical treatment from his doctor the next day, who prescribed medication and found that appellant had “not completely healed to return to work.” He explained that, prior to that request, he “worked on the bench” without the need for frequent kneeling or climbing but that he did minor repairs on the flight line “where [he] was required to walk great distances and occasionally climb” aircraft stairs. Appellant alleged that “there was no longer anything such as light duty, so [he] had to deal with the pain.”

Appellant stopped work on March 20, 2003 and returned to work on March 24, 2003. The record indicates that he again stopped work and did not return through October 2003 and continuing.

In May 2, 2003 letters, the employing establishment stated that, following appellant’s February 2000 right knee injury, he was assigned to modified duty for one year, “working at a table” with no flight line tasks. The Office denied appellant’s claim for a March 4, 2002 recurrence of disability. Appellant then alleged a February 25, 2003 recurrence of disability and presented a slip that indicated that “he could not walk up stairs or squat.” The employing establishment did not authorize light duty and placed appellant on sick leave. On February 28, 2003 appellant “returned to work ... with a doctor’s note returning him to full duty, so he elected not to fill out the” claim form for recurrence of disability. The employing establishment alleged that, between the alleged February 25, 2003 recurrence of disability and the April 9, 2003 claim, appellant traveled to Pensacola, Florida to attend technical training.

Appellant submitted medical evidence in support of his claim from Dr. David V. DiMarco, an attending orthopedic surgeon.<sup>1</sup> In a February 25, 2003 report, Dr. DiMarco related appellant’s account of right knee burning, swelling and buckling associated with “increased ... work duties that require him to be kneeling, using stairs and prolonged standing getting in and out of a squatting position.” On examination of the right knee, Dr. DiMarco found crepitation, synovitis and a positive grind test. Dr. DiMarco released appellant to work the following day “hopefully avoiding stairs, squats and kneeling.”

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<sup>1</sup> The record indicates that Dr. DiMarco may have served as a second opinion physician early in the development of this case. Appellant transferred care to Dr. DiMarco’s office on October 20, 2000.

In an April 15, 2003 report, Dr. DiMarco noted that appellant “was unable to return to work because no light duty was available” but that he attended a “school program for some training” outside the local area. Dr. DiMarco diagnosed synovitis of the right knee. In a June 10, 2003 report, Dr. DiMarco opined that appellant’s ongoing symptoms and traumatic osteoarthritis [were] related to” the February 2, 2000 injury. Dr. DiMarco noted that no light duty was available. Dr. DiMarco provided work restrictions on July 11, 2003 limiting lifting, pushing and pulling to 25 pounds and indicating unspecified limitations on squatting, kneeling, climbing, sitting, walking and standing. In an August 26, 2003 report, Dr. DiMarco indicated that appellant could perform sedentary, clerical duties.

In an August 28, 2003 file memorandum, the Office noted that appellant’s claim for a recurrence of disability pertaining to the accepted February 2, 2000 torn medial meniscus had “been changed to a new claim with March 20, 2003 as the date of injury.”

In September 2, 2003 letters, the Office advised appellant that the evidence was insufficient to support that he sustained an injury on March 20, 2003 as the medical reports submitted lacked a diagnosis and were insufficiently rationalized. The Office explained that the evidence indicated that the claim should be reviewed “not as a recurrence but as a traumatic injury claim with a March 20, 2003 date of injury.” The Office advised appellant to submit a detailed narrative report from his attending physician explaining “why the condition diagnosed [was] believed to have been caused or aggravated by [the] claimed injury.” Appellant responded on September 8, 2003 that “[a]t the time of the reinjury [he] experienced a sudden pull on the outer right side of [his] right knee” with a pinching sensation. He informed his supervisor and sought medical treatment the following day.

In an October 7, 2003 file memorandum, the Office noted that an employing establishment supervisor confirmed that, “on or about March 20 or March 21, 2003,” appellant was doing “patch-up work” but that this was “highly unusual because [appellant] was doing bench work.” The supervisor asserted that appellant “never reported an injury.” In a second October 7, 2003 memorandum, the Office stated that Dr. DiMarco’s office confirmed that, after February 25, 2003, there were no records indicating that appellant sought additional treatment until April 15, 2003.

By decision dated October 7, 2003, the Office denied appellant’s claim for a March 20, 2003 traumatic right knee injury. The Office found that appellant established as factual that he worked installing aircraft floor patches on March 20, 2003. The Office found, however, that there was no probative medical evidence that he incurred a right knee injury as a result. The Office noted that appellant was advised by September 2, 2003 letter of the deficiencies in his claim but did not submit the clarifying evidence requested.

In a February 20, 2004 letter and brief, appellant requested reconsideration through his attorney. Appellant asserted that being directed to install aircraft floor patches on March 20, 2003 constituted both a modification and withdrawal of his light-duty assignment. He alleged that kneeling to install the floor patches on March 20, 2003 caused a right knee injury. Appellant argued that the Office improperly developed his claim for recurrence of disability as a traumatic injury claim. He asserted that, when advised by the Office’s September 2, 2003 letter of the

change of issue, he tried to schedule an appointment with Dr. DiMarco but was unable to see him prior to the issuance of the Office's October 7, 2003 decision denying his claim. Appellant alleged that the Office did not properly review the evidence submitted and committed adversarial, inequitable actions. He concluded that the appropriate burden of proof in his case was that of a recurrence of disability while performing light-duty work and that he remained eligible for light duty on March 20, 2003.<sup>2</sup> He submitted additional medical evidence.<sup>3</sup>

In an October 3, 2003 note, Dr. DiMarco diagnosed traumatic arthritis resulting from the February 2, 2000 injury. He asserted that "[a]ny flare-ups that he should have to that knee" would be related to the traumatic arthritis caused by the February 2, 2000 injury. Dr. DiMarco found appellant temporarily disabled for work.

In a January 21, 2004 report, Dr. DiMarco noted appellant's history of a February 2, 2000 occupational right knee injury and February 12, 2000 and January 21, 2001 resections of the medial meniscus. Dr. DiMarco noted that appellant's "most recent exacerbation occurred on January 20, 2003" and that he was first examined for this exacerbation on February 25, 2003. Appellant attributed his increased symptoms to "increased work duties that required extensive kneeling, use of stairs ... prolonged standing" and arising from squat. Dr. DiMarco stated that, since February 25, 2003, appellant was totally and permanently disabled for work as a sheet metal mechanic. He diagnosed "status post tear and recurrent tear forearm the medial meniscus with chondromalacia of the patella to his right knee." Dr. DiMarco prescribed continuing medications and recommended synvisc injections. He specified that appellant was incapable of "significant lifting, pushing or pulling and needs to avoid repetitive stairs, climbing, crawling and kneeling" and prolonged sitting.

By decision dated May 28, 2004, the Office denied modification of the October 7, 2003 decision. The Office found that the April 9, 2003 claim form was sufficient to establish that appellant's specific job duties were "new factors causing an intervening injury. The Office further found that, as Dr. DiMarco's January 20, 2004 report did not refer to a March 20, 2003 exacerbation of right knee symptoms, it was "of no probative medical value to support that either a recurrence or a new injury was sustained" on that date.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 10.5(x) of the Office's regulations provides, in pertinent part: "Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."<sup>4</sup>

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<sup>2</sup> By decision dated March 15, 2004, the Office approved the request of Paul Kalker, appellant's authorized attorney representative, for a \$5,445.00 attorney's fee. Appellant approved the fee and attested to its reasonableness in a February 26, 2004 letter. Appellant did not appeal this decision to the Board.

<sup>3</sup> On reconsideration, appellant also resubmitted a copy of his April 10, 2003 statement and the Office's September 2, 2003 letter.

<sup>4</sup> 20 C.F.R. § 10.5(x).

The Board has held that, in order to establish a claim for a recurrence of disability, appellant must establish that he suffered a spontaneous material change in the employment-related condition without an intervening injury.<sup>5</sup> If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken, and an appropriate new claim should be filed.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

Appellant alleged that he sustained a recurrence of his accepted February 2, 2000 right knee injury, as a result of kneeling and climbing stairs at work on March 20, 2003. Appellant described the recurrence of disability as “on one particular occasion” on March 20, 2003 “while attempting to kneel [he] experienced a sudden pull on the right side of” his right knee. Appellant’s identification of “one particular occasion” of kneeling causing a “sudden” onset of symptoms clearly describes a new work incident. Thus, appellant asserted that his March 20, 2003 work stoppage and subsequent work absences were caused by a new March 20, 2003 incident, occurring after his return to work following his initial February 2, 2000 injury. The March 20, 2003 incident constitutes a new, intervening event breaking the chain of causation from the February 2, 2000 injury.<sup>7</sup> Therefore, the Office properly developed appellant’s April 9, 2003 claim as one for a new injury and not as one for a recurrence of his prior accepted claim.<sup>8</sup>

Appellant’s attorney contends that he became disabled for work on March 20, 2003 as the employing establishment effectively withdrew his light-duty assignment by assigning him to install floor patches.<sup>9</sup> The Board notes that appellant and the employing establishment both indicate that appellant was no longer on light duty as of March 20, 2003. Also, there are no administrative records demonstrating that appellant was on light duty as of March 20, 2003. Therefore, the assertion that light duty was withdrawn on March 20, 2003 appears to be factually incorrect.

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<sup>5</sup> *Philip L. Barnes*, 55 ECAB \_\_\_\_ (Docket No. 02-1441, issued March 31, 2004); *Carlos A. Marrero*, 50 ECAB 117 (1998).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, Recurrences, Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB \_\_\_\_ (Docket No. 03- 205, issued June 19, 2003).

<sup>7</sup> *Donald T. Pippin*, *supra* note 6.

<sup>8</sup> 20 C.F.R. § 10.5(x); *Philip L. Barnes*, *supra* note 5.

<sup>9</sup> The Office’s procedure manual provides, in pertinent part, that withdrawal of a light-duty assignment made to accommodate the work-related condition may constitute a recurrence of disability, if the withdrawal was not due to the employee’s misconduct or nonperformance. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997). *See also Steven A. Andersen*, 53 ECAB \_\_\_\_ (Docket No. 01-1376, issued February 19, 2002).

## LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under the Federal Employees' Compensation Act<sup>10</sup> has the burden of establishing that 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>11</sup> 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>12</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. 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.<sup>13</sup> An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>14</sup>

The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>15</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 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>16</sup> Neither the mere fact that a disease or condition manifests itself during a period

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<sup>10</sup> 5 U.S.C. § 8101 *et seq.*

<sup>11</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>12</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>13</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>14</sup> *Juanita Pitts*, 56 ECAB \_\_\_\_ (Docket No. 04-1527, issued October 28, 2004).

<sup>15</sup> *Jennifer Atkerson*, 55 ECAB \_\_\_\_ (Docket No. 04-158, issued February 13, 2004). For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

<sup>16</sup> *Beverly A. Spencer*, 55 ECAB \_\_\_\_ (Docket No. 03-2033, issued March 31, 2004).

of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>17</sup>

### **ANALYSIS -- ISSUE 2**

Appellant alleged that he sustained an exacerbation of right knee pain, accompanied by pulling and pinching sensations in the knee, while kneeling and climbing stairs at work on March 20, 2003. In its October 7, 2003 decision, the Office found that appellant had established as factual that on March 20, 2003 he was assigned to install floor patches in an aircraft. The Board finds, however, that appellant has not submitted sufficient medical evidence to establish that he sustained an injury due to the accepted work factors.

Appellant submitted medical evidence in support of his claim from Dr. DiMarco, an attending orthopedic surgeon. In reports from February 25, 2003 to January 21, 2004, Dr. DiMarco diagnosed synovitis, traumatic osteoarthritis, status post meniscal tear and recurrent tear and chondromalacia of the right knee. He attributed these diagnoses to the accepted February 2, 2000 injury and a January 20, 2003 exacerbation. However, Dr. DiMarco did not address the March 20, 2003 incident in any of his reports. Therefore, his reports are of very little probative value in establishing that appellant sustained an injury resulting from work on March 20, 2003.

Also, there are no medical reports of record dated between appellant's February 25 and April 15, 2003 visits to Dr. DiMarco, the period encompassing March 20, 2003. The Office noted in an October 7, 2003 memorandum that Dr. DiMarco's office confirmed that there were no treatment records for appellant dated between February 25 and April 15, 2003. Moreover, Dr. DiMarco's April 15, 2003 report, the medical evidence most contemporaneous to the alleged injury, does not mention any incident occurring on March 20, 2003. Although appellant asserted that he obtained medical treatment on March 21, 2003, there are no reports of record dated from March 20 to April 14, 2003.

As appellant has not submitted any rationalized medical evidence to establish that work factors on March 20, 2003 caused a right knee injury, he has failed to meet his burden of proof in establishing his claim.<sup>18</sup>

### **CONCLUSION**

The Board finds that the Office properly adjudicated appellant's claim as one for a new traumatic injury, rather than one for a recurrence of his previously accepted right knee injury. The Board further finds that the Office properly found that appellant did not establish that he sustained a new right knee injury on March 20, 2003 as he submitted insufficient medical evidence to establish causal relationship.

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<sup>17</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>18</sup> *Jennifer Atkerson*, *supra* note 15.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 28, 2004 and October 7, 2003 are affirmed.

Issued: November 30, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member