



## **FACTUAL HISTORY**

On April 8, 2002 appellant, a 49-year-old mail processing clerk, filed a claim for a recurrence of disability beginning March 26, 2002 due to an accepted August 12, 1998 injury for contusion and effusion of the right knee.<sup>1</sup> She alleged that following her return to work that her right knee began to swell and was painful with standing. The Office determined that appellant sustained a new injury on March 26, 2002 and assigned it a new claim number.<sup>2</sup> On September 9, 2002 the Office accepted appellant's claim for temporary exacerbation of right knee arthritis.<sup>3</sup>

On April 11, 2006 appellant filed a claim for a recurrence of disability beginning April 3, 2006 due to her employment injury.<sup>4</sup> She was placed in a limited-duty job and, on December 13, 2005, she felt her right knee snap while working on a machine. In response to question 21 on the form, appellant noted December 13, 2005 as her first recurrence "and second was went (sic) my knee got worse April 3, 2006." On the back of the form, the employing establishment indicated that appellant was placed in a sedentary job due to her medical restrictions. The job included: "sitting [and] boxing up or casing mail" for eight hours.

On April 20, 2006 the Office received medical evidence from appellant relating to her right knee treatment. On December 21, 2005 Dr. Stuart S. Remer, an attending Board-certified orthopedic surgeon, restricted appellant to four hours per day limited duty. On March 29 2006 he stated that appellant was treated for increased pain and he recommended work restrictions. In April 10, 2006 treatment notes, Dr. Remer diagnosed a right knee injury and restricted her to no work for four weeks. He stated that she "needs to reopen comp[ensation] case due to worsening knee pain." In an April 6, 2006 discharge instructions form from Good Samaritan Emergency Department, appellant was diagnosed with right knee derangement. In a May 12, 2006 attending physician's report Form OWCP CA-20, Dr. Remer diagnosed right knee mild arthritis.

On May 12, 2006, appellant filed a claim for wage-loss compensation, Form CA-7, for the period commencing April 4, 2006.

In a May 26, 2006 attending physician's report, Dr. Remer diagnosed right knee arthritis with increased chronic right knee pain. He checked "yes" to the question of whether the condition had been caused or aggravated by appellant's employment.

In an April 5, 2006 disability note, Dr. Eli Anker, a treating Board-certified vascular surgeon and general surgeon, indicated that appellant was disabled for the period April 5 to 13, 2006.

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<sup>1</sup> The Office assigned file number 02-0747104.

<sup>2</sup> The Office assigned file number 02-202565.

<sup>3</sup> The Office noted that her degenerative condition was not accepted as compensable at this time.

<sup>4</sup> Appellant noted that her first recurrence of disability began on December 13, 2005 and the second recurrence began April 3, 2006.

In an April 18, 2006 magnetic resonance imaging (MRI) scan, Dr. Joseph Izzo, a radiologist, diagnosed bilateral meniscal tears, Baker's cyst and small joint effusion.

By decision dated July 21, 2006, the Office denied appellant's claim for a recurrence of disability beginning April 3, 2006.

On August 16, 2006 appellant requested a review of the written record by an Office hearing representative.

In a July 24, 2006 treatment noted, Dr. Remer indicated that appellant was unable to work for two or more months due to her knee injury.

In an August 16, 2006 statement, appellant related injuring her right knee while performing her work duties on December 13, 2005. On December 21, 2005 appellant stated that her physician gave her restrictions of four hours of limited-duty work and four hours working on the machine "due to the increased pain on my right knee to avoid prolong (sic) standing." She related that her right knee became swollen and her pain increased as time passed which resulted in her being placed on eight hours of limited duty on March 29, 2006. On April 6, 2006 appellant went to the emergency room due to unbearable pain and swelling of the right knee. She noted that Dr. Remer took her off work for various periods between April 10 and July 24, 2006 and that she was unable to work due to constant right knee swelling and pain.

On August 23, 2006 the Office received an April 6, 2006 x-ray interpretation by Dr. Wan Kim, a radiologist, who found a large amount of a joint effusion present with no dislocation or fracture. An April 13, 2006 vascular laboratory report by Dr. Anker was reported as normal.

On August 23, 2006 Dr. Remer related that appellant had injured herself in 2002 and that he saw her on December 21, 2005 after she had sustained a reinjury. Appellant related that the prolonged standing, repetitive bending and heavy lifting aggravates her right knee condition. During March, April and May 2006 she had been placed on disability. A physical examination revealed right knee stiffness, tenderness and swelling and that she has "compensatory back pain and hip pain" as a result of her having to support her back. Dr. Remer reported that as of July 24, 2006 appellant "is unable to work and take part in normal activities of daily living" due to her right knee condition. He diagnosed torn right knee meniscus with joint effusion and opined that she is totally disabled.

By decision dated December 4, 2006, an Office hearing representative affirmed the denial of her recurrence of disability claim.

In a letter dated December 28, 2006, appellant's counsel requested reconsideration. She argued that the Office failed to include appellant's August 12, 1998 employment injury when considering her April 3, 2006 recurrence claim and that the March 26, 2002 employment injury was too narrowly focused. Appellant contended that the Office should have included a torn right knee meniscus due to the March 26, 2002 employment injury and that it failed to properly develop the medical evidence.

On December 21, 2006 Dr. Anthony J. Rizzo, an examining osteopath, diagnosed a Baker's cyst and bilateral meniscal tear with a small joint effusion based upon an April 2006 MRI scan. He noted that appellant originally injured both her knees in 1998, had arthroscopic knee surgery in 2000, was on total disability for about seven months, returned to work and "started aging with significant pain." Appellant related difficulty walking and that there have not been any recent reinjuries to her knee. A physical examination revealed significant right knee swelling and decreased range of motion. Dr. Rizzo stated that appellant is unable to do any lifting or stand for prolonged periods of time due to her knee pain and knee derangement. He concluded that appellant was totally disabled due to her right knee condition.

By decision dated March 22, 2007, the Office denied modification of the denial of her recurrence claim.<sup>5</sup> The Office also found that the medical evidence was insufficient to warrant expansion of her claim to include a right knee meniscal tear or bilateral meniscal tear with Baker's cyst. The Office advised appellant that if she wished to file a new claim, she should follow the options given by the Office hearing representative.

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

The Office's implementing regulations define a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>6</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>7</sup>

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such an opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and that such a relationship must be supported with affirmative evidence, explained by medical rationale and be based on a complete and accurate medical and factual background of the claimant.<sup>8</sup> Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation.<sup>9</sup>

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<sup>5</sup> The Board notes that, following the March 22, 2007 decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. See 20 C.F.R. §§ 501.2(c); *Donald R. Gervasi*, 57 ECAB \_\_\_\_ (Docket No. 05-1622, issued December 21, 2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>6</sup> 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Phillip L. Barnes*, 55 ECAB 426 (2004).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997), *Donald T. Pippin*, 54 ECAB 631 (2003).

<sup>8</sup> *Conard Hightower*, 54 ECAB 796 (2003).

<sup>9</sup> *Albert C. Brown*, 52 ECAB 152 (2000).

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

The Office accepted that appellant sustained a temporary exacerbation of right knee arthritis in the performance of duty on March 26, 2002. Appellant claimed to have sustained recurrences of disability on December 13, 2005 and again commencing April 3, 2006 causally related to her accepted condition. She must demonstrate a spontaneous change in the nature and extent of her temporary exacerbation of right knee arthritis without an intervening injury or new exposures.<sup>10</sup>

The record demonstrates that appellant attributed her first claimed recurrence of disability to new work factors on December 13, 2005, not the accepted work activities occurring on or before March 26, 2002. She asserted that on December 13, 2005 she felt her knee snap while working on a machine and that on April 3, 2006 she felt her knee got worse. Appellant's statements and the factual record demonstrate that she was exposed to new work factors after she returned to work in 2000. She described a new incident occurring on December 13, 2005 when she felt her knee snap while working. Appellant thus asserts a new injury. The Board finds that she has not established that she sustained a recurrence of disability commencing April 3, 2006 related to the accepted work incident occurring on March 26, 2002. Moreover, in an August 23, 2006 report, Dr. Remer attributed appellant's disability to a new injury sustained on December 21, 2005. None of the remaining medical reports address either appellant's employment injury or the issue of a recurrence of disability. Thus, there is no medical evidence of record containing a rationalized opinion as to how appellant's disability beginning April 3, 2006 was causally related to her accepted March 26, 2002 employment injury. Therefore, appellant has not met her burden of proof in establishing a recurrence of disability.

### **LEGAL PRECEDENT -- ISSUE 2**

To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.<sup>11</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>12</sup> Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.<sup>13</sup> 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>14</sup> Neither the mere fact

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<sup>10</sup> See *Philip L. Barnes*, *supra* note 6.

<sup>11</sup> *John D. Jackson*, 55 ECAB 465 (2004).

<sup>12</sup> *Mary J. Summers*, 55 ECAB 730 (2004).

<sup>13</sup> *Phillip L. Barnes*, *supra* note 6; *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>14</sup> *D.D.*, 57 ECAB \_\_\_\_ (Docket No. 06-1315, issued September 14, 2006).

that a disease or condition manifests itself during a period 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>15</sup>

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

The Office accepted appellant's claim for a temporary exacerbation of right knee arthritis. Appellant contends that the Office failed to properly develop the claim and should have accepted the condition of right knee meniscal tear or bilateral meniscal tear with a small joint effusion and Baker's cyst. The Board finds that appellant did not submit medical evidence sufficient to establish that her right knee meniscal tear or bilateral meniscal tear with a small joint effusion and Baker's cyst was causally related to the March 26, 2002 employment injury, for which the Office accepted a temporary exacerbation of right knee arthritis. In order to be rationalized medical evidence, 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>16</sup>

The evidence relevant to her claim for expansion of her claim includes an April 18, 2006 MRI scan by Dr. Izzo, an April 6, 2006 x-ray interpretation by Dr. Kim, and reports by Drs. Remer and Rizzo. Dr. Izzo interpreted an April 18, 2006 MRI scan as revealing bilateral meniscal tears, Baker's cyst and small joint effusion. Dr. Kim diagnosed a "large amount of joint effusion" with no dislocation of fracture after reviewing an April 6, 2006 x-ray interpretation. On August 23, 2006 Dr. Remer diagnosed a torn right knee meniscus with joint effusion. On December 21, 2006 Dr. Rizzo diagnosed a Baker's cyst and bilateral meniscal tear with a small joint effusion based upon an April 2006 MRI scan. The opinions of Drs. Baker, Izzo, Kim and Remer are insufficient to support expansion of appellant's claim to include additional knee conditions. The reports of Drs. Kim and Izzo contain no reference to appellant's employment injury. While Dr. Remer and Dr. Izzo both noted that appellant sustained work-related knee injuries, neither physician offered an opinion as the cause of her meniscal tear in her knees. None of the physicians provided any opinion as to the cause of appellant's condition and, thus, they are insufficient to support her burden of proof in establishing that her claim should be expanded to include right meniscal knee tear, bilateral meniscal tear, Baker's cyst and small joint effusion.<sup>17</sup>

There is no rationalized medical evidence relating appellant's employment to her injury. Accordingly, the Office properly denied expansion of the claim.

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<sup>15</sup> *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>16</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>17</sup> *Richard A. Neidert*, 57 ECAB \_\_\_\_ (Docket No. 05-1330, issued March 10, 2006); *Mary E. Marshall*, 56 ECAB \_\_\_\_ (Docket No. 04-1048, issued March 25, 2005) (medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof).

**CONCLUSION**

The Board finds that appellant has not established that she sustained a recurrence of disability as alleged. The Board further finds that the Office properly found that appellant has failed to establish that her accepted condition of temporary exacerbation of right knee arthritis disease should be expanded to include a right knee meniscal tear or bilateral meniscal tear with a small joint effusion and Baker's cyst and, therefore, properly denied expansion of the accepted condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 22, 2007 is affirmed.

Issued: December 28, 2007  
Washington, DC

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

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

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