

	)	
<b>J.H., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 11-666</b>
	)	<b>Issued: November 4, 2011</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>U.S. CUSTOMS &amp; BORDER PROTECTION,</b>	)	
<b>Blair, WA, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
 RICHARD J. DASCHBACH, Chief Judge  
 COLLEEN DUFFY KIKO, Judge  
 MICHAEL E. GROOM, Alternate Judge

On January 25, 2011 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) August 9 and December 7, 2010 merit decisions denying his claim for a recurrence of a medical condition. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. This additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

## **ISSUE**

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of his medical condition on or subsequent to June 10, 2010, that was causally related to his accepted injury.

## **FACTUAL HISTORY**

On March 9, 2003 appellant, then a 36-year-old customs inspector, filed a traumatic injury claim that was accepted for a medial meniscus tear of the left knee. On August 8, 2003 he underwent a left knee meniscectomy.<sup>3</sup> On December 19, 2003 appellant's employment was terminated. He received compensation for total disability from December 19, 2003 through June 11, 2005, when he returned to work in the private sector.<sup>4</sup>

In a September 29, 2005 report, Dr. Gidon Frame, a treating physician, stated that appellant had an exacerbation of his left knee injury. He stated that appellant's medial meniscal tear appeared worse and required immediate attention. On October 27, 2005 OWCP authorized a magnetic resonance imaging (MRI) scan of the left knee, which revealed a horizontal tear of the medial meniscal posterior horn and moderate degenerative changes involving the medial compartment.

In a May 2, 2006 report, Dr. Ralph M. Belle, a treating physician, reviewed the results of an April 6, 2006 MRI scan, which revealed a horizontal tear of the medial meniscus posterior horn, as well as moderate degenerative changes in the medial compartment. He diagnosed osteoarthritis of the left knee, which he opined preexisted appellant's original injury. Dr. Belle stated that appellant's knee "flared" after he returned to work following his meniscal surgery in 2003.

On June 21, 2010 appellant filed a recurrence of a medical condition as of June 10, 2010, contending that the condition for which he sought treatment was causally related to his accepted March 2003 injury. He indicated that after returning to work in the private sector following the original injury, his repetitive employment activities (including standing for long periods of time, bearing weight on his left knee, walking, running, bending, stooping, lifting and kneeling), as well as the weight of his duty gear and body armor, aggravated his knee symptoms and increased his disability. Although appellant stated that his condition worsened due to new work activities, he expressed his belief that his current condition was related to the original injury because the symptoms and increase in disability were to the same left knee area.

---

<sup>3</sup> The record reflects that appellant had preexisting severe degenerative joint disease. In a January 19, 2004 report, Dr. Michael K. Gannon, a Board-certified orthopedic surgeon, attributed residual meniscal symptoms to his degenerative joint disease.

<sup>4</sup> This case has previously been before the Board on appeal. In a decision dated February 20, 2007, the Board set aside OWCP's December 5, 2005 nonmerit decision denying appellant's request for a precoupment hearing and remanded the case for further development. Docket No. 06-1565 (issued February 20, 2007).

In a June 15, 2010 letter, Dr. Frame stated that appellant had “ongoing and worsening disability and pain from left knee meniscal injury.” He indicated that appellant urgently required a follow-up MRI scan of the left knee to compare with the November 29, 2005 MRI scan.<sup>5</sup>

In a letter dated June 25, 2010, OWCP informed appellant that the information submitted was insufficient to establish that his current condition was causally related to the accepted left knee injury. It advised him to submit a physician’s narrative report with a diagnosis and a rationalized opinion explaining how his current condition was related to the original March 2003 injury.

By decision dated August 9, 2010, OWCP denied appellant’s recurrence claim on the grounds that the medical evidence was insufficient to show that his current medical condition was due to the accepted work injury.

In an August 5, 2010 letter, which was received by OWCP on August 10, 2010, appellant stated that OWCP refused to grant him a 30-day extension of time to submit supporting medical evidence, but rather insisted that appellant submit all evidence to be considered by August 6, 2010. He characterized the claims examiner’s comments as condescending and retaliatory.

Appellant submitted a copy of a letter dated May 18, 2004 from Dr. Frame, who stated that appellant aggravated his left knee condition after his August 8, 2003 arthroscopic repair when he resumed his regular work duties. Dr. Frame also indicated that appellant suffered a low back strain and aggravation of his left knee injury as a result of a December 16, 2003 motor vehicle accident.

In a letter dated August 5, 2010, Dr. Frame opined that appellant’s March 9, 2003 workplace injury was the direct cause of his left knee medial meniscal tear and degenerative damage, stating that there was no evidence of any other cause for these symptoms or injuries. He also opined that appellant’s work in his own business as private investigator and enforcement officer did not materially damage his left knee. Rather the original 2003 injury had continued and progressed. Dr. Frame noted that the medial meniscal injury had never been repaired.

On August 25, 2010 appellant requested review of the written record. In an August 24, 2010 letter, he stated that OWCP improperly failed to consider Dr. Frame’s August 5, 2010 letter, which it received by fax on August 6, 2010. Appellant contended that OWCP denied his claim in retaliation for his numerous complaints regarding its financial matters. He submitted copies of medical reports and letters previously received and reviewed by OWCP.

By decision dated December 7, 2010, an OWCP hearing representative affirmed the August 5, 2010 decision on the grounds that the evidence failed to establish that appellant’s left knee condition after June 10, 2010 was causally related to the accepted March 2003 work injury.

---

<sup>5</sup> Appellant submitted a copy of a November 19, 2005 MRI scan of the left knee, as well as copies of previously submitted reports from Dr. Frame.

### **LEGAL PRECEDENT**

Appellant has the burden of establishing that he sustained a recurrence of a medical condition<sup>6</sup> that is causally related to his accepted employment injury. To meet his burden, appellant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>7</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>8</sup>

OWCP regulations define a recurrence of medical condition as the documented need for further medical treatment after release from treatment of the accepted condition when there is no work stoppage. Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment.<sup>9</sup>

OWCP's procedure manual provides that, after 90 days of release from medical care (based on the physician's statement or instruction to return PRN (as needed), or computed by the claims examiner from the date of last examination), a claimant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury.<sup>10</sup>

### **ANALYSIS**

Appellant failed to meet his burden of proof to establish that he sustained a recurrence of a medical condition commencing June 10, 2010.

On May 2, 2006 Dr. Belle reported the results of an April 6, 2006 MRI scan, which revealed a horizontal tear of the medial meniscus posterior horn, as well as moderate degenerative changes in the medial compartment, and diagnosed osteoarthritis of the left knee, which he opined preexisted appellant's original injury. Dr. Belle stated that appellant's knee "flared" after he returned to work following his meniscal surgery in 2003. There is no evidence of record establishing that appellant received medical treatment for his accepted condition between May 2, 2006 and June 15, 2010, when he was again examined by Dr. Belle. As

---

<sup>6</sup> "Recurrence of medical condition" means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment. 20 C.F.R. § 10.5(y) (2011).

<sup>7</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>8</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004); *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>9</sup> 20 C.F.R. § 10.5(y).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003). The procedure manual provides, with certain exceptions, that, within 90 days of release from medical care (as stated by the physician or computed from the date of last examination or the physician's instruction to return PRN), a claims examiner may accept the attending physician's statement supporting causal relationship between appellant's current condition and the accepted condition, even if the statement contains no rationale. *Id.* at Chapter 2.1500.5(a).

computed from the date of the last examination on May 2, 2006, the treatment on June 15, 2010 was rendered more than 90 days after appellant's release from medical care. Therefore, appellant was responsible for submitting an attending physician's report containing a description of the objective findings and supporting causal relationship between his current condition and the previously accepted work injury.<sup>11</sup> He had the burden of submitting sufficient medical evidence to document the need for further medical treatment.<sup>12</sup> Appellant did not submit the evidence required and thus failed to establish a need for continuing medical treatment.<sup>13</sup>

Appellant has failed to establish a recurrence of a medical condition. He contends on the one hand that his current condition is related to the original 2003 injury. Appellant reports on the other, however, that after returning to work in the private sector, following the original injury, his repetitive employment activities (including standing for long periods of time, bearing weight on his left knee, walking, running, bending, stooping, lifting, and kneeling), as well as the weight of his duty gear and body armor, aggravated his knee symptoms and increased his disability. Such aggravation due to an intervening event would constitute a new injury to these factors, rather than a recurrence of the accepted injury.

The medical evidence of record does not establish that appellant required further medical treatment for a continuing employment-related condition. In a June 15, 2010 letter, Dr. Frame stated that appellant had "ongoing and worsening disability and pain from left knee meniscal injury." He indicated that appellant urgently required a follow-up MRI scan of the left knee to compare with the November 29, 2005 MRI scan. Dr. Frame's report does not contain examination findings or a definitive diagnosis. Moreover, it does not contain an opinion that appellant's current condition was related to the original March 9, 2003 injury. Therefore, it is of limited probative value.<sup>14</sup>

Dr. Frame's August 5, 2010 report is deficient on several counts. It does not contain examination findings, an accurate factual and medical background<sup>15</sup> or a rationalized opinion that appellant's current condition was causally related to his original 2003 injury.<sup>16</sup> Dr. Frame

---

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003).

<sup>12</sup> 20 C.F.R. § 10.5(y).

<sup>13</sup> See *J.F.*, 58 ECAB 124 (2006).

<sup>14</sup> A medical report that does not contain an opinion on the cause of a claimant's condition is of limited probative value. See *Mary E. Marshall*, 56 ECAB 420, 427 (2005).

<sup>15</sup> The Board notes that Dr. Frame stated that appellant's medial meniscal injury had never been repaired. The record reflects, however, that appellant underwent a partial meniscectomy on August 8, 2003. To the extent that Dr. Frame may have intended to indicate that the August 8, 2003 procedure was unsuccessful, his report is unclear and, therefore, of diminished probative value.

<sup>16</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 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 such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant. See *Thomas A. Faber*, 50 ECAB 566 (1999); *Samuel Senkow*, 50 ECAB 370 (1999).

opined that the March 9, 2003 workplace injury was the direct cause of appellant's left knee medial meniscal tear and degenerative damage and that the original 2003 injury had continued and progressed. He failed, however, to explain the claimed progression. The Board has held that medical conclusions unsupported by rationale are of little probative value.<sup>17</sup> Dr. Frame's opinion was based, in part, on the fact that there was no evidence of any other cause for appellant's symptoms. An explanation based on the process of elimination does not constitute strong medical rationale. Similarly, Dr. Frame opined without explanation that appellant's work in his own business as private investigator and enforcement officer did not materially damage his left knee. He did not identify or discuss the work activities or appellant's claim that those very activities actually aggravated his left knee condition. Finally, Dr. Frame's opinion is inconsistent with his report of May 18, 2004, in which he identified appellant's work duties subsequent to his knee surgery and a December 16, 2003 motor vehicle accident as intervening events responsible for aggravation of his left knee condition. For all of these reasons, his August 5, 2010 report is of diminished probative value.

Reports of MRI scans and x-rays that do not contain an opinion as to the cause of appellant's condition are of diminished probative value and are insufficient to establish appellant's claim.<sup>18</sup> The Board finds that the evidence submitted was insufficient to establish that appellant sustained a recurrence of a medical condition and OWCP properly denied his claim.

On appeal, appellant contends that his current condition is due both to an aggravation of his original meniscal tear and of his preexisting osteoarthritis. He argues that OWCP failed to consider his diagnosed osteoarthritis and should have accepted that condition when it originally accepted his meniscal tear in 2003. As noted, the medical evidence does not establish a causal relationship between appellant's current condition and his accepted injury or preexisting osteoarthritis, which was not accepted by OWCP. Appellant also argues that he was denied due process and given insufficient notice regarding the evidence required to support his claim. The record reflects that he was informed of the information and evidence necessary to establish his burden of proof by letter dated June 25, 2010. Appellant failed, however, to submit sufficient evidence to establish the necessary causal relationship.<sup>19</sup>

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.

---

<sup>17</sup> *Cecilia M. Corley*, 56 ECAB 662 (2005).

<sup>18</sup> See *Mary E. Marshall*, *supra* note 14.

<sup>19</sup> In support of his request for review of the written record, appellant contended that OWCP failed to properly consider Dr. Frame's August 5, 2010 report prior to rendering its August 9, 2010 decision. The record reflects that Dr. Frame's August 5, 2010 report was faxed on August 6, 2010; however, OWCP reportedly received it on August 12, 2010. If OWCP was in possession of Dr. Frame's report prior to its issuance of the August 9, 2010 decision, then it should have considered it when formulating its decision. The Board finds the error to be harmless, however, as OWCP's hearing representative reviewed and considered Dr. Frame's August 5, 2010 letter in his December 7, 2010 decision.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of a medical condition that was causally related to his accepted injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 7 and August 9, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 4, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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