

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

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**L.M., Appellant**

**and**

**SOCIAL SECURITY ADMINISTRATION,  
OFFICE OF MANAGEMENT & BUDGET,  
Brooklyn, NY, Employer**

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**Docket No. 12-1234  
Issued: November 9, 2012**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 15, 2012 appellant, through her attorney, filed a timely appeal of the December 13, 2011 decision of the Office of Workers' Compensation Programs (OWCP) which affirmed a decision denying her claim. 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 the case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> Following issuance of the December 13, 2011 decision, appellant submitted new evidence to OWCP. The Board may not consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

## **FACTUAL HISTORY**

On January 26, 2011 appellant, then a 54-year-old contact representative, filed a traumatic injury claim, alleging that, on the same date at 8:30 a.m., she slipped on pavement in front of her office building and fell hitting her knee and twisting her hip. She stopped work on January 26, 2011 and returned to work on April 20, 2011. Appellant's supervisor noted on the Form CA-1 that appellant's tour of duty was 8:00 a.m. to 4:30 p.m. and that the injury occurred in the performance of duty.

Appellant submitted a February 24, 2011 return to work slip from Dr. John D. MacGillivray, a Board-certified orthopedic surgeon, who noted that appellant had right knee surgery on February 15, 2011 and needed aggressive physical therapy. Dr. MacGillivray opined that she was totally disabled. In a March 23, 2011 attending physician's report, he noted that appellant complained of right knee pain for one year. Dr. MacGillivray diagnosed right lateral meniscus tear and arthritis and checked a box "yes" that her condition was aggravated by the January 26, 2011 fall. He performed a right knee scope, meniscectomy and chondroplasty and advised that appellant was totally disabled.<sup>3</sup> In a March 28, 2011 duty status report, Dr. MacGillivray noted that she was totally disabled.

On April 13, 2011 OWCP advised appellant of the type of evidence needed to establish her claim. It particularly requested that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific work factors.

Appellant submitted an April 6, 2011 duty status report from Dr. MacGillivray, who noted clinical findings of a meniscal tear and opined that she could return to restricted duty on April 18, 2011. In an April 15, 2011 return to work slip, Dr. MacGillivray advised that she was status post right knee surgery and could return to restricted duty on April 18, 2011. He recommended aggressive physical therapy for eight weeks.

On June 2, 2011 OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish that a medical condition was related to the established work-related events.

On June 21, 2011 appellant requested an oral hearing which was held on October 11, 2011. She submitted a January 6, 2011 report from Dr. MacGillivray, who treated her for pain and swelling in her right knee commencing one year earlier. Dr. MacGillivray noted the physical examination revealed a moderate to large effusion, posterior medial joint line tenderness and positive lateral joint line tenderness. On February 3, 2011 he diagnosed torn lateral meniscus and chondromalacia in the medial femoral condyle and recommended a partial lateral meniscectomy. In reports dated February 24 to April 6, 2011, Dr. MacGillivray noted that appellant was status post one month from surgery and had pain and swelling with a moderate effusion. He noted that x-rays showed grade 4 chondromalacia and he recommended steroid injections. In a September 22, 2011 report, Dr. MacGillivray noted initially seeing appellant on January 6, 2011 for right knee pain which existed for one year. He noted objective findings of a large effusion with tenderness over the midline and lateral joint line. Dr. MacGillivray

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<sup>3</sup> The operative report is not in the case record.

diagnosed right lateral medial meniscus tear and performed a lateral meniscectomy and chondroplasty. In addressing causal relationship, he noted that appellant fell at work. Other reports from Dr. MacGillivray, dated February 24 to April 15, 2011, were previously of record. A January 6, 2011 x-ray of the right knee revealed tricompartmental degenerative arthrosis with joint line osteophytes and a small effusion. A magnetic resonance imaging (MRI) scan of the right knee dated January 26, 2011 revealed a grade 4 chondral loss on the weightbearing medial femoral condyle with small medial joint line osteophytes, tear of the anterior horn and body of the lateral meniscus, grade 2 to 4 chondral loss on the lateral tibial plateau with subchondral marrow edema and lateral joint line osteophytes, joint effusion with popliteal cyst and chondromalacia patella.

By decision dated December 13, 2011, OWCP's hearing representative affirmed the decision dated June 2, 2011.

### **LEGAL PRECEDENT**

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 filed within the applicable time limitation 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 is 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>

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 which is alleged to have occurred.<sup>5</sup> The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>6</sup>

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

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<sup>4</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>5</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>6</sup> *Id.*

by the claimant.<sup>7</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>8</sup>

### ANALYSIS

In the instant case, it is not disputed that appellant worked as a contact representative and that on January 26, 2011 she slipped and fell at work. It is also not disputed that she was diagnosed with a right lateral meniscal tear and chondromalacia. However, appellant has not submitted sufficient medical evidence to establish that her right lateral meniscal tear and chondromalacia was causally related to the January 26, 2011 fall. On April 13, 2011 OWCP advised her of the type of medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from a physician sufficiently explaining how the January 26, 2011 fall caused or aggravated a diagnosed medical condition.

Appellant submitted several reports from Dr. MacGillivray. In a September 22, 2011 report, Dr. MacGillivray noted initially seeing her on January 6, 2011 for right knee pain which existed for one year. He diagnosed a meniscus tear and, in addressing causal relationship, stated that appellant fell at work. While Dr. MacGillivray supported causal relationship, he did not provide medical rationale explaining the basis of his conclusion.<sup>9</sup> The need for medical reasoning is particularly important where appellant had a prior right knee condition for which he was treating her. In a March 23, 2011 attending physician's report, Dr. MacGillivray checked a box "yes" that appellant's condition was aggravated by her January 26, 2011 fall. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>10</sup> Other reports from Dr. MacGillivray either predated the claimed work injury or did not specifically address how the January 26, 2011 fall caused or aggravated her medical condition.<sup>11</sup>

Other medical reports submitted by appellant, such as reports of diagnostic testing including the January 6, 2011 x-ray of the right knee and January 26, 2011 MRI scan of the right knee are insufficient to establish the claim as these reports did not provide an opinion on the causal relationship between her job and her diagnosed medial meniscus tear.

For these reasons, OWCP properly found that appellant did not meet her burden of proof in establishing her claim.

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<sup>7</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>8</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>9</sup> *Id.*

<sup>10</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

<sup>11</sup> *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

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 did not meet her burden of proof to establish that her claimed conditions were causally related to her employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 13, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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