

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

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**S.F., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Burbank, CA, Employer**

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**Docket No. 12-1801  
Issued: February 22, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

**JURISDICTION**

On August 29, 2012 appellant filed a timely appeal from a March 7, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 claim.

**ISSUE**

The issue is whether appellant sustained a medical condition in the performance of duty on May 7, 2011.

**FACTUAL HISTORY**

On May 25, 2011 appellant, then a 53-year-old mail processing clerk, filed a traumatic injury claim alleging that on May 7, 2011 she went to the woman's restroom after casing flats

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

and, as she was leaving, she felt a pulling sensation and heard a crackling sound on the left side of her left leg near her knee. She stopped work on May 9, 2011 and returned to light duty. In two separate statements, appellant stated that she began work at 4:00 a.m. on May 7, 2011 and listed her duties, which included unloading and scanning mail and parcels, casing and throwing flats. She noted that at the end of her morning shift a “battleship”<sup>2</sup> of second class flats was brought to her case to unload. Appellant reiterated that her injury occurred when she was leaving the women’s restroom after she completed casing flats. Also submitted were reports from Dr. Carlo Orlando, a Board-certified orthopedic surgeon, dated May 16, 18 and 24 and June 1, 2011 regarding appellant’s work status and restrictions.

In a June 9, 2011 letter, OWCP advised appellant that it required additional factual and medical evidence in support of her claim. It requested a comprehensive medical report from a physician.

In a May 8, 2011 report from the emergency department of Verdugo Hills Hospital, Dr. Armand Dorian, a Board-certified emergency physician, excused appellant from work for three days and provided her with aftercare instructions for her knee injury. A May 9, 2011 disability certificate from Dr. William F. Schubert, a family practitioner, was also provided.

In a May 18, 2011 report, Dr. Orlando stated that appellant injured her left knee while working on May 7, 2011. He reported that she was getting up from her chair to go to the restroom when she felt a sudden pop and had pain in her left knee. There was also a tearing like sensation and appellant was unable to bear weight. Dr. Orlando diagnosed left knee strain, probable left lateral meniscal tear, left patellofemoral arthrosis, currently not symptomatic. Progress reports dated June 1, 2011 and a June 16, 2011 worker’s status report were also submitted.

By decision dated July 22, 2011, OWCP denied appellant’s claim as fact of injury had not been established. It found that the evidence did not support that the injury or events occurred as described as appellant’s statements regarding how her injury occurred were inconsistent with the history of injury provided to Dr. Orlando in his May 18, 2011 report.

On August 14, 2011 appellant requested an oral hearing before an OWCP hearing representative, which was held December 15, 2011. She testified that she believed her job duties on May 7, 2011 caused her injury. Appellant stated that she was pushing a “battleship” and crouching and turning to do her job that day. She reiterated that her injury occurred when she was walking out of the restroom.

Diagnostic testing and additional reports from Dr. Orlando were received. In an August 3, 2011 report, Dr. Orlando stated that he last saw appellant on July 25, 2011. He noted there appeared to be some confusion with regard to the mechanism of injury. According to his records, Dr. Orlando documented that appellant injured her knee while working on May 7, 2011. He documented that she was getting up from a chair to go to the restroom and she felt a sudden pop and had pain in her left knee. Dr. Orlando stated that it was his best recollection of what was reported to him, but according to appellant, she went to the women’s restroom and as she was

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<sup>2</sup> A “battleship” is a big cart with mail.

coming out, she felt a pulling sensation and heard a crackling sound in the left side of her knee along with pain and discomfort. He stated that the magnetic resonance imaging (MRI) scan was consistent with a complex tear of the lateral meniscus, which he opined could be caused by that type of injury. In addition, there were symptoms on the lateral side of appellant's left knee and her pathology on the MRI scan was on the lateral side of her knee. Dr. Orlando recommended an arthroscopic debridement of appellant's left knee. Appellant underwent left knee arthroscopic surgery on August 16, 2011. Progress reports prior to and after her surgery were received. In a January 20, 2012 report, Dr. Orlando opined that appellant's left knee injury was caused by her employment. He stated that appellant's history and duties performed on May 7, 2011 and her complaint, clinical finding and diagnostic testing results were consistent with her injury.

By decision dated March 7, 2012, an OWCP hearing representative affirmed the denial of appellant's claim but modified the denial to reflect causal relationship was not established.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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 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.<sup>3</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>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

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<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

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

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>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

The record supports that appellant was working on May 7, 2011 and experienced the incident, as alleged. She alleged that her injury occurred as she was exiting the women's restroom.<sup>9</sup> The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a knee injury on May 7, 2011 causally related to the work incident.

In his August 3, 2011 report, Dr. Orlando diagnosed a left knee strain, complex tear of the lateral meniscus and left patellofemoral arthrosis which he opined in his reports of August 3, 2011 and January 20, 2012 were caused by her employment. He found that appellant's history, duties performed on May 7, 2011, clinical findings and diagnostic test results were consistent with the described injury. However, Dr. Orlando did not provide a rationalized medical opinion explaining how walking from the restroom could have caused the diagnosed condition at work on May 7, 2011 or other particular duties or incidents of the employment. Medical reports not containing rationale on causal relationship are entitled to little probative value.<sup>10</sup> Thus, the reports from Dr. Orlando are insufficient to establish appellant's claim.

The reports of diagnostic testing, appellant's disability status, and the emergency room and operation report do not specifically address causal relation.

Consequently, the medical evidence is insufficient to establish a causal relationship between specific factors or conditions of employment and the diagnosed medical conditions.

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 her conditions were caused, precipitated or aggravated by her 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.

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

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

<sup>9</sup> Although Dr. Orlando initially indicated that the claimed injury occurred before going to the restroom, he later amended his history to reflect that the claimed injury occurred as appellant was leaving the restroom at work.

<sup>10</sup> *Franklin D. Haislah*, *supra* note 8.

<sup>11</sup> *Id.*

OWCP advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Consequently, appellant has not met her burden of proof to establish that the May 7, 2011 incident caused or aggravated a diagnosed medical condition.

On appeal, appellant argued that the medical and factual evidence supports that she sustained an injury on May 7, 2011. As noted while the record supports an incident occurred on May 7, 2011, the medical record is insufficient to establish that the May 7, 2011 incident caused or aggravated a diagnosed medical condition.

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 failed to meet her burden of proof to establish that she sustained a medical condition causally related to her May 7, 2011 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 7, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board