

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

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**S.Z., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Norcross, GA, Employer**

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**Docket No. 13-111  
Issued: May 28, 2013**

*Appearances:*  
*Larry Walker*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 20, 2012 appellant, through her representative, filed a timely appeal of an August 6, 2012 decision of the Office of Workers' Compensation Programs (OWCP) concerning the denial of 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 this case.

**ISSUE**

The issue is whether appellant established that she sustained a left knee medial meniscal tear in the performance of duty on October 27, 2011, as alleged.

On appeal, appellant alleged that her physician stated that her left knee condition was caused by the October 27, 2011 employment incident and is sufficient to establish her claim.

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

## **FACTUAL HISTORY**

On October 27, 2011 appellant, then a 46-year-old city carrier, filed a traumatic injury claim alleging that on that day she injured her left knee when she lost her balance while walking toward a trailer.

In an October 28, 2011 attending physician's report, Barry N. Parker, a certified physician's assistant, diagnosed left knee pain. He checked "yes" to the question of whether the diagnosed condition was employment related. Mr. Parker completed a physician activity status report in which he diagnosed lower leg joint pain. He released appellant to work on October 28, 2011 with restrictions including no squatting, kneeling or climbing.

On November 2, 2011 Dr. John I. Foster, III, a treating Board-certified orthopedic surgeon, diagnosed left knee medial meniscus tear. He reported that appellant was injured on October 27, 2011 when she twisted her knee after almost falling. Dr. Foster reviewed a magnetic resonance imaging (MRI) scan that revealed a medial meniscal tear. On physical examination, there was tenderness along the left knee medial joint line; active range of motion; no instability, normal skin, sensory and motor findings and a slightly antalgic gait.

In a November 10, 2011 report, Dr. Anuj Gupta, an examining Board-certified orthopedic surgeon, conducted a physical examination. He noted appellant's history of injury and reviewed x-ray and MRI scans. Dr. Gupta diagnosed left knee medial meniscal tear with medial compartment degenerative joint disease. Appellant reported sustaining a number of falls during a significant time period with the first fall occurring on May 18, 2011. On physical examination, Dr. Gupta noted an antalgic gait, tenderness on palpation over the medial joint line, significant tenderness over the lateral or patellofemoral compartments, pain with medial McMurray's test and no knee joint instability. He noted a macerated degenerative tear of the medial meniscus and medial compartment joint space narrowing. Dr. Gupta stated that he was unable to identify any specific injury which would have caused the meniscal tear as it appeared to be degenerative and preexisting.

In a November 30, 2011 letter, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised as to the additional medical and factual evidence to submit to establish her claim and given 30 days to provide the information.

Appellant submitted a July 9, 2011 MRI scan showing a left knee medial meniscal complex tear and a December 5, 2011 physician activity status report and progress notes from Dr. Foster, who diagnosed left lower leg joint pain and released her to return to work on December 5, 2011 with restrictions. Dr. Foster provided physical findings, history of the illness and diagnosed left medial meniscal tear. He reported that appellant related that she recently injured her left knee as a result of a fall due to her knee giving way. Dr. Foster reported that a prior MRI scan revealed a left knee medial meniscal tear. The physical examination revealed left medial knee joint line tenderness, no instability, full range of motion and normal motor, sensory and skin examinations.

On December 27, 2011 OWCP received a December 8, 2011 attending physician's report from Dr. Foster, who diagnosed left medial meniscal tear. Dr. Foster noted that appellant

sustained a fall at work on October 27, 2011 which caused appellant to twist her left knee. He checked “yes” to the question of whether the diagnosed condition was employment related. Under explanation, Dr. Foster related that the injury was a result of her “new fall [plus] causation to work injury.”

By decision dated January 12, 2012, OWCP denied appellant’s claim. It found the medical evidence insufficient to establish a causal relationship between her left knee condition and the accepted October 27, 2011 incident.

On February 1, 2012 appellant requested an oral hearing before an OWCP hearing representative, which was held on May 12, 2012.

In a March 29, 2012 report, Dr. Foster diagnosed left knee medial meniscal tear. He stated that he believed her mensical tear was caused by the October 27, 2011 injury when she twisted her knee. The physical examination revealed left medial knee joint line tenderness, no instability, full range of motion and normal motor, sensory and skin examinations.

By decision dated August 6, 2012, OWCP’s hearing representative affirmed the January 12, 2012 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> 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; that an injury was sustained while 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 on a traumatic injury or an occupational disease.<sup>4</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.<sup>5</sup> First, 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>6</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>4</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3.

<sup>6</sup> *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>7</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3.

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>8</sup> An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact 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 a causal relationship.<sup>9</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>10</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>11</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>12</sup>

### ANALYSIS

Appellant alleged a left medial meniscal tear as a result of losing her balance and twisting her knee on October 27, 2011. OWCP found the evidence sufficient to establish that the incident occurred as alleged, but that the medical evidence of record was insufficient to establish that her left knee meniscus condition was causally related to the October 27, 2011 employment incident. The Board finds that appellant has failed to meet her burden of proof.

Dr. Foster provided physical findings and diagnosed a left medial meniscal tear which he attributed to appellant's October 27, 2011 employment incident. He related that she sustained an employment injury on October 27, 2011 when she twisted her knee after almost falling. The Board finds that Dr. Foster did not provide adequate medical rationale explaining how appellant's medial meniscal tear was caused or aggravated by the October 27, 2011 employment incident. Dr. Foster did not provide a full history of appellant's left knee complaints or address the diagnostic studies that revealed degenerative changes prior to the accepted incident. He merely states that the diagnosed condition was due to the October 27, 2011 employment incident. The Board finds that Dr. Foster failed to explain the issue of causal relationship as he did not explain how the mechanism of the October 27, 2011 employment incident caused or aggravated his left medial meniscal tear. Lacking thorough medical rationale on the issue of causal

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<sup>8</sup> *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

<sup>9</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>10</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>11</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>12</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

relationship, Dr. Foster's opinion is of limited probative value and not sufficient to establish that appellant sustained an employment-related injury on October 27, 2011.<sup>13</sup>

The record also contains reports from Mr. Parker, a certified physician's assistant, diagnosing left knee pain in support of appellant's claim. However, these reports have no probative value as medical evidence as they were not from a physician. A physician's assistant is not defined as a physician under FECA.<sup>14</sup> Section 8101(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law.<sup>15</sup>

The November 10, 2011 report from Dr. Gupta who reviewed diagnostic studies listed a history of multiple falls sustained in a significant period of time and provided findings on physical examination. Dr. Gupta diagnosed a left knee medial meniscal tear with medial compartment degenerative joint disease. As to causation, he opined that he was unable to attribute the meniscus condition to any specific injury as it appeared to be degenerative and preexisting. Dr. Gupta's report negated causation between the left medial meniscal tear and the October 27, 2011 employment incident. The evidence is insufficient to establish appellant's claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's conditions became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>16</sup> Causal relationship must be established by rationalized medical opinion evidence and he failed to submit such evidence.

OWCP advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Consequently, appellant has not met his burden of proof in establishing that his claimed right hip condition was causally related to the October 12, 2010 employment incident.

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.

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<sup>13</sup> See *S.S.*, 59 ECAB 315 (2008); *Richard A. Neidert*, 57 ECAB 474 (2006); *Mary E. Marshall*, 56 ECAB 420 (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). See also *M.W.*, 57 ECAB 710 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005) (medical conclusions based on an inaccurate or incomplete factual history are of diminished probative value).

<sup>14</sup> See *J.M.*, 58 ECAB 303 (2007); *Lyle E. Dayberry*, 49 ECAB 369 (1998) (the reports of a physician's assistant are entitled to no weight as a physician's assistant is not a "physician" as defined by section 8101(2) of FECA).

<sup>15</sup> 5 U.S.C. § 8101(2). See also *Paul Foster*, 56 ECAB 208 (2004); *Thomas O. Bouis*, 57 ECAB 602 (2006)

<sup>16</sup> See *D.U.*, Docket No. 10-144 (issued July 27, 2010); *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

**CONCLUSION**

The Board finds that appellant failed to establish that she sustained a left medial mensical tear causally related to the accepted October 27, 2011 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 6, 2012 is affirmed.

Issued: May 28, 2013  
Washington, DC

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

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

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