

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

R.G., Appellant	)	
	)	
and	)	<b>Docket No. 16-0647</b>
	)	<b>Issued: July 1, 2016</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Denville, NJ, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On January 25, 2016<sup>1</sup> appellant filed a timely appeal from the August 20, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. See 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from August 20, 2015, the date of OWCP's last decision, was February 16, 2016. Since using February 18, 2016, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is January 25, 2016, rendering the appeal timely filed. See 20 C.F.R. § 501.3(f)(1).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue on appeal is whether appellant met his burden of proof to establish a recurrence of disability beginning September 30, 2014, causally related to his September 1, 1997 employment injury.

## FACTUAL HISTORY

OWCP accepted that on or before September 1, 1997 appellant, then a 42-year-old letter carrier, sustained a tear of the lateral meniscus on the right and a partial tear of the anterior cruciate ligament in the performance of duty. Appellant did not initially stop work. OWCP authorized an arthroscopic partial lateral meniscectomy, synovectomy, and chondroplasty of femoral trochlea performed on February 1, 2010. Appellant received wage-loss compensation from February 1 to April 2, 2010. He returned to full duty on April 5, 2010.<sup>3</sup> Appellant last received medical care for his work-related conditions on August 30, 2012.

OWCP received treatment notes dating October 29, 2014 to June 1, 2015 from Dr. Lerner. In a January 22, 2015 report, Dr. Lerner advised that appellant was struggling with the right knee. He recommended arthroscopy of the right knee and lateral unicondylar replacement, and a possible total knee replacement. Dr. Lerner indicated that he would request authorization for the surgery.

On March 12, 2015 OWCP referred the request for surgery to an OWCP medical adviser. In a March 12, 2015 report, the OWCP medical adviser noted appellant's history of injury and treatment. He indicated that the treating physician, Dr. Lerner, requested authorization to perform a total right knee replacement or a unicondylar replacement. Recent x-rays revealed complete loss of the lateral joint space and 11 degrees of valgus deformity. The medical adviser recommended the requested surgery and opined that it was related to the accepted conditions and the prior surgery performed on February 1, 2010. He explained that enough conservative treatment had been provided and the requested procedure was appropriate for the degenerated right knee.

On April 13, 2015 OWCP authorized the right total knee replacement. Dr. Lerner performed the authorized surgery on May 12, 2015.<sup>4</sup> He continued to submit notes for follow-up treatment following the procedure.

On April 20, 2015 appellant filed a claim for compensation (Form CA-7) for the period beginning February 21, 2015.

On April 20 and June 9, 2015 appellant filed a claim for a recurrence of disability (Form CA-2a) beginning September 30, 2014. He noted that his pay stopped after the recurrence on

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<sup>3</sup> Dr. Kent S. Lerner, a Board-certified orthopedic surgeon, advised on April 19, 2010 that appellant was capable of performing his usual job without any restrictions.

<sup>4</sup> The operative report mentions the left knee but this appears to be a typographical error. Appellant received wage-loss compensation from May 12 through August 31, 2015.

February 21, 2015. Appellant indicated that over the years his pain had progressively worsened with minimal relief. He explained that five years earlier, arthroscopic surgery on his right knee was performed and the pain was diminished, but still hindered his ability to function normally on a daily basis.

In a letter dated June 22, 2015, OWCP accepted the claim for a recurrence of disability effective May 12, 2015, based upon the authorized surgery. Regarding the earlier claim for compensation, it indicated that it was unable to process the request. In a separate letter dated June 22, 2015, OWCP advised appellant of the additional factual and medical information needed to establish his claim for compensation beginning September 30, 2014 through May 11, 2015. It advised appellant of the additional factual and medical evidence needed to support his claim for a recurrence and requested that he submit such evidence within 30 days.

OWCP received records from the May 12, 2015 surgery that included an anesthesia report, pathology report, hospital admittance record, and operative report.

In a June 22, 2015 treatment note, Dr. Lerner diagnosed pain in the lower joint. He noted that appellant was six weeks post right knee lateral compartment unicondylar replacement and had effusion again in the right knee.

In an August 20, 2015 decision, OWCP denied appellant's claim for a recurrence of disability beginning September 30, 2014. It noted that the evidence of record did not indicate what occurred on September 30, 2014 that caused the claimed recurrent disability.

### **LEGAL PRECEDENT**

FECA provides compensation for the disability of an employee resulting from a personal injury sustained while in the performance of duty.<sup>5</sup> Disability means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.<sup>6</sup>

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>7</sup> An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.<sup>8</sup> In this regard, medical evidence of bridging symptoms between the

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> 20 C.F.R. § 10.5(f).

<sup>7</sup> *Id.* at § 10.5(x).

<sup>8</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956).

recurrence and the accepted injury must support the physician's conclusion of a causal relationship.<sup>9</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not established that he sustained a recurrence of disability beginning September 30, 2014. OWCP accepted that appellant sustained a tear of the lateral meniscus on the right and a partial tear of the anterior cruciate ligament. Before the claimed recurrence of disability, appellant last received treatment for his condition in August 2012. On January 22, 2015 he advised that appellant was struggling with the right knee and requested authorization for arthroscopy of the right knee and lateral unicondylar replacement, and a possible total knee replacement. In a March 12, 2015 report, the OWCP medical adviser approved the request and the surgery occurred on May 12, 2015.

The Board finds that there is insufficient medical evidence of record to establish that his claimed recurrent disability from September 30, 2014 to May 11, 2015 is causally related to his work-related injury. Dr. Lerner advised, in his October 29, 2014 report, that appellant came to see him about his left knee which was extremely painful. He explained that appellant "states that he is been working as a driver for the post office, but can no longer be a letter carrier. Dr. Lerner's been out of work for the last three months because of a back problem." The Board notes that a back condition has not been accepted by OWCP and Dr. Lerner does not establish disability causally related to his work-related right knee injury. On January 22, 2015 Dr. Lerner advised that appellant was struggling with his right knee. He recommended surgery. While OWCP later authorized the right-sided surgery, Dr. Lerner did not offer any opinion on appellant's ability to work prior to the surgery. Because this report does not specifically address how appellant's disability beginning September 30, 2014 is causally related to his accepted conditions, it is of limited probative value and insufficient to establish a recurrence of disability before May 12, 2015. Other reports from Dr. Lerner also do not specifically address the cause of appellant's disability from September 30, 2014 to May 11, 2015.

There are no other medical reports which offer an opinion on the cause of appellant's disability from September 30, 2014 to May 11, 2015. The Board has held that a medical report without an opinion as to causal relationship is of little probative value.<sup>11</sup> As a result, the medical evidence of record is insufficient to discharge appellant's burden of proof.

On appeal, appellant argues that he complained of both knees since the start of his work-related injury. He explained that he requested authorization for his right knee in January 2015. However, the authorization for surgery did not occur for many months, and it did not occur until

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<sup>9</sup> *Rickey S. Storms*, 52 ECAB 349 (2001). For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>10</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>11</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

May 12, 2015. Appellant argues that he was unable to work prior to the surgery because his hip and back were bothering him. He indicated that those problems were related to his knee problems. Appellant explains that it is unsafe for him to continue to work, so he retired early effective August 31, 2015. He also notes that he had a hip replacement on October 13, 2015. The Board notes, as found above, that the medical evidence of record does not indicate that appellant was unable to work during the period for which he is requesting compensation and his claim for such benefits is denied. Additionally, it appears he may be requesting an expansion on his claim or a consequential condition stemming from the original injury. The Board notes that appellant's back and hip conditions were not accepted and expansion of the claim is not presently before the Board.

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 his burden of proof to establish a recurrence causally related to his September 1, 1997 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 20, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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