

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

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**S.S., Appellant**

**and**

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

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**Docket No. 16-0675  
Issued: July 15, 2016**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On February 22, 2016 appellant filed a timely appeal of a January 29, 2016 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 to consider the merits of the case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a recurrence of a medical condition on July 15, 2015 causally related to her September 9, 2002 employment injury.

**FACTUAL HISTORY**

This case has previously been before the Board. On September 20, 2002 appellant, then a 40-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she

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

developed a right leg condition while driving in the performance of her federal job duties. OWCP denied her claim on February 4, 2003. Appellant then requested both reconsideration from OWCP and an oral hearing from OWCP's Branch of Hearings and Review. OWCP denied her request for reconsideration by decision dated February 21, 2003. In a decision dated July 23, 2003, the Board remanded appellant's claim for OWCP's Branch of Hearings and Review to conduct an oral hearing.<sup>2</sup>

On August 26, 2003 appellant filed a traumatic injury claim (Form CA-1) alleging that she injured her right leg attempting to enter her postal vehicle on that date. She hit the door frame and dirt with her right leg. On October 9, 2003 OWCP accepted appellant's claim for right knee contusion, right knee strain, lumbar sprain, and rib contusion.

Following the Board's July 23, 2003 decision, on January 2, 2004 an OWCP hearing representative reversed OWCP's February 4, 2003 decision finding that appellant had subsequently submitted sufficient medical evidence to establish a right knee meniscal tear as a result of her accepted employment duties.

Appellant filed a claim for schedule award (Form CA-7) on April 22, 2004. By decision dated July 31, 2004, OWCP denied her claim finding that she had not established a permanent impairment sufficient to warrant a schedule award. Appellant requested an oral hearing from OWCP's Branch of Hearings and Review and by decision dated November 17, 2004, an OWCP hearing representative affirmed that appellant had not established a ratable impairment of her right lower extremity. She appealed this decision to the Board. In a decision dated August 5, 2005,<sup>3</sup> the Board found that the medical evidence was insufficient to establish appellant's permanent impairment for schedule award purposes.

On July 20, 2015 appellant filed a recurrence claim (Form CA-2a) alleging that on July 15, 2015 she sustained a recurrence of a medical condition causally related to her September 9, 2002 employment injury. She asserted that she had not stopped work after her accepted employment injuries, but that her right knee continued to cause her pain and to swell. Appellant also attributed left knee pain to over compensating for her injured right knee. She described the events of July 15, 2015 as delivering a package on her route, turning to her left, and her right leg failing to turn properly with her body. Appellant experienced severe pain and limped back to her vehicle. She hoped her condition would improve, but she found it difficult to drive and could barely walk to the next delivery. Appellant did not stop work on July 15, 2015.

On the reverse of the form, appellant's supervisor noted that appellant had called the employing establishment to report her pain on July 15, 2015. Appellant submitted a statement from a coworker noting that on July 15, 2015 appellant called the employing establishment and reported that she took a package to a door and felt a pain in her right knee.

In a letter dated July 28, 2016, OWCP requested that appellant provide additional factual and medical evidence in support of her claimed recurrence of her medical condition of tear of the

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<sup>2</sup> Docket No. 03-1404 (issued July 23, 2003).

<sup>3</sup> Docket No. 05-0685 (issued August 5, 2005).

medial meniscus of the right knee. It explained that, if an intervening cause such as a new work injury occurred, then a new claim would need to be created. OWCP afforded appellant 30 days to respond. This letter was undeliverable. OWCP issued a second development letter on August 25, 2015 and afforded appellant an additional 30 days to respond. This letter was also returned as undeliverable.

Dr. Raymond Dewri, a physician Board-certified in emergency medicine, examined appellant on July 15, 2015 for injuries to her right knee and hip. He diagnosed sprain of the collateral ligaments of the knee. Dr. Dewri indicated that appellant's injury occurred while delivering parcels. Appellant also submitted two notes signed by a physician assistant (whose signature is illegible) dated July 15, 2015. The physician assistant indicated that appellant was disabled through July 22, 2015. The physician assistant included a form report on which appellant had described her history of turning after delivering a parcel and experiencing knee pain.

By decision dated September 25, 2015, OWCP denied appellant's claim for recurrence finding that she had not established that she required additional medical treatment due to a worsening of her accepted work-related conditions without intervening cause. It noted that the August 25, 2015 letter was also returned as undeliverable.<sup>4</sup>

Appellant requested reconsideration on November 6, 2015 through a form dated October 15, 2015. She submitted descriptions of her ongoing knee condition. Appellant asked whether she should be filing a different way. She also submitted her statement of disability in support of an application for disability retirement.

By decision dated January 29, 2016, OWCP declined modification of the September 25, 2015 decision finding that appellant had not established a recurrence of her medical condition.

### **LEGAL PRECEDENT**

A 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.<sup>5</sup> Continuous treatment for the original condition or injury is not considered a recurrence of a medical treatment nor is an examination without treatment.<sup>6</sup> As distinguished from a recurrence of disability, a recurrence of a medical condition does not involve an accompanying work stoppage.<sup>7</sup> It is the employee's burden of proof to establish that

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<sup>4</sup> Appellant's address is listed on her Form CA-2a. OWCP did not utilize this address on July 28, 2015, but used it on the August 25 and September 25, 2015 and January 29, 2016 correspondence.

<sup>5</sup> 20 C.F.R. § 10.5(y).

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

<sup>7</sup> *Id.* at § 10.5(x).

the claimed recurrence is causally related to the original injury.<sup>8</sup> Causal relationship is a medical issue that can generally be resolved only by rationalized medical opinion evidence.<sup>9</sup>

### ANALYSIS

The Board finds that the case is not in posture for a decision regarding appellant's claim.

Appellant filed a Form CA-2a and described a new employment incident on July 15, 2015 of delivering a package on her route, turning to her left, and her right leg failing to turn properly with her body. She reported severe pain, found it difficult to drive and could barely walk to make her next delivery. While appellant filed a claim for recurrence of a medical condition, in fact, her claim as made on the Form CA-2a was for a new traumatic injury. The turning incident on July 15, 2015 is an intervening event such that appellant cannot establish that her current condition is a spontaneous recurrence of her previously accepted right knee condition.

Appellant immediately reported her new injury to her employing establishment and sought medical treatment on that day from Dr. Dewri. She received a new diagnosis of sprain of the collateral ligaments of the right knee from Dr. Dewri. Appellant then filed an incorrect claim form for recurrence of a medical condition.

Given the intervening employment event on July 15, 2015, this claim cannot be factually or medically established based on the claim form filed. The Board finds that this case shall be remanded and that OWCP should develop appellant's claim as a new traumatic injury. OWCP procedures require that if doubt exists regarding the type of claim, the claimant should be asked to clarify what condition is being claimed or whether the claimed condition is due to a traumatic injury, occupational disease, or recurrence.<sup>10</sup> The Board finds that appellant's claim for a traumatic injury, while made on the wrong form was clear on its face and should have been developed as a traumatic injury by OWCP. The Board also notes that OWCP recognized that appellant did not receive either of the developmental letters sent to her, and that appellant specifically asked which form her claim should take in the November 6, 2015 request for reconsideration.

It is well established that proceedings under FECA are not adversarial in nature and that while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. OWCP has an obligation to see that justice is done.<sup>11</sup> As appellant has received no guidance from OWCP regarding the specific

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<sup>8</sup> *Id.* at § 10.104. See also *E.M.*, Docket No. 15-1497 (issued December 18, 2015); *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

<sup>9</sup> See *E.M.*, *id.*; *Jennifer Atkerson*, 55 ECAB 317 (2004).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7b(1) (June 2011).

<sup>11</sup> *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

evidence required to establish her traumatic injury claim, the Board finds that this case must be remanded for further development.<sup>12</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.

### **CONCLUSION**

The Board finds this case not in posture for decision. The Board further finds that the case should have been developed as a new traumatic injury claim and remands for OWCP to undertake appropriate steps to develop this aspect of appellant's July 20, 2015 claim for injury on July 15, 2015.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 29, 2016 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: July 15, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>12</sup> 20 C.F.R. § 10.121. This provision requires OWCP to inform a claimant of the additional evidence needed to establish the claim and allow 30 days for submission of the evidence requested.