

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

A.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bronx, NY, Employer**

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**Docket No. 15-0870
Issued: March 14, 2016**

Appearances:

*Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 9, 2015 appellant, through counsel, filed a timely appeal from a November 24, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 met her burden of proof to establish a right knee condition causally related to factors of her federal employment.

On appeal, counsel contends that nothing within OWCP's decision negates the evidence or argument submitted with appellant's request for reconsideration.

FACTUAL HISTORY

On October 30, 2013 appellant, then a 38-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a right knee condition due to factors of her

¹ 5 U.S.C. § 8101 *et seq.*

federal employment, including walking more than six hours per day, standing more than two hours per day, walking up and down steps, and pushing and pulling over 50 pounds.

In an October 24, 2013 report, Dr. John Mitamura, a Board-certified orthopedic surgeon, diagnosed a torn medial meniscus of the right knee and opined that it was causally related to appellant's work as a mail carrier. He indicated that appellant walked six hours per day, over hills and up and down stairs, while delivering mail for the employing establishment. Dr. Mitamura noted that appellant had some additional injury to the knee in 2003, but no formal case was established at that time. In an October 24, 2013 work excuse note, he advised that appellant was unable to work due to internal derangement of the right knee. On November 13, 2013 Dr. Mitamura indicated that a magnetic resonance imaging (MRI) scan of the right knee demonstrated significant tearing and extrusion of the medial meniscus, as well as joint effusion and lateral subluxation of the patella with chondromalacic changes. He diagnosed torn meniscus with patellar subluxation and chondromalacic changes and advised that appellant was totally disabled for work.

In a December 24, 2013 letter, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence.

Appellant submitted a December 10, 2013 report from Dr. Mitamura who advised that she was not able to work "because she has to lift many pounds in the workplace." Dr. Mitamura recommended right knee surgery and a 10-pound weight restriction on lifting at work. Appellant further submitted physical therapy notes dated November 20 through December 30, 2013.

By decision dated January 30, 2014, OWCP denied the claim as the medical evidence failed to establish a causal relationship between appellant's condition and factors of her federal employment.

On September 30, 2014 appellant, through counsel, requested reconsideration and submitted physical therapy notes dated January 9 through April 23, 2014.

In a November 13, 2013 report, Dr. Mitamura released appellant to work on November 18, 2013 with the following restrictions: no lifting, bending, kneeling, or carrying more than 10 pounds; no standing, climbing, long walks, pushing, or pulling.

On January 9, 2014 Dr. Mitamura diagnosed torn medial meniscus based on an October 31, 2013 MRI scan demonstrating tearing of the medial meniscus. He noted that appellant would return to work with the following restrictions: repetitive lifting, pushing, and pulling no more than 30 pounds; walking and carrying no more than 2.5 hours per day; standing no more than 3 hours per day.

In a statement dated February 14, 2014, the employing establishment indicated that appellant had returned to full-time, modified duty with restrictions effective January 27, 2014.

In reports dated February 6 through May 1, 2014, Dr. Mitamura reiterated his diagnoses and recommendation for right knee surgery. On March 6, 2014 he stated that appellant had a right knee injury from her work as a mail carrier. Dr. Mitamura opined that "repetitive kneeling and stair climbing put stress upon the meniscus creating meniscal tear." He reasoned that it was "well known that the flexion and pressure of the knee against the cartilage on a repetitive basis

creates stress to the knee and this had led to the stress creating meniscal tearing.” On April 3, 2014 Dr. Mitamura indicated that appellant felt “enough improvement to return to full duty” and he recommended her “for return to full work.”

By decision dated November 24, 2014, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden to establish 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, and that an injury³ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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.⁶

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish a claim that federal employment factors caused or aggravated her right knee condition. Appellant identified the factors of employment that she believed caused the condition, including walking, standing, climbing stairs, and pushing and pulling over 50 pounds at work, which OWCP accepted as factual. However, in order to establish a claim that she sustained an employment-related injury,

² *Id.*

³ OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁴ See *O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ See *D.R.*, Docket No. 09-1723 (issued May 20, 2010). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ See *O.W.*, *supra* note 4.

she must also submit rationalized medical evidence which explains how her medical condition was caused or aggravated by the implicated employment factors.⁷

In an October 24, 2013 report, Dr. Mitamura diagnosed a torn medial meniscus of the right knee and opined that it was causally related to appellant's work as a mail carrier. He indicated that appellant walked six hours per day, over hills and up and down stairs, while delivering mail for the employing establishment. On December 10, 2013 Dr. Mitamura advised that she was not able to work "because she has to lift many many pounds in the workplace." On March 6, 2014 he opined that "repetitive kneeling and stair climbing put stress upon the meniscus creating meniscal tear." Dr. Mitamura reasoned that it was "well known that the flexion and pressure of the knee against the cartilage on a repetitive basis creates stress to the knee and this had led to the stress creating meniscal tearing." He failed, however, to provide a rationalized opinion explaining how the specifically identified factors of appellant's federal employment, such as walking, standing, climbing stairs, and pushing and pulling over 50 pounds at work, caused or aggravated her right knee condition. Dr. Mitamura noted that appellant's condition occurred while she was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed conditions.⁸ The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between appellant's condition and her employment factors.⁹ Dr. Mitamura did not explain the reasons why particular work factors caused or aggravated meniscal tearing or any other right knee condition. Other reports from him are of limited probative value as they do not specifically address whether particular work factors caused or contributed to a diagnosed medical condition.¹⁰ Thus, the Board finds that the medical evidence from Dr. Mitamura is insufficient to establish appellant's claim.

In support of her claim, appellant also submitted physical therapy notes dated November 20, 2013 through April 23, 2014. These documents do not constitute competent medical evidence as they do not contain rationale by a physician relating appellant's disability to her employment.¹¹ As such, the Board finds that appellant did not meet her burden of proof with these submissions.

As appellant has not submitted sufficient rationalized medical evidence to support her allegation that she sustained an injury causally related to the accepted employment factors, she failed to meet her burden of proof to establish a claim.

⁷ See *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

⁸ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

⁹ See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹⁰ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

¹¹ See 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004).

On appeal, counsel contends that nothing within OWCP's decision negates the evidence or argument submitted with appellant's request for reconsideration. Based on the findings and reasons stated above, the Board finds counsel's arguments are not substantiated.

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 has not met her burden of proof to establish a right knee condition causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2014 decision of the Office of Workers' Compensation Programs is affirmed.¹²

Issued: March 14, 2016
Washington, DC

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

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

¹² James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.