

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

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**CELSO A. CORPUZ, Appellant**

**and**

**U.S. POSTAL SERVICE, GENERAL MAIL  
FACILITY, Bakersfield, CA, Employer**

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**Docket No. 04-1953  
Issued: January 4, 2005**

*Appearances:*  
*Celso A. Corpuz, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On August 2, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decisions dated February 6 and June 7, 2004 denying appellant's claim for the reason that the medical evidence did not establish that appellant sustained a left knee condition in the performance of duty causally related to his federal employment. Pursuant to 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 sustained an injury to his left knee in the performance of duty.

**FACTUAL HISTORY**

On November 5, 2003 appellant, then a 56-year-old custodian, filed an occupational disease claim alleging that he sustained aggravation of bilateral knee pain with degenerative arthritis due to his federal employment duties, including lifting heavy objects, moving furniture,

mopping, mowing lawns and general gardening.<sup>1</sup> Appellant indicated that he originally filed this claim two months prior, but it was only accepted for his right knee, despite his claims of a bilateral condition. In a report dated November 5, 2003, Dr. Michael Randall, a Board-certified specialist in occupational medicine and a consultant for the employing establishment, indicated that appellant could not perform prolonged standing or walking, lifting over 25 pounds or operation of dangerous equipment requiring the use of his legs.

In a letter to appellant dated November 20, 2003, the Office indicated that appellant's previous claim had been accepted for a right knee condition<sup>2</sup> but that the Office found that appellant's claim lacked medical evidence for the Office to accept a bilateral knee condition. The Office informed appellant that the evidence still did not establish that appellant had sustained an injury to his left knee and requested that he submit further information. No timely response was received, and by decision dated February 6, 2004, the Office denied appellant's claim. The Office found that, although the evidence supported that the claimed event(s) occurred, there was no medical evidence that provided a diagnosis which could be connected to appellant's employment; therefore, he had not established an injury in the performance of duty.

By letter dated March 21, 2004, appellant requested reconsideration. In support thereof, appellant submitted a report dated December 8, 2003 wherein Dr. B.C. Wells, an orthopedic surgeon, indicated that appellant had an acute exacerbation of left knee pain secondary to chronic osteoarthritis and a probable degenerative medial meniscal tear. He noted that appellant reported no recent history of trauma.

Appellant also submitted progress notes from Dr. Roger Talob, an orthopedic surgeon, dated from October 27, 2003 through February 20, 2004 wherein he indicated that appellant complained of bilateral knee pain. He diagnosed left knee mild-to-moderate osteoarthritis. In a certification of health care provider for the Family and Medical Leave Act dated October 27, 2003, Dr. Talob indicated that he was treating appellant for bilateral knee pain due to osteoarthritis and he restricted appellant to light work for six weeks. In a form completed February 11, 2004, Dr. Talob indicated that he first saw appellant on April 11, 2001 at which time he was complaining of persistent right knee pain, that he diagnosed osteoarthritis and degenerative meniscal tear and that he treated this surgically with meniscal debridement and postoperatively with nonsteroidal anti-inflammatory medications, rest and activity modification. He further noted that appellant was undergoing knee injection treatment for his left knee which began on January 30, 2004. He noted that appellant was limited to no prolonged standing, no heavy lifting, no prolonged walking, no fine manipulation and no intermittent kneeling.

By letter dated April 15, 2004, the Office referred appellant to Dr. Alice M. Martinson, a Board-certified orthopedic surgeon, for a second opinion. In a report dated May 6, 2004, Dr. Martinson diagnosed osteoarthritis of both knees, right worse than left. She noted that, according to the statement of accepted facts, appellant's right knee osteoarthritis has been accepted as aggravated by his employment. She noted, however, that there is nothing in his history or physical examination which suggests that his left knee complaints have any

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<sup>1</sup> OWCP File No. 132092610.

<sup>2</sup> OWCP File No. 132082337.

relationship to his work either by direct cause, aggravation, precipitation or acceleration. She did note that appellant had permanent work restrictions due to bilateral knee pain for less than 1 hour a day of walking and standing, less than 2 hours a day operating a motor vehicle at work, was limited to lifting 10 pounds, and could engage in no squatting, kneeling and climbing.

In a decision dated June 7, 2004, after reviewing appellant's case on the merits, the Office denied modification of its prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</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 the Act, 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>4</sup>

In an occupational disease claim, the claimant must submit: (1) medical evidence establishing the existence of the disease or condition on which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the disease; and (3) medical evidence establishing that the employment factors were the proximate cause of the disease, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>5</sup>

### **ANALYSIS**

The Board finds that the Office properly determined that appellant had not submitted medical evidence sufficient to establish that his claimed bilateral knee condition, specifically the left knee, was causally related to his federal employment. Dr. Randall simply indicated appellant's restrictions; he failed to give a medical diagnosis. Drs. Wells and Talob both indicated that appellant had osteoarthritis and degenerative medial meniscus tear in his left knee; however, neither physician linked these conditions to appellant's work for the employing establishment. Dr. Martinson specifically stated that nothing in appellant's history or examination suggested that his left knee complaints had any relationship to his federal employment. Accordingly, the Board finds that the medical evidence is insufficient to show that appellant's left knee condition was caused or aggravated by his federal employment and the Office properly denied his claim.<sup>6</sup>

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Melinda C. Epperly*, 45 ECAB 196 (1993).

<sup>5</sup> *Id.*

<sup>6</sup> Appellant has submitted new medical evidence on appeal. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997); Appellant may submit this evidence to the Office with a request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

**CONCLUSION**

Under the circumstances as described above, the Board finds that the Office properly denied appellant's claim for compensation as he had not established that he sustained an injury to his left knee in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 7 and February 6, 2004 are hereby affirmed.

Issued: January 4, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member