



With his claim, appellant submitted medical reports from Dr. Joseph Scarcella, a Board-certified orthopedic surgeon. In an April 22, 1998 report, Dr. Scarcella advised that appellant underwent “a bilateral knee replacement for severe degenerative arthritis with malalignment of both his knees” in June 1997. The purpose of the surgery was to enable appellant to return to his normal daily activities. Dr. Scarcella advised that appellant would be able to carry out normal daily activities after his surgery. In a report dated May 12, 1998, he informed the employing establishment that appellant’s surgery would not prevent him from carrying out the duties of a custodian.

On March 11, 2004 the Office advised appellant that the medical evidence on file did not adequately support his claim and advised him of the evidence needed to establish his claim. Appellant responded by submitting additional evidence, including reports from Dr. Scarcella, which noted removal of a left knee Baker’s cyst in March 2003 and a subsequent infection of the surgical site.

In a report dated February 23, 2004, Dr. Scarcella stated that appellant’s condition had worsened since his surgery. Specifically, he noted that appellant had developed an infection in the left knee and that the components in both knees had loosened “grossly.” Dr. Scarcella attributed appellant’s deteriorating condition to “the increasing workloads of being a letter carrier.” He also noted, however, that, “[a]s far as the actual determining factor of the course of the looseness, one cannot say with 100 percent certainty that any one mechanism is responsible.”

In a follow-up report dated March 4, 2004, Dr. Scarcella stated that he had erroneously referred to appellant as a letter carrier. He noted that appellant’s employment as a custodian involved “vigorous activity” and included “assum[ing] many positions with his knee and climb[ing] up and down ladders.” Accordingly, Dr. Scarcella found that appellant’s position as custodian “actually makes the problem with his knees even more susceptible to work.”

In a May 17, 2004 decision, the Office found that appellant had failed to meet his burden of proof in establishing an occupational disease or injury claim. It found that the medical evidence did not contain a physician’s reasoned explanation regarding how employment factors caused or aggravated his claimed knee condition.

Appellant requested an oral hearing on May 28, 2004. The hearing was held on February 16, 2005. In a report dated February 28, 2005, Dr. Scarcella stated that the knee replacements were intended to improve appellant’s ability to conduct daily activities and that his “significant laborious activity” added to the cause of his knee failure. He also stated that “increased mechanical loading and increased activity over and above what would be considered to be normal function of daily activities can predispose a total knee to premature failure.” Dr. Scarcella concluded, however, that “there is no way to ascertain whether or not the type of activity that [appellant] performed was the direct cause of his failure.”

In a decision dated June 10, 2005, the hearing representative remanded the claim for further factual development and to obtain a second opinion.

The Office referred appellant to Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, on August 31, 2005. In a report dated September 23, 2005, Dr. Kaffen stated that he

examined appellant on September 21, 2005 and noted appellant's medical history of severe degenerative arthritis and infection following removal of a Baker's cyst. He stated that appellant "realized that his increasing knee symptoms were related to his work duties as a laborer/custodian." Dr. Kaffen's examination revealed surgical scars and tenderness around both knees and restricted range of motion in the left knee. He addressed appellant's medical history and noted that a photograph taken of appellant's knees before the date on which he claimed to have realized that his condition was work related reflected that "the left knee lacks full extension and there was swelling. The right knee, with the claimant standing, shows a marked varus deformity." The report also noted that appellant was treated for infections in both knees in 2003. Dr. Kaffen concluded that "[i]t is my opinion that the loosening of the knee components was secondary to the infection which developed as the result of the surgical intervention for the Baker's cyst in 2003 rather than the factors of claimant's employment."

In a decision dated October 11, 2005, the Office found that appellant had failed to meet his burden of proof for establishing an occupational disease or injury.

On October 13, 2005 appellant requested a hearing, which was held on April 26, 2006. After the hearing, appellant submitted a facsimile from Dr. Scarcella's office. The sender, identified only as "Michelle," stated that "Dr. Scarcella would like you to know that the knee was loose before infection. We have x-rays if you need them." Appellant's representative contended that this refuted Dr. Kaffen's report.

In a decision dated July 14, 2006, the hearing representative affirmed the Office's October 11, 2005 decision. The hearing representative found that Dr. Kaffen's opinion was well reasoned and was based on his review of appellant's medical history. The hearing representative found that the facsimile from Dr. Scarcella's office could not be considered medical evidence as it was not submitted by a physician; therefore, no conflict in the medical evidence arose.<sup>1</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<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 the Act, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.<sup>3</sup> An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his or her claimed injury and his or her employment.<sup>4</sup> To establish a causal relationship, appellant must submit a physician's report, in which the physician reviews the employment factors identified by appellant as causing

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<sup>1</sup> The hearing representative noted that, on October 6, 2005, the Office began the process of referring appellant for an impartial medical examination, but that no referral was actually made.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Donald W. Long*, 41 ECAB 142 (1989).

his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.<sup>5</sup>

An occupational disease or injury is one caused by specified employment factors occurring over a longer period than a single shift or workday.<sup>6</sup> The test for determining whether appellant sustained a compensable occupational disease or injury is three pronged. To establish the factual elements of the claim, appellant must submit: "(1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the factors identified by the claimant."<sup>7</sup>

### ANALYSIS

The record supports that appellant had total bilateral knee failure in 2004. However, appellant failed to present sufficient medical evidence to establish that the cause of his condition was work related. The medical evidence in the record does not suffice to meet appellant's burden of proof because he failed to submit a well-reasoned medical report, based on medical history and a physical examination, explaining how appellant's condition was work related.

Appellant relied on Dr. Scarcella's opinion that employment factors at least aggravated his knee condition. However, Dr. Scarcella's opinion is not supported by detailed medical reasoning. He wrote several reports in which he made general statements about the nature of total knee replacements. Dr. Scarcella's reports make only brief reference to appellant's employment factors. His reports do not give a firm opinion as to the cause of appellant's condition. The February 28, 2005 report does address causal relationship to the degree that it states that certain of appellant's employment activities may have predisposed his knee replacement to premature failure, but the report concludes that "there is no way to ascertain whether or not the type of activity that he performed was the direct cause of his failure." On February 23, 2004 Dr. Scarcella made similar statements noting that "[a]s far as the actual determining factor of the course of the looseness, one cannot say with 100 percent certainty that any one mechanism is responsible." Thus, Dr. Scarcella does not offer an unequivocal, well-reasoned medical opinion as to the cause of appellant's condition. His reports are insufficient to meet appellant's burden of proof.<sup>8</sup>

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

<sup>6</sup> *D.D.*, 57 ECAB \_\_\_ (Docket No. 06-1315, issued September 14, 2006).

<sup>7</sup> *Michael R. Shaffer*, 55 ECAB 386, 389 (2004); citing *Lourdes Harris*, 45 ECAB 545 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

Dr. Kaffen's September 23, 2005 report, by contrast, is well reasoned and based on a thorough review of appellant's medical history. He considered appellant's history of severe degenerative arthritis and surgical removal of a Baker's cyst and explained his conclusion that it was those nonoccupational causes that led to appellant's total bilateral knee replacement failure. Specifically, Dr. Kaffen stated that appellant's infection developed as a result of his surgery and that the loosening of the knee components was secondary to the infection rather than to factors of his federal employment. His conclusion comported with his thorough review of appellant's medical history and with his findings on physical examination.<sup>9</sup> Although appellant contends that a May 25, 2006 facsimile from an employee in Dr. Scarcella's office, identified as "Michelle," was adequate to refute Dr. Kaffen's opinion, the Board finds that this communication cannot be considered medical evidence, as there is no indication that it was signed by a physician.<sup>10</sup>

The Board also that there is no conflict in the medical evidence warranting referral to an impartial medical examiner.<sup>11</sup> A simple disagreement between two physicians does not, in and of itself, establish a conflict in the medical evidence. Rather, to constitute a conflict of medical opinion, the opposing physicians' reports must be of virtually equal weight and rationale.<sup>12</sup> Here, the two physicians' reports are not of equal weight and rationale. Dr. Scarcella's most recent report is equivocal regarding causal relationship, while Dr. Kaffen by contrast, gives a reasoned and unequivocal opinion that appellant's knee failure was not due to factors of his employment. Accordingly, there is no conflict in the medical opinion.

Accordingly, the Office properly denied appellant's claim as appellant failed to present adequate medical evidence to discharge his burden of proof and establish that his condition was related to employment factors.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof in establishing that his bilateral knee condition is employment related.

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<sup>9</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>10</sup> Lay persons are not competent to render medical opinion. *James A. Long*, 40 ECAB 538 (1989); *Jaja K. Asaramo*, *id.* See 5 U.S.C. § 8101(2). This subsection defines the term "physician." See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

<sup>11</sup> See 5 U.S.C. § 8123(a).

<sup>12</sup> *John D. Jackson*, 55 ECAB 465 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' July 14, 2006 decision is affirmed.

Issued: December 13, 2006  
Washington, DC

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

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

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