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

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| **S.A., Appellant** | ) | |
| **and** | ) | **Docket No. 08-1239** |
| | ) | **Issued: February 13, 2009** |
| **U.S. POSTAL SERVICE, POST OFFICE, Turner Falls, MA, Employer** | ) | |

*Appearances:*
*Linda Temple,* for the appellant
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On March 21, 2008 appellant filed a timely appeal from the May 9 and December 21, 2007 merit decisions of the Office of Workers' Compensation Programs denying her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

### ***ISSUE***

The issue is whether appellant sustained a left knee injury while in the performance of duty on August 8, 2005.

### ***FACTUAL HISTORY***

On November 7, 2005 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim alleging that she sustained an injury to her left knee in the performance of duty on August 8, 2005. She stated that she tore her left medial meniscus while climbing stairs to deliver mail.

Appellant submitted a note dated August 10, 2005 from Dr. Richard McGinn, a Board-certified obstetrician, reflecting her complaints of continuing knee and foot pain. Dr. McGinn indicated that appellant could perform office duties, but was restricted from walking a mail route.

The record contains a November 3, 2005 letter from the Office regarding File No. xxxxxx490, which was accepted for a left foot condition. It informed appellant that her request for approval of a magnetic resonance imaging (MRI) scan of the left knee was not causally related to her accepted foot condition.

A November 9, 2005 memorandum from Patricia Stoddard, a registered nurse, reflects that appellant sustained a stress-related fracture to her left foot on November 14, 2004. She stated that appellant had preexisting arthrosis of the medial compartment of the left knee.

Appellant submitted a September 15, 2005 report from Dr. George W. Ouster, Jr., a treating physician, who noted complaints of moderate left knee pain, which increased with ambulation. Dr. Ouster related appellant's reported history of a work-related knee injury in the 1990's, which required arthroscopic surgery and her placement on light duty following a July 2004 left foot injury. He stated that appellant began experiencing increasing pain in the medial aspect of her left knee in August 2005. An MRI scan of the left knee showed degenerative changes to the medial compartment, with thinning of cartilage tissue. Examination of the left knee revealed full extension and flexion to 130 degrees without pain. Examination of the ligaments was considered to be normal, with no associated effusion. On flexion and rotation of the tibia, appellant reported slight pain along the medial joint line. Dr. Ouster diagnosed mild, preexisting degenerative arthrosis of the left knee, not associated with a tear of the medial meniscus reported by MRI scan. He opined that appellant's left knee condition, which developed while she was on light-duty status, was not causally related to her work injury.

Appellant submitted reports from Dr. Thomas S. Echeverria, a Board-certified orthopedic surgeon. On January 19, 2006 Dr. Echeverria diagnosed a torn posterior horn of the left medial meniscus. He noted that appellant had been performing basically inside duties, such as standing and casing and that by the end of the day, her left knee was swollen. Appellant also continued to have occasional catching and clicking. On February 22, 2006 Dr. Echeverria indicated that, for several months, appellant had been experiencing pain and swelling in her left knee, which had periodically been giving way. He stated that the injury occurred in August 2005 while appellant was going up stairs.

By letter dated April 7, 2006, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested details surrounding the alleged incident, as well as a medical report from an attending physician which included dates of examination and treatment, a history of injury, a detailed description of findings, x-ray and laboratory test results, a diagnosis and an opinion supported by medical explanation as to how the reported work incident caused or aggravated the claimed injury. The Office advised appellant that the medical explanation was crucial to her claim.

In a report dated August 26, 2005, Dr. Echeverria provided an assessment of "pain and effusion of the left knee of uncertain etiology." He stated that appellant remembered no specific injury, but that she had been experiencing some discomfort in her left knee "for the last several

months." On April 20, 2006 Dr. Echeverria reported that, in August 2005, appellant was going up stairs at work, when she felt discomfort in the medial aspect of her left knee. He diagnosed a torn left medial meniscus. On February 8, 2007 Dr. Echeverria noted continued pain and swelling. On March 13, 2007 he opined that appellant's continued ambulation on a torn meniscus was likely causing further interarticular deterioration.

In an undated statement, appellant alleged that the following events occurred on August 8, 2008 while she was carrying mail on 3rd Street in Turner's Fall, MA: As she was "climbing the stairs to the porch where the mailbox is located," she experienced noticeable pain in her left knee, followed by swelling. There were no witnesses to the incident, as she did not fall. By the time appellant returned to the employing establishment, her knee was noticeably swollen and quite painful. After reporting the incident to her supervisor, she went home, where she elevated and iced her leg. Appellant stated that she had never had any previous problems with her left leg.

By decision dated May 9, 2007, the Office found that the evidence was insufficient to establish that appellant sustained an injury in the performance of duty. The factual evidence of record failed to establish that the August 8, 2005 incident occurred at the time, place and in the manner alleged.

On June 8, 2007 appellant requested an oral hearing. She stated that she failed to file a traumatic injury claim immediately following the August 8, 2005 incident because she originally attributed the onset of her pain to her preexisting arthritis, rather than to a traumatic injury. Appellant did not become aware of the connection between her left knee condition and the incident until Dr. Echeverria informed her that a person can tear a meniscus by walking up stairs.

The record contains a September 6, 2005 report of a September 4, 2005 MRI scan of the left knee, signed by Dr. Robert Y. Yoon, a Board-certified radiologist. The report reflects degenerative changes in the left knee, with no evidence of significant internal derangement of the left knee. Dr. Yoon stated, "There is no evidence of a meniscal tear." In a September 12, 2005 addendum to the September 6, 2005 MRI scan report, he stated that, on review, he observed certain signal aberrations, which were suspicious for a tear of the posterior horn of the left medial meniscus. Dr. Yoon indicated that clinical correlation was required.

At the October 18, 2007 hearing, appellant testified that, as she was walking up stairs to deliver mail on August 8, 2005, she felt a sudden, sharp pain in her knee. She knew something was wrong, but she had no idea what it was.

In a report dated June 5, 2007, Dr. Echeverria stated that his note of August 26, 2005, which reflected that appellant remembered no specific injury, was incorrect. He indicated that appellant had "subsequently informed [him] that her left knee pain and swelling began after she twisted her knee walking up stairs while at work."

In a report dated November 19, 2007, Dr. Echeverria stated that his August 26, 2005 notes, which were dictated immediately after his visit with appellant, represented his best recollection of his discussion with appellant on that date. He indicated, however, that it was "certainly possible and most likely probable" that appellant had informed him that she

experienced a sharp, acute pain in the medial aspect of her knee while she was walking up stairs delivering mail on August 8, 2005. Dr. Echeverria noted that, appellant subsequently informed him of that injury, which would be consistent with the findings on examination and subsequent MRI scan. He opined that "just walking up stairs" was sufficient to cause appellant's meniscal tear, as walking up stairs may result in tensional stresses on the knee that are sufficient to cause a tear in the medial meniscus. Dr. Echeverria indicated that the acuteness of the onset of appellant's pain led him to believe that her symptoms in August 2005 were the result of the meniscal tear seen on the MRI scan, rather than underlying degenerative arthritis.

By decision dated December 21, 2007, the hearing representative accepted that the employment incident occurred on August 8, 2005 as alleged. Namely, he found that appellant had walked up stairs to deliver mail on the date in question. However, the hearing representative affirmed the Office's denial of the claim on the grounds that the medical evidence failed to establish that appellant sustained an injury causally related to the accepted event.

## ***LEGAL PRECEDENT***

The Federal Employees' Compensation Act[1] provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty. The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[2]

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of her claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty, as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[3] When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[4]

[1] 5 U.S.C. § 8102(a).

[2] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[3] *Robert Broome*, 55 ECAB 339 (2004).

[4] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term injury as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q)(ee).

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[5] An award of compensation may not be based on appellant's belief of causal relationship.[6] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[7] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, 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 established incident or factor of employment.[9] The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employees' condition is of diminished probative value.[10] Medical conclusions unsupported by rationale are also of little probative value.[11]

## ***ANALYSIS***

The Office accepted that appellant was a federal employee, that she timely filed her claim for compensation benefits and that the August 8, 2005 workplace incident occurred as alleged. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy her burden of proof.

Contemporaneous medical evidence does not support a causal relationship between the accepted incident and appellant's left knee condition. When she saw Dr. Echeverria on August 26, 2005 she made no mention of sustaining an injury to her left knee walking up stairs on August 8, 2005. Rather, appellant reported that she had been experiencing ongoing problems,

[5] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[6] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[7] *Id.*

[8] 20 C.F.R. § 10.303(a).

[9] *John W. Montoya*, 54 ECAB 306 (2003).

[10] *Michael E. Smith*, 50 ECAB 313 (1999).

[11] *Willa M. Frazier*, 55 ECAB 379 (2004).

including pain, swelling and occasional giving out, for several months. In fact, Dr. Echeverria expressly stated that appellant remembered no specific injury. He did not provide any opinion on the cause of appellant's left knee condition. Therefore, Dr. Echeverria's report is of diminished probative value.[12] On January 19, 2006 he diagnosed a torn posterior horn of the left medial meniscus. However, Dr. Echeverria failed to explain how the diagnosed condition was causally related to the accepted work incident. Therefore, his report is also of diminished probative value.

On February 22, 2006 Dr. Echeverria again indicated that, for several months, appellant had been experiencing pain and swelling in her left knee, which had periodically been giving way. He stated that the injury occurred in August 2005 while appellant was going up stairs. However, Dr. Echeverria did not provide a detailed history of the alleged injury or explain how appellant's climbing activity caused or contributed to her left knee condition. As it is unsupported by rationale, his opinion is of little probative value.[13]

In Dr. McGinn's August 10, 2005 note, he did not identify a specific recent injury. Rather, his comment that appellant was experiencing "continual knee and foot pain," implies that her pain was chronic. As the report did not contain a diagnosis or an opinion as to the cause of appellant's condition, it is of diminished probative value.

Dr. Ouster's September 15, 2005 report undermines appellant's claim that her left knee condition was caused by the accepted incident. After noting a preexisting knee condition, he stated that appellant began experiencing increasing pain in the medial aspect of her left knee in August 2005. Dr. Ouster diagnosed mild, preexisting degenerative arthrosis of the left knee, not associated with a tear of the medial meniscus reported by MRI scan and opined that appellant's left knee condition, which developed while she was on light-duty status, was not causally related to her work injury.

The remaining medical evidence of record is insufficient to establish appellant's claim. On June 5, 2007 Dr. Echeverria indicated that appellant had "subsequently informed [him] that her left knee pain and swelling began after she twisted her knee walking up stairs while at work." This report is inconsistent with his August 26, 2005 report, which reflected that appellant remembered no specific injury. Moreover, it is inconsistent with appellant's own version of the facts. On November 19, 2007 Dr. Echeverria stated that his August 26, 2005 notes, which were dictated immediately after his visit with appellant, represented his best recollection of his discussion with her on that date. He speculated, however, that it was "certainly possible and most likely probable" that appellant had informed him that she experienced a sharp, acute pain in the medial aspect of her knee while she was walking up stairs delivering mail on August 8, 2005. Such inconsistencies in the medical history diminish the probative value of Dr. Echeverria's reports.

Dr. Echeverria opined that "just walking up stairs" was sufficient to cause appellant's meniscal tear and stated that the acuteness of the onset of appellant's pain led him to believe that

[12] *Michael E. Smith*, *supra* note 10.

[13] *Willa M. Frazier*, *supra* note 11.

her symptoms of August 2005 were the result of the meniscal tear seen on the MRI scan, rather than underlying degenerative arthritis. However, he did not explain the physiological process whereby appellant would have sustained a meniscal tear by the simple act of "just walking up stairs." Equivocal in nature and unsupported by rationale, Dr. Echeverria's opinion is of limited probative value. Insofar as the remaining medical evidence of record, including nursing notes and reports of MRI scans, does not contain an opinion as to the cause of a diagnosed condition, it is of limited probative value and is insufficient to establish appellant's claim.

Appellant expressed her belief that her left knee condition resulted from the August 8, 2005 employment incident. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[14] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[15] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, her belief that her condition was caused by the work-related incident is not determinative.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative rationalized medical evidence addressing how appellant's claimed knee condition was caused or aggravated by her employment, she has not met her burden of proof in establishing that she sustained an injury in the performance of duty causally related to factors of her federal employment.

## ***CONCLUSION***

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a left knee injury while in the performance of duty on August 8, 2005.

[14] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[15] *Id.*

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the December 21 and May 9, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 13, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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