



attributed her condition to her then-current duties as a flat sorting machine operator.<sup>2</sup> Appellant, however, did not initially submit any medical evidence in support of her claim. In a decision dated January 22, 2007, the Office denied her occupational disease claim.

The same day the claim was denied, the Office received a November 8, 2005 return to work certificate from appellant's podiatrist, Dr. Frank A. Ognibene. Although Dr. Ognibene did not provide a specific diagnosis, he indicated that appellant was excused from work during the period October 24 to November 8, 2005. He also noted that appellant was able to perform light-duty work beginning November 9, 2005, with limited walking and standing.

On January 29, 2007 appellant requested a review of the written record. By decision dated May 7, 2007, the Office hearing representative affirmed the January 22, 2007 Office decision.

On November 11, 2007 appellant requested reconsideration. She submitted, among other things, several reports from Dr. F. Oliver Hardy, a family practitioner and general surgeon. In a January 27, 2007 report, Dr. Hardy diagnosed patella-femoral dysfunction and lower back pain. Appellant reported that while lifting trays of magazines weighing 15 pounds or more she experienced severe pain in her back and right knee, particularly with ambulation while carrying the trays. In an addendum, Dr. Hardy reported that she initially sustained an injury on her job when she was hit from the rear with a forklift and her right knee also hit a lowboy. He recommended physical therapy for appellant's back and right knee.

In a February 9, 2007 letter to the Office, Dr. Hardy indicated that appellant continued to have pain and discomfort and that physical therapy and a transcutaneous electrical nerve stimulation unit was recommended.

Dr. Hardy reexamined appellant on February 10, 2007 and reported that she had been attending physical therapy for her lower back and right knee patella-femoral dysfunction. Despite ongoing therapy, appellant continued to experience pain and discomfort in her knee and lumbosacral spine. Dr. Hardy diagnosed right patella-femoral dysfunction, lower back pain, hypertension, hypertensive cardiovascular disease, hyperlipidemia, chronic sinusitis and seasonal allergy. He recommended continued physical therapy and magnetic resonance imaging (MRI) scans for the knee and lumbosacral spine.

A February 21, 2007 right knee MRI scan revealed mild knee joint effusion, osteoarthritis, a horizontal medial meniscal tear, chondromalacia patellae and a Baker's cyst.

In an August 7, 2007 report, Dr. Hardy diagnosed a number of conditions, including hypertension, hypertensive cardiovascular disease, hyperlipidemia, reflux esophagitis, gastritis, history of on-the-job injury with low back pain, status post hallux valgus surgery of the left toe, and osteoarthritis of the foot.

Appellant also submitted December 3, 2007 physical therapy treatment records for right knee and low back pain.

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<sup>2</sup> Appellant explained that lifting and moving 25-pound trays of mail on and off conveyor lines on a daily basis caused stress and strain on her lower back and right knee, which resulted in excruciating pain.

The Office did not respond to appellant's November 11, 2007 request for reconsideration, and, therefore, she filed a second request dated December 3, 2008.

In a February 25, 2009 decision, the Office denied modification of the hearing representative's May 7, 2007 decision.

### **LEGAL PRECEDENT**

A claimant seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>4</sup>

To establish that an injury was sustained in the performance of duty, a claimant 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 employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>5</sup>

### **ANALYSIS**

Appellant's claim for an employment-related low back and right knee injury is not supported by the medical evidence of record. First, Dr. Ognibene's November 8, 2005 back to work certificate is unrelated to the current claim for a low back and right knee injury. His November 8, 2005 note predated the claimed low back and right knee injuries by six months and did not include a diagnosis. Second, the February 21, 2007 right knee MRI scan is primarily a diagnostic tool. The MRI scan did not address what, if any, relationship existed between appellant's employment duties and the numerous right knee abnormalities the scan revealed. Third, the December 3, 2007 physical therapy records do not constitute competent medical opinion evidence.<sup>6</sup> Lastly, the several reports authored by Dr. Hardy do not specifically relate appellant's flat sorting machine duties to her low back and right knee complaints. His January 27, 2007 report was the only one to mention appellant's complaints of right knee and back pain while working with 15-pound trays of magazines. However, even in that particular

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 20 C.F.R. § 10.115(e), (f) (2009); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

<sup>5</sup> *Victor J. Woodhams*, *supra* note 4.

<sup>6</sup> A physical therapist is not considered a "physician," as that term is defined under 5 U.S.C. § 8101(2). See, e.g., *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

report, Dr. Hardy did not specifically attribute appellant's low back and right knee complaints to her then-current employment duties.<sup>7</sup> Based on the evidence of record, the Board finds that appellant failed to establish that her claimed low back and right knee conditions are employment related. Appellant notes in her appeal that she has had difficulty obtaining medical evidence from her physician on a timely basis. Under the statute, however, appellant has the burden of establishing her claim.

**CONCLUSION**

Appellant failed to establish that she sustained an injury in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 25, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 12, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>7</sup> Dr. Hardy's addendum to the January 27, 2007 report indicated that appellant initially sustained an on-the-job injury when she was hit from behind with a forklift and her right knee also hit a lowboy. However, he did not identify the date of this particular injury.