

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

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G.K., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
TRANSPORTATION SECURITY )  
ADMINISTRATION, DES MOINES )  
INTERNATIONAL AIRPORT, Des Moines, IA, )  
Employer )

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**Docket No. 09-272  
Issued: September 4, 2009**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 5, 2008 appellant filed a timely appeal from an August 28, 2008 decision of the Office of Workers' Compensation Programs denying his claim for an injury sustained in the performance of duty. 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 established that she sustained a left knee injury in the performance of duty on April 24, 2008, as alleged.

## **FACTUAL HISTORY**

On June 6, 2008 appellant, then a 46-year-old transportation security officer, filed a traumatic injury claim alleging that on April 24, 2008 she hit her foot against an electrical plug under a rubber mat and jarred her left knee resulting in pain and swelling.

On April 25, 2008 a physician's assistant noted appellant's complaints of swelling and that she could not bend her knee. Appellant stated that she stepped in a hidden hole under a mat and jammed her knee. The report indicated that she had hurt her knee again before a previously scheduled appointment. In a separate April 29, 2008 report, Dr. Mark E. Buchanan, a Board-certified orthopedic surgeon, diagnosed left knee pain and indicated that the condition was work related. He stated that appellant could return to work with restrictions beginning April 29, 2008.

In a May 5, 2008 medical report, Dr. Buchanan stated that appellant presented on April 29, 2008 for a follow-up visit for a left knee injury. He stated that she was four months status post left knee arthroscopy and was progressing well with lessening pain and increased range of motion. Dr. Buchanan noted that appellant jammed her left knee at work on a plug and that she experienced edema. Physical examination of the left knee revealed swelling and a tender medial aspect on palpitation. Dr. Buchanan diagnosed localized primary osteoarthritis of the knee and loose body in the knee.

In a May 13, 2008 report, Dr. Buchanan diagnosed knee joint pain and localized primary arthritis of the left knee. He recommended left knee medial unicompartmental knee replacement or total knee replacement. A May 13, 2008 radiographic report showed a medial subluxation of the distal left femur in regard to anatomic position of the proximal left tibial, suggesting pathologic or laxity pertaining to the collateral ligament structures. Degenerate changes were present.

On July 15, 2008 the Office notified appellant of the deficiencies in her claim and requested that she provide additional information.

In a May 15, 2008 report, Dr. Buchanan stated that appellant could return to work beginning May 13, 2008 with restrictions. He diagnosed left knee pain and indicated that the condition was work related.

In a report dated July 30, 2008, Dr. Scott B. Neff, an osteopath and a Fellow of the American Academy of Orthopedic Surgeons, diagnosed osteoarthritis of the left knee. He stated that appellant had previously sustained sports injuries to her left knee for which she underwent surgery. Dr. Neff also noted her weight had been in excess of 300 pounds. He stated that appellant had a sports-related injury to her left knee years ago and that her history showed an arthroscopy, other surgeries, anti-inflammatory medications and injections. An x-ray revealed significant rotator instability of the left knee with a complete loss of the medial joint line cartilage. Physical examination revealed a plus one effusion, crepitus with motion and positive anterior drawer sign. There was no swelling in the calf. Dr. Neff stated that a total knee arthroplasty could no longer occur and that she was contraindicated for the unicompartmental knee replacement based on anterior cruciate ligament laxity. He recommended a Biomet

Replacement and stated that she was appropriately taken off of work. In a separate report, Dr. Neff indicated that appellant was unable to work after July 30, 2008 pending surgery.

By decision dated August 28, 2008, the Office found that the employment incident occurred but denied the claim finding that the medical evidence did not establish that appellant sustained an injury causally related to the accepted work event.

### **LEGAL PRECEDENT**

An employee seeking compensation under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,<sup>2</sup> including that she is an "employee" within the meaning of the Act<sup>3</sup> and that she filed her claim within the applicable time limitation.<sup>4</sup> The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>6</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup>

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 which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. 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,

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *J.P.*, 59 ECAB \_\_\_ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>3</sup> *See M.H.*, 59 ECAB \_\_\_ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

<sup>4</sup> *R.C.*, 59 ECAB \_\_\_ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

<sup>5</sup> *G.T.*, 59 ECAB \_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

<sup>7</sup> *T.H.*, 59 ECAB \_\_\_ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

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.<sup>8</sup>

### ANALYSIS

The Office accepted that on April 24, 2008 appellant hit her foot against an electrical plug under a rubber mat. The issue is whether she sustained an injury to her left knee causally related to this event. The Board finds that appellant did not submit sufficient medical evidence to meet her burden of proof.

In an April 25, 2008 report, a physician's assistant reported appellant's complaints of swelling after she jammed her knee when she stepped in a hidden hole. Because a physician's assistant is not a physician under the Act, this report is of diminished probative value.<sup>9</sup>

Appellant also submitted medical reports from Dr. Buchanan dated April 29 through May 13, 2008. These reports are also insufficient to establish that she sustained a compensable injury. In a May 5, 2008 medical report, Dr. Buchanan stated that appellant was returning for a follow-up of a left knee injury. He also stated that appellant jammed her left knee at work on a plug and experienced edema. Dr. Buchanan diagnosed local primary osteoarthritis and loose body in the left knee. However, he did not provide a rationalized medical opinion describing how the April 24, 2008 incident caused the edema. Moreover, Dr. Buchanan did not opine that the work event caused or contributed to the diagnosed osteoarthritis or loose body in the left knee. The medical evidence reveals that appellant had a preexisting left knee condition. Dr. Buchanan did not provide a clear description of appellant's prior injuries or surgery or explain how the accepted incident would aggravate her left knee. Because he failed to describe how appellant's condition was related to the work event, this report is insufficient to establish that she sustained a compensable injury.<sup>10</sup> On April 29 and May 13, 2008 reports Dr. Buchanan diagnosed knee joint pain and localized arthritis of the left knee. In a May 15, 2008 medical report, he diagnosed left knee pain and indicated that the condition was work related. These reports are similarly insufficient to establish appellant's burden of proof. Dr. Buchanan did not address the cause of appellant's left knee arthritis or provide a rationalized medical opinion connecting her left knee condition to the April 24, 2008 work incident. Thus, these medical reports are also of diminished probative.<sup>11</sup>

A July 30, 2008 medical report from Dr. Neff diagnosed osteoarthritis. Dr. Neff noted that appellant had prior sports-related injuries to her left knee and had obtained multiple treatments, including surgery. He recommended a Biomat replacement. Dr. Neff did not

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<sup>8</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> Under section 8101(2), the definition of physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). See *Richard E. Simpson*, 57 ECAB 668 (2006).

<sup>10</sup> See *Robert Broome*, 55 ECAB 339 (2004); *Linda I. Sprague*, 48 ECAB 386 (1997).

<sup>11</sup> See *Robert Broome*, *supra* note 10.

mention the April 24, 2008 work event nor opine that appellant's work caused or aggravated her left knee condition. Rather, he attributed appellant's left knee condition to her preexisting sports injury and subsequent surgery and treatment. Dr. Neff provided only a brief reference to appellant's prior left knee condition without addressing how the accepted incident would cause or aggravate the diagnosed osteoarthritis or result in the need for further replacement surgery. Thus, the Board finds that this report is also of diminished probative value. The medical evidence is insufficient to show that the April 24, 2008 work incident caused or contributed to appellant's left knee condition.

**CONCLUSION**

The Board finds that appellant did not establish that she sustained a left knee injury in the performance of duty on April 24, 2008, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 28, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 4, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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