

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

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**D.R., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Greensboro, NC, Employer**

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**Docket No. 09-1723  
Issued: May 20, 2010**

*Appearances:*

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 16, 2009 appellant, through his attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated May 20, 2009. 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 a left knee condition due to his federal employment.

**FACTUAL HISTORY**

On August 20, 2008 appellant, then a 53-year-old city carrier, filed an occupational disease claim alleging that he developed a left knee condition due to factors of his federal employment. He first became aware of his condition on April 14, 2008 and first attributed it to his employment on that date.

The record reflects that appellant developed bilateral knee pain in 2001. Dr. Claude T. Moorman, III, a Board-certified orthopedic surgeon of professorial rank, performed a

chondroplasty of the lateral tibial plateau and resection of the medial shelf plica with partial synovectomy on appellant's left knee on January 10, 2007. Appellant accepted a light-duty position on May 30, 2008 which included the office duties of a carrier with "no steps." Dr. Moorman completed a work release notes on July 1 and 24, 2008 and indicated that appellant could work eight hours a day with limited climbing up and down stairs.

The employing establishment submitted a statement dated September 23, 2008 and stated that appellant's normal route had been abolished in February 2008 and that it was not able to accommodate appellant's restrictions of no steps. Specifically, the employing establishment stated, "Any time his route received an accountable piece or any mail that required him to obtain a signature he was subject to being required to climb steps."

The Office requested additional factual and medical evidence by letters dated October 3 and November 17, 2008. On August 5, 2008 Dr. Moorman stated that he performed left knee surgery on January 10, 2007 and that appellant returned to full duty in March 2007. The record reflects that he worked at a military base and that no stair climbing was involved. However, after a February 1, 2008 audit, the route was abolished. Dr. Moorman noted that appellant's route was changed in April 2008 and appellant then developed new left knee problems with significant patellofemoral pain and difficulty negotiating stairs. He stated that appellant now required a knee brace for stability. Dr. Moorman stated, "We do think that the change of his mail route caused a new chondral patella femoral injury to his left knee." On August 7, 2008 he repeated his findings.

Dr. Moorman examined appellant on February 14 and March 27, 2008 and stated that appellant had continuous pain in his knees and that appellant had not done well following the arthroscopy. In notes dated May 5, 6 and August 5, 2008, he reviewed appellant's previous knee surgery and advised that appellant did well during rehabilitation; however, when his mail route changed in April 2008 he was unable to negotiate stairs on his job. Dr. Moorman found osteoarthritis and visible quadriceps atrophy in the left knee. He diagnosed chondromalacia following chondral injury to the patellofemoral joint. Dr. Moorman stated that appellant sustained a new knee injury after the change in his mail route.

Appellant reported knee problems to his physician, Dr. K. Kilaura Carmack, a physician, in January 2008. On April 16, 2008 Dr. Carmack reported bilateral knee pain and burning. A nurse practitioner stated that appellant was carrying a mail route on foot which "has flared up his knees."

By decision dated December 19, 2008, the Office denied appellant's claim finding that the medical evidence did not establish that he developed a knee condition as a result of his employment activities.

Appellant, through his attorney, requested a telephonic hearing on December 27, 2008. He noted that he began a new postal route on April 14, 2008 and requested that he not have to climb steps. The postmaster denied his request. Appellant stated that beginning April 14, 2008 his route changed and he now had to carry a route with stairs. Previously, appellant had delivered a route on a military base where there were no steps going up to the houses.

By decision dated May 20, 2009, the hearing representative affirmed the December 19, 2008 decision, finding that the medical evidence was not sufficient to establish a left knee condition due to appellant's employment.

### **LEGAL PRECEDENT**

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.<sup>1</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of a disease or condition for which compensation is claimed; (2) a factual statement identifying the 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 employment factors identified by the claimant. The medical opinion 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 specific employment factors identified by the claimant.<sup>2</sup>

### **ANALYSIS**

Appellant submitted medical evidence that he had preexisting knee conditions which resulted in left knee surgery in 2007. Dr. Moorman, a Board-certified orthopedic surgeon of professorial rank, reported that he had osteoarthritis and visible quadriceps atrophy in the left knee. He diagnosed chondromalacia following chondral injury to the patellofemoral joint. Dr. Moorman supported that appellant sustained a new knee injury after his mail route changed in April 2008. He explained that appellant's new mail route caused or contributed to this new condition as appellant was unable to negotiate stairs.

The employing establishment submitted a statement acknowledging that appellant's route had been eliminated in 2008 and that he was currently required to climb stairs to perform the duties of his new route.

The Board finds that appellant has established a *prima facie* claim for compensation. The Board notes that Dr. Moorman's reports are consistent in finding that appellant sustained further injury to his left knee after he was required to climb stairs on his route. The factual allegation of appellant's additional employment duty of climbing stairs has been acknowledged by the employing establishment. Based on the evidence submitted, appellant has shown a *prima facie* claim of injury.<sup>3</sup> The case will be remanded to the Office for further development and a determination as to whether appellant sustained any injury due to the requirement of climbing stairs. After such development as it deems necessary, it should issue a merit decision on appellant's claim.

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<sup>1</sup> 20 C.F.R. § 10.5(q).

<sup>2</sup> *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

<sup>3</sup> *Id.*; *Victor J. Woodhams*, 41 ECAB 345 (1989).

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 20, 2009 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further development consistent with this decision.

Issued: May 20, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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