

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

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<b>A.B., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 09-1780</b>
	)	<b>Issued: May 21, 2010</b>
<b>U.S. POSTAL SERVICE, CLIFTON POST OFFICE, Clifton, NJ, Employer</b>	)	
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*Appearances:*  
*James. D. Muirhead, 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 July 8, 2009 appellant filed a timely appeal from a March 11, 2009 merit decision of the Office of Workers' Compensation Programs denying her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained an injury causally related to factors of her federal employment.

On appeal, appellant's counsel contends that the report of appellant's treating physician is of greater probative value than that of the second opinion physician. He also argues that the statement of accepted facts was not accurate.

**FACTUAL HISTORY**

On May 25, 2001 appellant, then a 36-year-old letter carrier, filed an occupational disease claim alleging that she sustained bilateral chondromalacia of the patella, right leg and both ankles as a result of her federal employment. On June 1, 2001 she stated that she meant to file

her initial claim for injuries to both legs.<sup>1</sup> Appellant previously filed an occupational disease claim on March 9, 2000 alleging that she worked for the employing establishment for 13 years and sustained multiple injuries while delivering mail including left anterior knee syndrome. Walking and going up and down steps put pressure on her knees. The Office accepted appellant's claim for chondromalacia of the left knee.

On October 11, 2001 the Office requested further information from appellant. Appellant did not file a timely response.

In a December 10, 2001 decision, the Office denied appellant's claim, finding that she failed to establish that she had a medical condition as a result of her federal employment.

In a May 12, 2000 report, Dr. Bryan J. Massoud, a Board-certified orthopedic surgeon, listed his impressions as cervical strain, lumbar strain and bilateral anterior knee syndrome. He noted that there was pain with mobilization of the patella, full range of motion, mild effusion and no instability. Dr. Massoud opined that appellant was "clearly unable to perform her duties at work." He placed her off work for six months and initiated physical therapy for four weeks.

On December 4, 2002 appellant, through her attorney, requested reconsideration. She noted that her claim was for bilateral knee syndrome and injury to her feet and ankles. Appellant described her work as a letter carrier which involved standing for 1½ hours casing mail and then delivering the mail for approximately 5½ hours. Her job also required bending, stooping and some heavy lifting.

By decision dated March 4, 2003, the Office denied modification of the December 17, 2001 decision.

In a March 14, 2003 note, Dr. Massoud noted that appellant returned complaining of bilateral knee pain, right greater than left, with difficulty with prolonged standing, walking and bending. He listed his impression as bilateral anterior knee syndrome and chondromalacia patella which were related to her work duties due to prolonged standing and walking.

By letter dated April 23, 2003, appellant, through her attorney, requested reconsideration. By decision dated July 7, 2003, the Office denied reconsideration without conducting a merit review.

On October 6, 2003 appellant filed a request for review with the Board. However, on January 28, 2004, the Board dismissed the appeal at appellant's request in order to file a request for reconsideration before the Office.<sup>2</sup>

By letter dated June 30, 2004, appellant, through her attorney, requested reconsideration and submitted a December 8, 2003 report from Dr. Massoud. He stated that, within a reasonable degree of medical certainty, appellant's bilateral knee pain, anterior knee syndrome and chondromalacia patella was in direct causal relation to her work duties as a letter carrier and

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<sup>1</sup> The Office assigned File No. xxxxxx767 and is the subject of the current appeal.

<sup>2</sup> Docket No. 04-56 (issued January 28, 2004).

permanent in nature. Dr. Massoud noted that appellant has been complaining of right knee pain since her office visit on May 12, 2000 and of left knee pain dating back to April 5, 2000. A magnetic resonance imaging (MRI) scan confirmed Grade 3 chondromalacia patella on March 27, 2000. Dr. Massoud stated that the condition developed as a result of prolonged standing, walking and going up and down stairs and hills as a letter carrier for 12 years. He noted that appellant's work duties included approximately 2½ hours of casing mail followed by the delivery of the mail. Dr. Massoud noted no traumatic injury to appellant's knees, but indicated that the chronic pain and bilateral anterior knee syndrome is an injury of repetitive use during her employment.

By letter dated July 23, 2004, the Office, referred appellant to Dr. Igbal Ahmad, an orthopedic surgeon, for a second opinion. In a report dated August 12, 2004, Dr. Ahmad diagnosed spinal sprain and sprains to both knees with chondromalacia. He found that in all probability her sprain and chondromalacia of the knees was not related to her work. Dr. Ahmad advised that appellant was able to return to her regular work and that no further medical treatment was indicated.

By decision dated September 20, 2004, the Office denied modification of its prior decision.

By letter dated November 22, 2004, appellant requested reconsideration, contending that Dr. Massoud's report was more probative than that of Dr. Ahmad. In a January 18, 2005 decision, the Office denied her request for reconsideration without merit review.

On March 18, 2005 appellant filed an appeal with the Board. However, the Office did not submit the case record. On October 3, 2005 the Board issued an order remanding the case to the Office to reconstruct the record and issue an appropriate decision to protect appellant's appeal rights.<sup>3</sup>

The case was inactive until February 25, 2008 when the Office issued appeal rights pursuant to the Board's instructions. By letter dated March 4, 2008, appellant filed an appeal with this Board. On November 6, 2008 the Board found that the Office had not complied with the Board's instructions.<sup>4</sup> The case was remanded for a merit decision.

In a May 12, 2008 report, Dr. David Weiss, an osteopath, diagnosed chronic post-traumatic cervical and lumbosacral strain and sprain; bulging cervical disc C4-5 and C5-6, MRI scan positive January 18, 1999; bulging lumbar disc L4-5, MRI scan positive January 21, 1999; left upper extremity radiculitis; cumulative and repetitive trauma disorder superimposed upon a defined work-related injury to the left knee February 15, 2000; chondromalacia patella to the left knee and patellofemoral arthralgia to the right knee (anterior knee pain syndrome). He performed an impairment rating and found that appellant had a 3 percent impairment of the left arm, a 15 percent impairment of the left leg and a 3 percent impairment of the right leg.

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<sup>3</sup> Docket No. 05-997 (issued October 3, 2005).

<sup>4</sup> Docket No. 08-1190 (issued November 6, 2008).

By decision dated March 11, 2009, the Office denied modification of its prior decision.

### **LEGAL PRECEDENT**

An employee seeking compensation under the Federal Employees' Compensation Act<sup>5</sup> has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,<sup>6</sup> including that she is an "employee" within the meaning of the Act<sup>7</sup> and that she filed her claim within the applicable time limitation.<sup>8</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>9</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>10</sup>

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>11</sup>

Causal relationship is a medical issue<sup>12</sup> 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 of the physician must be based on a complete factual and medical background of the claimant,<sup>13</sup> must be one of reasonable medical certainty,<sup>14</sup>

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<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *J.P.*, 59 ECAB \_\_\_ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>7</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>8</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>9</sup> *G.T.*, 59 ECAB \_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>10</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>11</sup> *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>12</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>13</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>14</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

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.<sup>15</sup>

Section 8123 of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, who shall make an examination.<sup>16</sup> When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>17</sup>

### ANALYSIS

The Office denied appellant's claim for an injury to her right lower extremity as it found that the medical evidence of record was not sufficient to establish that she sustained a medical condition as a result of her federal employment. Appellant submitted reports by her treating orthopedic surgeon, Dr. Massoud, who advised that her work duties of prolonged standing, walking, going up and down stairs and hills as a letter carrier resulted, to a reasonable degree of medical certainty, in her bilateral knee syndrome and chondromalacia of the patella. Dr. Ahmad, a second opinion physician, disagreed. He found that appellant's sprain and chondromalacia of both knees was not related to her work. The Office relied on the opinion of Dr. Ahmad as having greater weight.<sup>18</sup> The Board finds, however, that there exists a conflict between Dr. Massoud and Dr. Ahmad as to the nature and extent of appellant's condition and any disabling residuals. The case will be returned to the Office to refer appellant to an impartial medical examiner to resolve the conflict in the evidence.<sup>19</sup>

The case is remanded to the Office for referral of appellant to an appropriate impartial medical specialist to resolve the conflict in the medical opinion. After such development as the Office deems necessary, a *de novo* decision shall be issued.

### CONCLUSION

The Board finds that this case is not in posture for decision due to an unresolved conflict in medical opinion.

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<sup>15</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>16</sup> 5 U.S.C. § 8123.

<sup>17</sup> *James F. Weikel*, 54 ECAB 660 (2003); *Beverly Grimes*, 54 ECAB 543 (2003); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003); *Phyllis Weinstein (Elliot H. Weinstein)*, 54 ECAB 360 (2003); *Barry Neutuch*, 54 ECAB 313 (2003).

<sup>18</sup> The opinion of Dr. Weiss addresses appellant's entitlement to a schedule award and is not relevant to establishing appellant's claim.

<sup>19</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 11, 2009 is set aside and the case is remanded for further consideration consistent with this opinion.

Issued: May 21, 2010  
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