

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

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**J.T., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Niles, OH, Employer**

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**Docket No. 10-497  
Issued: November 26, 2010**

*Appearances:*

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On December 16, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' November 25, 2009 decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUES**

The issues are: (1) whether appellant met his burden of proof to establish that his left knee lateral internal derangement, meniscus tear and Baker's cyst are employment related; and (2) whether the Office properly denied appellant's claim for a schedule award.

**FACTUAL HISTORY**

On December 21, 2005 appellant, then a 57-year-old city carrier, filed a traumatic injury claim alleging on December 20, 2005 while delivering mail he felt severe pain in his left knee.

The Office accepted his claim for left knee sprain.<sup>1</sup> Appellant did not stop work and performed light-duty work subject to restrictions.

Appellant was treated by Dr. Vincent Marino, a family practitioner. On December 21, 2005 he related to the physician that he twisted his left knee at work the previous day. Dr. Marino noted physical findings of no effusion or edema and tenderness over the anterior and medial compartments. He diagnosed left knee pain. X-rays were negative for fracture or dislocation.<sup>2</sup> In a December 21, 2005 attending physician's report, Dr. Marino advised that appellant did not require surgery and could work with restrictions. In reports dated December 23 to 30, 2005, he noted appellant's complaint of left knee pain medially and anteriorly. Dr. Marino subsequently treated appellant through July 28, 2006 for left knee pain and episodes of his left knee giving out. He recommended a leg brace and continued light duty. On June 15 and 30, 2006 appellant was treated by a health care professional whose signature was illegible. Chondromalacia patellae and left knee sprain were diagnosed.

On April 27, 2007 Dr. Marino noted that appellant presented with progressive right knee pain with episodes of the left knee giving out. He diagnosed left knee sprain and probable internal derangement. In reports dated to October 24, 2007, Dr. Marino noted a history of injury and diagnosed left knee sprain. He indicated that appellant's condition was unchanged. A September 7, 2007 magnetic resonance imaging (MRI) scan of the left knee revealed a complete tear of the anterior cruciate ligament, large horizontal tear involving the posterior horn of the medial meniscus with a moderate Baker's cyst.

On November 8, 2007 appellant was seen by Dr. Edward J. Uberti, an osteopath and Board-certified orthopedic surgeon, for persistent left knee pain. He reported working as a letter carrier and twisting his left knee while walking his mail route. Dr. Uberti advised that x-ray of the left knee revealed degenerative changes and an MRI scan revealed a probable tear of the medial meniscus. Physical examination revealed mild left knee effusion, no instability, no positive anterior drawer or Lachman's test, positive McMurray's test, crepitus, small popliteal cyst and a mild pitting edema about the ankle. Dr. Uberti diagnosed chondromalacia with a torn medial meniscus of the left knee and recommended arthroscopic surgery. He noted this was "obviously ... a federal workman's compensation since he is a postal carrier."

On November 29 and December 15, 2007 appellant filed claims for a schedule award. Appellant also submitted claims for compensation for intermittent disability from August 4 to November 8, 2007.

In a January 25, 2008 decision, the Office denied appellant's claim for wage-loss compensation.

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<sup>1</sup> Appellant has several claims pertaining to his left leg. Claim file number xxxxxx668 was accepted for exacerbation of left knee sprain, claim file number xxxxxx913 was accepted for a left knee contusion, and claim file number xxxxxx039 was accepted for a left toe contusion. On April 8, 2009 the Office issued a schedule award for seven percent impairment of the left leg due to appellant's accepted toe condition. These claims were doubled with that presently before the Board.

<sup>2</sup> X-rays of the left knee obtained on November 3, 2003 showed mild bony hypertrophy and medial joint space narrowing.

On December 20, 2007 the Office informed appellant that the medical evidence must support that his accepted injury caused permanent impairment to his left knee and that the residuals of the injury had reached maximum medical improvement. It advised that the medical evidence of record did not establish maximum medical improvement.

In a December 19, 2007 report, Dr. Marino noted no change in appellant's left knee. On March 14, 2008 he indicated that appellant was awaiting authorization for left knee arthroscopy and could continue light-duty work. In a July 11, 2008 report, Dr. Marino noted that appellant was involved in a motor vehicle accident while driving his postal vehicle and was diagnosed with exacerbation of left knee sprain.

In an April 20, 2009 letter, the Office requested that Dr. Marino further address how the diagnosed lateral internal derangement of the left knee, meniscus tear and Baker's cyst were related to the December 20, 2005 injury. It asked whether the conditions preexisted the December 20, 2005 work injury or if the injury had aggravated appellant's condition.

In a decision dated May 27, 2009, the Office denied appellant's claim for lateral internal derangement of the left knee, meniscus tear or Baker's cyst. It also denied his claim for a schedule award. The Office determined that the medical evidence was insufficient to establish that he sustained permanent impairment due to the accepted injury or that the additional left knee diagnoses were causally related to the December 20, 2005 injury.

On June 8, 2009 appellant requested an oral hearing which was held on September 8, 2009.

In a decision dated November 25, 2009, an Office hearing representative affirmed the May 27, 2009 decision.

### **LEGAL PRECEDENT -- ISSUE 1**

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>3</sup>

Causal relationship is a medical issue that must be established by rationalized medical opinion evidence.<sup>4</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician 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 specific employment factors identified by the claimant.<sup>5</sup> The weight of medical evidence is determined by its reliability, its

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<sup>3</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>4</sup> *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

<sup>5</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

Appellant alleges that he sustained left knee lateral internal derangement, meniscus tear and Baker's cyst due to the December 20, 2005 injury. The Office accepted his claim for a left knee sprain.

The Board finds that the medical evidence is insufficient to establish that the lateral internal derangement, meniscus tear or Baker's cyst conditions are causally related to the accepted work injury. The medical records most contemporaneous to the injury are reports from Dr. Marino dated December 21 to 30, 2005. Dr. Marino noted that appellant twisted his left knee at work while delivering mail and sustained a sprain. In a December 21, 2005 attending physician's report, he noted that x-rays of December 21, 2005 were negative for fracture or dislocation but shared a suggestion of a small joint effusion. Appellant did not require surgery and could return to work with restrictions. He did not diagnose a lateral internal derangement, meniscus tear and Baker's cyst. The Board has consistently held that evidence contemporaneous to an injury is entitled to greater probative value than later evidence.<sup>7</sup> These reports do not support that the December 20, 2005 injury caused or aggravated the left knee conditions subsequently claimed.

In reports dated March 13 to July 28, 2006, Dr. Marino noted appellant reported left knee pain and episodes of his left knee giving out. On April 27, 2007 he again diagnosed left knee sprain and probable internal derangement. On September 7, 2007 diagnostic testing was obtained by MRI scan that first listed the conditions currently claimed by appellant as related to his December 20, 2005 injury. The Board had held that, when diagnostic testing is delayed, uncertainty mounts regarding the cause of the diagnosed condition and a question arises as to whether that testing in fact documents the injury claimed by the employee.<sup>8</sup> The greater the delay in testing, the greater the likelihood that an event not related to employment cause or worsened the condition for which the employee seeks compensation. When the delay becomes so significant that it calls into question the validity of an affirmative opinion based at least in part on the testing, such delay diminishes the probative value of the opinion offered. In reports subsequent to the MRI scan, Dr. Marino diagnosed internal derangement and a torn medial meniscus; however, he did not adequately address how the conditions found were caused or contributed to by the accepted injury. In assessing the probative value of his medical opinion, the Board notes that Dr. Marino did not explain how the left knee sprain accepted by the Office was sufficient to give rise to the conditions diagnosed some 20 months following injury. No other reports from Dr. Marino address causal relationship between the claimed conditions and the accepted injury. On April 20, 2009 the Office requested that Dr. Marino provide additional

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<sup>6</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>7</sup> See *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

<sup>8</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004); *Linda L. Mendenhall*, 41 ECAB 532 (1990).

opinion addressing how the diagnosed lateral internal derangement of the left knee, meniscus tear and Baker's cyst were related to the December 20, 2005 work injury. No responsive report was received.

Dr. Uberti's November 8, 2007 report noted appellant's treatment for persistent left knee pain. Appellant reported injuring his left knee while walking his mail route. Dr. Uberti noted the MRI scan result of a probable torn medial meniscus and a small popliteal cyst. He diagnosed chondromalacia with torn medial meniscus of the left knee and recommended arthroscopic surgery. Dr. Uberti stated this was "obviously ... a federal workman's compensation since he is a postal carrier." He did not provide medical rationale explaining the basis of his conclusory opinion between appellant's employment and the diagnosed chondromalacia or torn medial meniscus. Dr. Uberti did not provide a history of the December 20, 2005 injury in this case; rather he implicated appellant's walking his route as causative. His report is insufficient to meet appellant's burden of proof.<sup>9</sup>

Appellant has not submitted sufficient medical evidence to establish the lateral internal derangement, meniscus tear or Baker's cyst of his left knee as employment related. Neither the fact that a claimant's condition became apparent during a period of employment, nor the belief that the condition was caused, precipitated or aggravated by the employment is sufficient to establish causal relationship.<sup>10</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8107 of the Federal Employees' Compensation Act was intended by Congress to only apply to cases in which federal employees sustain a permanent impairment of a listed member of the body due to an employment injury. The provisions for schedule awards are separate from any factors that would be used to determine disability based on wage loss. The amounts payable pursuant to a schedule award are defined by weeks of compensation for the listed scheduled members.<sup>11</sup> Impairment ratings are not granted for nonaccepted conditions.<sup>12</sup> Not all medical conditions accepted by the Office result in permanent impairment to a scheduled member.<sup>13</sup>

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<sup>9</sup> Appellant submitted reports dated June 15 and 30, 2006 from a health care professional with an illegible signature. There is no indication of who signed the reports. The Board has held that medical reports lacking proper identification do not constitute probative medical evidence. *See R.M.*, 59 ECAB 690 (2008); *D.D.*, 57 ECAB 734 (2006).

<sup>10</sup> *D.I.*, 59 ECAB 158 (2007).

<sup>11</sup> *Denise L. Crouch*, 57 ECAB 161 (2005).

<sup>12</sup> *See Alice J. Tysinger*, 51 ECAB 638 (2000) (for conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship).

<sup>13</sup> *Thomas P. Lavin*, 57 ECAB 353 (2006).

## ANALYSIS -- ISSUE 2

The Office accepted appellant's claim for left knee sprain and he claimed a schedule award. To the extent that appellant sought a schedule award for lateral internal derangement, meniscus tear and Baker's cyst of the left knee, these conditions were not accepted as work related.<sup>14</sup> To be entitled to a schedule award appellant must establish that he sustained a permanent impairment of a listed member of the body due to an employment injury.<sup>15</sup> Appellant's condition was accepted for left knee sprain. However, he did not submit sufficient medical evidence to establish entitlement to a schedule award for his accepted left knee sprain.

Appellant submitted various reports from Dr. Marino noting diagnoses and treatment options. However, Dr. Marino did not specifically address how the accepted left knee sprain caused permanent impairment of the left leg nor did he provide an impairment rating pursuant to the Office's standards for evaluating scheduled impairment.<sup>16</sup> Similarly, Dr. Uberti on November 8, 2007 diagnosed chondromalacia with torn medial meniscus of the left knee and recommended arthroscopic surgery. However, he did not specifically address how a left knee sprain caused permanent impairment of the left leg nor did he provide an impairment rating.

Other medical evidence of record does not explain how the accepted left knee sprain caused or contributed to permanent impairment of the left leg. Without the necessary reasoned medical opinion evidence establishing that appellant has permanent impairment causally related to his accepted left knee sprain, appellant has failed to establish that he sustained a permanent impairment as a result of his employment.

## CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a lateral internal derangement, meniscus tear and Baker's cyst of the left knee causally related to his December 20, 2005 employment incident. The Board further finds that appellant failed to establish that he is entitled to a schedule award.

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<sup>14</sup> These conditions were also not accepted in appellant's other claims. *See supra* note 1.

<sup>15</sup> *See supra* note 12; *Veronica Williams*, 56 ECAB 367 (2005) (a schedule award can be paid only for a condition related to an employment injury; the claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment).

<sup>16</sup> *See* 20 C.F.R. § 10.404. These regulations provide that the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, has been adopted as the appropriate standard for evaluating schedule losses.

**ORDER**

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

Issued: November 26, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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