

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

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<b>L.T., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 10-810</b>
	)	<b>Issued: October 18, 2010</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>LOUIS B. STOKES VETERANS</b>	)	
<b>ADMINISTRATION MEDICAL CENTER,</b>	)	
<b>Cleveland, OH, Employer</b>	)	

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<i>Appearances:</i> <i>Alan J. Shapiro, Esq., for the appellant</i> <i>Office of Solicitor, for the Director</i>	<i>Case Submitted on the Record</i>
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**DECISION AND ORDER**

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

**JURISDICTION**

On February 1, 2010 appellant, through her attorney, filed a timely appeal of the November 24, 2009 merit decision of the Office of Workers' Compensation Programs finding that she did not sustain an injury while 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 right knee injury on April 1, 2009, as alleged.

On appeal, counsel contends that the Office's decision is contrary to fact and law.

**FACTUAL HISTORY**

On April 7, 2009 appellant, then a 52-year-old registered nurse, filed a traumatic injury claim alleging that on April 1, 2009 she hurt her right knee when she slipped while exiting an

employing establishment shuttle bus.<sup>1</sup> She stopped work on April 3, 2009. In medical reports dated April 3 through 24, 2009, Dr. Bruce T. Cohn, an attending Board-certified orthopedic surgeon, advised that appellant was totally disabled for work through May 20, 2009. He stated that she reaggravated a right knee condition. In an April 3, 2009 report, Martha Brennan, a nurse practitioner, noted appellant's right knee and upper leg symptoms and medical history. She placed appellant off work for the remainder of the day due to right knee pain.

By letter dated May 21, 2009, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit medical evidence, including a rationalized medical report from an attending physician which described a history of injury and provided dates of examination and treatment, findings, test results, a diagnosis together with an opinion with medical reasons on why the diagnosed condition was caused or aggravated by the April 1, 2009 incident.

In a May 15, 2009 report, Dr. Cohn advised that appellant was totally disabled for work through June 26, 2009. In an April 3, 2009 report, he conducted a follow-up examination of appellant's prior employment-related right knee injury for which she underwent arthroscopic surgery five months prior. Appellant had recently returned to full-duty work when she experienced symptoms related to her knee on March 30, 2009. She denied any buckling or giving out of the knee. Dr. Cohn listed essentially normal findings on examination of the right knee with tenderness along the medial joint line, a positive McMurray's test and decreased range of motion. He also reported normal findings on examination of the right leg. Dr. Cohn diagnosed a dislocated tear of the medial cartilage or meniscus of the right knee. He placed appellant off work until her next evaluation. In reports dated April 10 and 24 and May 15, 2009, Dr. Cohn again listed essentially normal findings on physical and neurosensory examination of appellant's right knee and leg, with a decreased range of motion. He diagnosed degenerative joint disease with aggravation and patella chondromalacia of the right knee and osteoarthritis of the right leg. Dr. Cohn opined that appellant's arthritic right knee condition was employment related. He advised that she was totally disabled for work.

By decision dated June 22, 2009, the Office denied appellant's claim, finding that the medical evidence was insufficient to establish that her right knee condition was causally related to the April 1, 2009 employment incident.

On August 25, 2009 appellant requested reconsideration. In reports dated May 22 to June 12, 2009, Dr. Cohn reiterated the diagnoses of patella chondromalacia and dislocated tear of the medial cartilage or meniscus of the right knee and osteoarthritis of the right lower leg. He released appellant to return to full-duty work June 29, 2009, four hours per day. Dr. Cohn restricted her from climbing stairs.

By decision dated November 24, 2009, the Office denied modification of the June 22, 2009 decision, finding the evidence insufficient to establish that appellant sustained a right knee injury causally related to the accepted April 1, 2009 employment incident.

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<sup>1</sup> Prior to the instant claim, appellant filed a claim for a right knee injury under Office File No. xxxxxx809.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act; that the claim was filed within applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.<sup>4</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>5</sup> In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.<sup>6</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>7</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>8</sup> The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.<sup>9</sup>

## ANALYSIS

The Office accepted that appellant slipped while exiting an employing establishment shuttle bus on April 1, 2009 while working as a registered nurse. The Board finds that the

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 3.

<sup>5</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>6</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

<sup>8</sup> *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>9</sup> *Charles E. Evans*, 48 ECAB 692 (1997).

medical evidence of record is insufficient to establish that her right knee condition was caused or aggravated by the April 1, 2009 employment incident.

Appellant submitted medical reports from Dr. Cohn, an attending physician, who noted appellant's prior employment-related right knee injury and listed essentially normal findings on physical and neurosensory examination of the right knee and leg. Dr. Cohn found that she had a dislocated tear of the medial cartilage or meniscus, degenerative joint disease with aggravation and patella chondromalacia of the right knee. He also found that appellant had osteoarthritis of the right leg. Dr. Cohn opined that her arthritic right knee condition was employment related. He stated that appellant was totally disabled for work from April 3 to June 28, 2009. Dr. Cohn released her to return to full-duty work on June 29, 2009, four hours a day with restrictions. However, he failed to identify the specific employment incident that caused appellant's right knee degenerative joint disease. Dr. Cohn did not discuss how the diagnosed arthritic right knee condition was caused or aggravated by the April 1, 2009 employment incident in which appellant slipped while exiting a bus.<sup>10</sup> He noted appellant's history of a prior right knee condition for which she underwent surgery some five months before the accepted incident. Dr. Cohn did not provide medical rationale explaining why the employment incident caused or aggravated her right knee arthritic condition. He did not provide any medical opinion addressing whether the dislocated tear of the medial cartilage or meniscus and patella chondromalacia of the right knee and osteoarthritis of the right leg conditions were causally related to the April 1, 2009 employment incident. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.<sup>11</sup> The Board finds that Dr. Cohn's reports are insufficient to establish appellant's claim.

The April 3, 2009 report from Ms. Brennan, a nurse practitioner, has no probative medical value in establishing appellant's claim. A nurse practitioner is not defined as a physician under the Act.<sup>12</sup>

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a right knee injury causally related to the accepted April 1, 2009 employment incident. Appellant did not meet her burden of proof.

### CONCLUSION

The Board finds that appellant has failed to establish that she sustained a right knee injury on April 1, 2009, as alleged.

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<sup>10</sup> See *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>11</sup> *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>12</sup> See 5 U.S.C. § 8101(2); *K.H.*, Docket No. 09-2292 (issued May 14, 2010).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 24, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 18, 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