

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

C.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Chicago, IL, Employer)

**Docket No. 11-81
Issued: August 22, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On October 7, 2010 appellant filed a timely appeal from May 6 and July 23, 2010 merit decisions of the Office of Workers' Compensation Programs (OWCP) which denied her recurrence claim. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 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 met her burden of proof to establish that she sustained a recurrence of total disability on or after March 12, 2010 due to her August 29, 2008 employment injury.

FACTUAL HISTORY

On August 29, 2008 appellant, then a 36-year-old mail carrier, filed a traumatic injury claim alleging that on that date she sustained abrasions on both knees when she fell down stairs

¹ 5 U.S.C. § 8101 *et seq.*

in the performance of duty. She stopped work on August 30, 2008 and returned to full duty on September 3, 2008. On March 23, 2010 OWCP accepted appellant's claim for bilateral knee abrasions and strain.

On March 16, 2010 appellant filed a notice of recurrence of disability alleging that on March 12, 2010 she was only able to complete part of her route due to pain. She explained that she experienced a lot of pain due to inflammation in both her knees since the original injury.

Appellant provided medical records from Dr. William Lopez, a Board-certified internist. In March 12 and 16, 2010 examination notes, Dr. Lopez diagnosed lower leg joint pain and a knee sprain. He provided a duty status report authorizing appellant to work eight hours a day with restrictions to not climb stairs or ladders. In a March 12, 2010 medical report, Dr. Lopez stated that she worked for the postal service and complained about her leg, which was injured on October 9, 2008 when she fell down. He also noted that appellant complained of persistent pain and discomfort since "September/2008" after she sustained a fall coming down steps. Dr. Lopez reviewed her medical history and conducted an examination. He observed bilateral knee joint stiffness. Regarding appellant's left knee, Dr. Lopez noted mild tenderness anteriorly, equivocal minimal swelling and effusion. Appellant's drawer sign, Lachman's test and McMurray's test were negative with no erythema, giving away, locking, or popliteal fossa swelling. She had normal dorsalis pedis pulse and gait with full active range of motion. Regarding appellant's right knee, Dr. Lopez observed negative drawer sign, Lachman's and McMurray's test. He did not find any ecchymosis, knee effusion, erythema, swelling or tenderness. Appellant also had full range of motion, normal dorsalis pedis pulse, normal gait and minimal endrange soreness. Dr. Lopez diagnosed bilateral knee strain and contusion and bursitis. Appellant was restricted from climbing stairs or ladders.

In a March 16, 2010 follow-up report, appellant complained of intermittent bilateral knee soreness, more on the left, that was exacerbated by walking up or down stairs. Upon examination of appellant's left knee, Dr. Lopez observed equivocal anterior swelling with no tenderness, ecchymosis, knee effusion or erythema. Appellant's drawer sign, Lachman's and McMurray's tests were negative. She had full range of motion with mild pain and normal dorsalis pedis pulse. Upon examination of her right knee, Dr. Lopez observed that her knee joint was stable with no ecchymosis, knee effusion, erythema, swelling, valgus-varus stress or tenderness. Appellant's drawer sign, Lachman's and McMurray's test were negative. She had full range of motion with normal dorsalis pedis pulse and foot sensation intact. Dr. Lopez reviewed a 2008 magnetic resonance imaging scan report and noted degenerative spurring, more on the left, but no bony destruction. He diagnosed bilateral knee strain, contusion and bursitis.

Appellant reported that she injured both her knees last year when she fell down some steps on her mail route. She explained that since the injury she experienced knee pain in both knees, which has worsened, but she continued to work hoping her knee problems would go away. Appellant's physician informed her that both her knees were inflamed.

OWCP requested additional evidence regarding her specific activities on March 12, 2010 and additional medical evidence including dates of all examinations and treatment, history of the recurrence, a firm diagnosis, periods of disability and a physician's opinion explaining how her disability resulted from the original injury.

On April 6, 2010 appellant submitted two CA-7 forms requesting compensation for the period March 13 to April 23, 2010. In an April 14, 2010 letter, OWCP requested additional factual and medical evidence.

Appellant submitted some earlier reports to support her claim. In a September 5, 2008 report, a physical therapist noted that appellant was a postal service employee who injured her leg on August 30, 2008 when she fell on both her knees while going down the stairs to deliver mail. The examination revealed abrasions on her bilateral patellar tendons and limited knee flexion due to soft tissue resistance of healing tissue on patellar tendons. Appellant's x-rays were negative.

A September 10, 2008 medical report, signed by a physician's assistant, noted that appellant returned for a follow-up appointment after she sustained bilateral knee abrasions and strain on August 30, 2008. Appellant complained of pain, especially in the anterior aspect, when walking up and down the stairs. The examination revealed tenderness anteriorly and diffusely with a stable knee joint. Appellant's drawer sign was negative and she did not have ecchymosis, knee effusion or swelling.

A March 18, 2010 insurance form indicated that appellant had sustained a knee sprain to both her knees on March 12, 2010 as a result of walking up and down the stairs on her route. She noted that she had similar symptoms on September 10, 2008 and that she stopped work as a result of her disability on March 13, 2010.

In an April 6, 2010 medical note, Dr. E. McKinley Fourte, a Board-certified family practitioner, confirmed that he examined appellant and placed her on restricted duty beginning April 7, 2010. Appellant also submitted handwritten examination and prescription notes from Dr. Fourte, who diagnosed bilateral knee pain and requested an x-ray of both knees.

In an April 16, 2010 handwritten duty status report, an unknown provider stated that appellant injured both her knees when she was walking up and down the stairs. The date of injury was noted as September 10, 2008.

On April 20, 2010 appellant accepted a modified assignment as a full-time city carrier. She was restricted to casing route for two hours, carrying flats for eight hours, no continuous lifting over 35 pounds and sitting intermittently.

On May 6, 2010 OWCP denied appellant's recurrence claim on the grounds of insufficient evidence demonstrating that her claimed recurrent disability resulted from the accepted August 29, 2008 injury.

On June 3, 2010 appellant filed a claim for reconsideration. She resubmitted Dr. Lopez' March 12 and 16, 2010 medical reports, the September 3, 5 and 10, 2008 physician's assistant report and the September 5, 2008 physical therapist medical report.

In a June 4, 2010 statement, appellant reported that on August 29, 2008 she injured herself on her route while delivering mail when she fell down. She has experienced severe pain since then and returned to her treating physician on numerous occasions for treatment. Appellant explained that when she filed her recurrence claim she got the dates confused. She called injury

compensation to get the date of injury, but was given the date of a follow-up medical visit with her treating physician. Appellant also stated that when she completed her recurrence claim she was only guessing or estimating about her date of injury because she did not realize that she needed to be precise. She has requested for her treating physician to correct the date of injury, but was told that he could not change dates on medical records. Appellant requested reconsideration because she had financial responsibility for her two children and requested compensation for the time she was off from work from March 13 to April 20, 2010.

By decision dated July 23, 2010, OWCP denied modification of its May 6, 2010 denial decision because the medical evidence failed to establish a causal relationship between appellant's claimed disability and the accepted August 29, 2008 injury.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.²

Where an employee claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing that the recurrence of disability is causally related to the original injury.³ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.⁴ The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.⁵

ANALYSIS

OWCP accepted that appellant sustained bilateral knee abrasions and strain on August 29, 2008 in the performance of duty. Appellant returned to work on September 3, 2008. On March 16, 2010 she filed a recurrence of disability claim alleging that she continued to experience pain since the original injury and was unable to finish her route. The Board finds that appellant failed to meet her burden of proof to establish that her claimed disability was causally related to the August 29, 2008 injury.

Appellant submitted medical reports from Dr. Lopez, who diagnosed lower leg joint pain and knee sprain and authorized her to return to work on March 16, 2010 with restrictions. In his March 12, 2010 report, Dr. Lopez stated that she initially injured her leg on October 9, 2009 when she fell down and complained of persistent pain and discomfort since then. He did not,

² 20 C.F.R. § 10.5(x).

³ *Id.* at § 10.104(b); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁴ *Helen K. Holt*, 50 ECAB 279, 382 (1999).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (March 2011).

however, explain why appellant became disabled from performing her work as of March 12, 2010 as a result of the original injury. Dr. Lopez did not address at all the cause of her condition as of March 12, 2010. As his reports do not provide any opinion regarding the cause of appellant's current condition and inability to work, they are of little probative value on the issue of causal relationship.⁶ In addition, Dr. Lopez' reports are based on an inaccurate history of injury because in his March 12, 2010 report he noted the original date of injury as October 9, 2009, not August 29, 2008. A medical opinion based on inaccurate or incomplete histories are of little probative value.⁷ Similarly, in an April 16, 2010 duty status report, the provider noted the date of injury as September 10, 2008. These reports do not constitute probative medical evidence sufficient to establish appellant's recurrence claim.

In an April 6, 2010 report, Dr. Fourte diagnosed bilateral knee pain and placed appellant on restricted duty. He did not, however, address her claimed disability nor explain how her inability to work resulted from her August 29, 2008 injury.

Appellant also submitted reports from a physician's assistant and a physical therapist who noted appellant's complaints of knee pain as a result of falling down on both her knees on August 30, 2008. These reports, although they do support the date of the original injury, they do not constitute probative medical evidence because neither a physician's assistant nor a physical therapist qualify as physicians under FECA.⁸

Neither the fact that appellant's claimed condition became apparent or worsened during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁹

Although appellant contends that she was unable to work from March 13 to April 20, 2010 as a result of her August 29, 2008 knee injury, the issue of causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁰ The record in this case does not contain a well-rationalized opinion from a physician, who based on a complete and accurate factual and medical history, concluded that she was disabled beginning on March 12, 2010 as a result of her August 29, 2008 injury. Appellant, therefore, did not meet her burden of proof to establish that her claimed disability was causally related to her original injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

⁶ *S.S.*, 59 ECAB 315 (2008); *Elizabeth H. Kramm*, 57 ECAB 117 (2008).

⁷ *James A. Wyrick*, 31 ECAB 1805 (1980); *B.L.*, Docket No. 10-1646 (issued May 9, 2011).

⁸ Section 8101(2) of FECA provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. *See also M.B.*, Docket No. 10-2004 (issued April 14, 2011).

⁹ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

¹⁰ *G.T.*, 59 ECAB 447 (2008); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability on or after March 12, 2010.

ORDER

IT IS HEREBY ORDERED THAT the July 23 and May 6, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 22, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board