

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

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**F.W., Appellant**

**and**

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

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**Docket No. 10-1975  
Issued: May 13, 2011**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge

COLLEEN DUFFY KIKO, Judge

JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 27, 2010 appellant filed a timely appeal from a June 1, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on September 28, 2009.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On September 30, 2009 appellant, then a 46-year-old mail carrier, filed a traumatic injury claim alleging that her left knee buckled and popped on September 28, 2009 while she was delivering mail. She stopped work on September 30, 2009.<sup>2</sup>

A return-to-work form dated September 30, 2009 and signed by a nurse stated that appellant “should be free to return to work in three days.” A subsequent October 1, 2009 note from Dr. James A. Schoen, an osteopath specializing in family medicine, revised that she was excused from work until October 13, 2009 due to a knee injury.

The employing establishment controverted the claim on the grounds that appellant had a preexisting condition. It submitted October 5, 2009 statements from her supervisor and manager detailing that she sustained a September 28, 2009 recurrence of an injury from a year earlier and had undergone knee surgery sometime in the past.

The Office informed appellant in an October 13, 2009 letter that the evidence submitted was insufficient and advised her about the evidence needed to establish her claim.

In a June 16, 2009 medical note, Dr. Brian J. Ceccarelli, an osteopath specializing in orthopedic surgery, released appellant to modified duty for one month and regular duty thereafter. He related in an October 16, 2009 note that appellant was carrying mail on or around September 28, 2009 when her left knee popped and caused significant discomfort and pain. On physical examination, she exhibited pain around the inferior patellar pole. Dr. Ceccarelli reviewed a previous magnetic resonance imaging (MRI) scan and x-rays and discerned a bony formation around the superior patellar pole along the anterior attachment site. He could not determine whether this formation was new or old and speculated that it “may represent some chronic quad traction tendinitis.” In a duty status report, physical therapy request form, and work status note, all of which were dated October 16, 2009, Dr. Ceccarelli diagnosed left medial meniscal tear and knee pain and advised that appellant remain off work until her next evaluation in two to three weeks.

An October 2, 2009 MRI scan report from Dr. Dhananjay Paranjpe, a Board-certified diagnostic radiologist, showed left knee synovitis, partial tendinosis of the distal quadriceps tendon, and Grade 2 to 3 chondromalacia of the patellar articular cartilage. Dr. Paranjpe pointed out that the left collateral and cruciate ligaments were intact without evidence of meniscal tearing. In addition, September 30, 2009 x-ray reports from Dr. William M. Meyers, an osteopath specializing in diagnostic radiology, revealed a hypertrophic spur of the left superior patellar pole and hypertrophic calcifications in the left talofibular joint region consistent with accessory ossification center or a prior avulsion injury.

In September 30, 2009 emergency department records from Dr. Schoen, appellant complained that she was unable to bear weight on the left knee, which gave out and popped

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<sup>2</sup> The Office previously accepted appellant’s traumatic injury claim for aggravation of left chondromalacia relating to a July 8, 2006 incident. It subsequently created master file number xxxxxx230 to combine the accepted claim and the present case, as both involved left knee conditions.

during work on September 28, 2009. She noted that she had surgery one year earlier. Dr. Schoen examined the knee and observed tenderness, swelling and limited range of motion (ROM) due to pain. He also found left ankle joint tenderness. Dr. Schoen diagnosed left knee and ankle sprains. Nursing records dated September 30, 2009 reiterated that appellant sustained work-related injuries on September 28, 2009 to her left knee, leg and ankle.

Dr. Schoen detailed in an October 1, 2009 report that appellant stepped in a pothole and twisted her left knee on September 28, 2009. He observed effusion and medial joint tenderness on physical examination and diagnosed unspecified lower leg arthropathy. In an October 29, 2009 follow-up, Dr. Schoen diagnosed left chondromalacia patella and added that appellant was “out of work.”

By decision dated November 17, 2009, the Office denied appellant’s claim, finding the evidence insufficient to establish the occurrence of a specific employment event, incident or exposure that caused an alleged injury.

In an undated statement, appellant recalled that her left knee popped and buckled during a September 28, 2009 mail delivery, resulting in a twisted left knee and ankle. She suggested that “[t]his may have been caused by a dip or depression in the area.” Thereafter, appellant returned to work sporadically and with restrictions as she could not bear weight on her left leg. In a December 17, 2009 statement, appellant articulated that she was walking and carrying mail on her postal route for approximately two hours on September 28, 2009 when her left knee popped and buckled forward, leading to a twisted left knee and ankle.

A December 10, 2009 duty status report, which contained an orthopedic surgeon’s illegible signature, noted that appellant’s diagnosed left knee pain occurred while “carrying mail” and she filed a workers’ compensation claim. She was scheduled to return to limited duty on December 14, 2009.

In Dr. Ceccarelli’s December 10, 2009 report, appellant presented with difficulty carrying, kneeling, squatting and climbing stairs. On peripatellar compression testing, she demonstrated pain to palpation about the left knee joint. Dr. Ceccarelli repeated that appellant’s left knee popped while she was carrying mail around September 28, 2009. He opined, “I feel this was a new injury, which aggravated her preexisting condition in her left knee.” Dr. Ceccarelli released appellant to limited duty on December 14, 2009.

Appellant requested a telephonic hearing, which was arranged for March 16, 2010. At the hearing, she testified that she sustained a left knee injury on July 8, 2006 when a motorist collided with her postal vehicle. Appellant underwent arthroscopic surgery performed by Dr. Ceccarelli in September 2008. She was struck by another motorist sometime in 2008, but denied reinjuring her left knee.

By decision dated June 1, 2010, the Office hearing representative found that appellant walked and delivered mail on September 28, 2009. She nonetheless affirmed the November 17, 2009 decision on the basis that the medical evidence was insufficient to demonstrate that the accepted work event caused or aggravated a left knee condition.

## LEGAL PRECEDENT

An employee seeking compensation under the Act has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,<sup>3</sup> including that she is an “employee” within the meaning of the Act and that she filed her claim within the applicable time limitation.<sup>4</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>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup>

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician’s 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, 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>7</sup>

## ANALYSIS

The record supports that appellant walked as she delivered mail on September 28, 2009. However, she did not provide sufficient medical evidence establishing that this work activity caused or aggravated a left knee condition.

Dr. Ceccarelli related in October 16 and December 10, 2009 reports that appellant was carrying mail on September 28, 2009 when her left knee popped. He subsequently concluded in the latter report, “I feel this was a new injury, which aggravated her preexisting condition in her left knee.” Although Dr. Ceccarelli’s opinion supported causal relationship, he did not provide medical rationale explaining the pathophysiological process by which walking and carrying and delivering mail caused the injury.<sup>8</sup> A medical opinion not fortified by medical rationale is of little

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<sup>3</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>4</sup> *R.C.*, 59 ECAB 427 (2008).

<sup>5</sup> *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>8</sup> *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

probative value.<sup>9</sup> The fact that appellant was asymptomatic before September 28, 2009 and symptomatic afterward, by itself, cannot establish causal relationship.<sup>10</sup> The need for rationalized medical opinion evidence is particularly important in light of her preexisting left knee condition stemming from a July 8, 2006 accident and arthroscopy in September 2008. Dr. Ceccarelli's October 16, 2009 duty status report, physical therapy request form, and work status note are of limited probative value as they do not give an opinion on the cause of injury.<sup>11</sup> Likewise, his June 16, 2009 note was immaterial as it predated the September 28, 2009 event.<sup>12</sup>

In September 30, 2009 emergency department notes, Dr. Schoen mentioned that appellant's left knee gave out and popped during work on September 28, 2009. He later described in October 1, 2009 records that she was excused from work because she stepped in a pothole and injured her left knee. Nonetheless, Dr. Schoen did not offer fortifying medical rationale in support of causal relationship. In addition, his October 29, 2009 follow-up report failed to address this matter.

Appellant's remaining medical evidence lacked probative weight. Medical opinion, in general, can only be given by a qualified physician.<sup>13</sup> Because the December 10, 2009 duty status report contained an illegible signature, a physician cannot be properly identified.<sup>14</sup> Finally, since nurses are not physicians as defined by the Act,<sup>15</sup> their notes from September 30, 2009 cannot constitute medical opinion.

Appellant argues on appeal that the Office's June 10, 2010 decision was contrary to fact and law. As stated, the medical evidence did not sufficiently explain how the September 28, 2009 employment incident caused or aggravated a left knee condition. In the absence of well-reasoned medical opinion explaining this relationship, appellant failed to meet her burden.<sup>16</sup>

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<sup>9</sup> *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

<sup>10</sup> *T.M.*, Docket No. 08-975 (issued February 6, 2009).

<sup>11</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009). The Board notes that Dr. Ceccarelli's duty status report diagnosed a left medial meniscal tear, which conflicted with Dr. Paranjpe's October 2, 2009 radiological findings. See *M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

<sup>12</sup> See *John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to the diagnosed medical condition).

<sup>13</sup> *Charley V.B. Harley*, 2 ECAB 208, 211 (1949). See also 5 U.S.C. § 8101(2).

<sup>14</sup> *R.M.*, 59 ECAB 690, 693 (2008).

<sup>15</sup> *Roy L. Humphrey*, 57 ECAB 238, 242 (2005).

<sup>16</sup> The Board notes that appellant submitted new evidence to the Office after issuance of the June 1, 2010 decision. The Board lacks jurisdiction to review evidence for the first time on appeal. 20 C.F.R. § 501.2(c). This, however, does not preclude appellant from having such evidence considered by the Office as part of a formal written request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

**CONCLUSION**

The Board finds that appellant did not establish that she sustained a traumatic injury in the performance of duty on September 28, 2009.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 1, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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