

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

A.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Keansburg, NJ, Employer**

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**Docket No. 11-787
Issued: November 2, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 8, 2011 appellant filed a timely appeal from a January 12, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury 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 established that she sustained a knee injury causally related to a September 11, 2010 employment incident.

FACTUAL HISTORY

On September 14, 2010 appellant, then a 57-year-old city carrier, filed a traumatic injury claim alleging that on September 11, 2010 she injured her left knee which she struck against a car door.

¹ 5 U.S.C. § 8101 *et seq.*

In support of her claim, appellant submitted a duty status report (Form CA-17), an authorization for examination and/or treatment (Form CA-15) and an attending physician's form (CA-20), dated September 14, 2010. Each contained an illegible signature.² The CA-17 form released appellant to work on September 14, 2010 with restrictions and noted a diagnosis of left knee trauma with an injury date of September 11, 2010. The CA-16 form noted an injury date of September 11, 2010 and authorized treatment for left knee contusion and bruise.

In the September 14, 2010 CA-20 form, the physician noted that appellant injured her left knee on the door frame of a mail truck while exiting. The physician diagnosed left knee trauma and checked "yes" to the question of whether the diagnosed condition had been caused or aggravated by the employment injury.

In a September 30, 2010 letter, OWCP informed appellant that the evidence of record was insufficient to support her claim. It requested additional medical and factual evidence. Appellant was given 30 days to provide the requested information.

Appellant submitted a September 17, 2010 magnetic resonance imaging scan from Dr. Mary Ann Peterson, an examining Board-certified radiologist, who diagnosed patellofemoral joint chondromalacia degenerative and complex posterior and medial meniscus tear. A September 17, 2010 x-ray report by Dr. Scott D. Boruchov, an examining Board-certified radiologist, noted a normal left knee. Appellant also submitted an unsigned October 19, 2010 report from Orthopaedic, Sports Medicine and Rehabilitation Center, P.A. that diagnosed a left medial meniscus tear. Physical findings were provided as was a history of appellant having several episodes of striking her knee against various objects. Appellant's work duties involved bending and twisting.

By decision dated November 3, 2010, OWCP denied appellant's claim that the employment incident was not established.

On November 10, 2010 appellant requested review of the written record by an OWCP hearing representative.

In a November 16, 2010 report, Ann Cook, a nurse practitioner, reported that appellant injured her left knee on September 11, 2010 on exiting a mail truck. A physical examination revealed positive McMurray's sign and Lachman's maneuver. Ms. Cook diagnosed left knee pain and possible left knee internal derangement as a result of acute trauma.

On January 4, 2011 OWCP received previously submitted medical evidence which appellant advised had been signed by Dr. Detulio.

By decision dated January 12, 2011, an OWCP hearing representative affirmed the denial of appellant's claim as modified. He found that the September 11, 2010 employment incident occurred, as alleged, but that the medical evidence was insufficient to establish a left knee condition as a result of the incident.

² Appellant stated that the signature on the forms is that of Dr. Antony De Tulio, a Board-certified internist.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the 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.⁴ 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.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁶ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁹ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹⁰

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹¹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *C.S.*, Docket No. 08-1585 (issued March 3, 2009).

⁵ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *Bonnie A. Contreras*, *supra* note 4; *B.F.*, Docket No. 09-60 (issued March 17, 2009).

⁷ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁸ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

⁹ *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215 (1997); *P.K.*, Docket No. 08-2551 (issued June 2, 2009).

¹¹ *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006); *Y.J.*, Docket No. 08-1167 (issued October 7, 2008).

compensable employment factors.¹² The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.¹³

ANALYSIS

There is no dispute that appellant struck her left knee on a mail truck door while exiting the vehicle on September 11, 2010. The Board finds, however, that the medical evidence of record is insufficient to establish that the work incident caused a left knee injury.

The medical evidence of record fails to provide a history of injury, a firm medical diagnosis or a physician's opinion explaining how the alleged left knee condition resulted from the accepted September 11, 2010 incident. There is no report by a physician with rationale or explanation of the mechanism of injury arising from the employment incident on September 11, 2010.¹⁴

The only medical evidence with a firm diagnosis are an October 19, 2010 medical report, a September 14, 2010 CA-20 form and a September 14, 2010 CA-17 form. The October 19, 2010 report is without a physician's signature or other proper identification, while the CA-20 and CA-17 forms dated September 14, 2010 contain an illegible signature. The Board has held that a medical report with no indication that the person completing the report qualifies as a physician as defined under 5 U.S.C. § 8102(2) or without proper identification of who provided the signature, does not constitute probative medical evidence.¹⁵ These reports do not contain adequate information to authenticate that a physician completed the reports. They are of no probative value to establish that appellant sustained any injury on September 11, 2010.

Appellant also submitted November 16, 2010 report signed a nurse practitioner diagnosing left knee pain and possible left knee internal derangement as a result of acute trauma. Section 8101(2) of FECA provides, however, that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.¹⁶ As a nurse practitioner

¹² *Michael S. Mina*, 57 ECAB 379 (2006); *J.J.*, Docket No. 09-27 (issued February 10, 2009).

¹³ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁴ See *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *S.D.*, 58 ECAB 713 (2007); *Cecelia M. Corley*, 56 ECAB 662 (2005) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹⁵ *D.D.*, 57 ECAB 734 (2006); *Richard J. Charot*, 43 ECAB 357 (1991); *E.K.*, Docket No. 09-1827 (issued April 21, 2010).

¹⁶ 5 U.S.C. § 8101(2).

is not a physician as defined under FECA, appellant's diagnosis of possible left knee internal derangement does not constitute competent medical opinion.¹⁷

Dr. Peterson's September 17, 2010 MRI scan report stated that testing revealed patellofemoral joint chondromalacia degenerative disease and a complex posterior and medial meniscus tear. Dr. Boruchov's September 17, 2010 x-ray report noted a normal knee. This evidence, however, is insufficient to establish appellant's claim. Dr. Peterson failed to address how the diagnosed conditions were caused or contributed to by the accepted employment incident and Dr. Boruchov found a normal knee.¹⁸

OWCP advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Appellant did not provide a firm diagnosis of her left knee condition or a medical opinion that sufficiently described or explained how the September 11, 2010 employment-related event caused an injury. As she has failed to submit any probative medical evidence establishing that she sustained an injury in the performance of duty, OWCP properly denied her claim for compensation.

The Board notes, however, that the employing establishment issued a Form CA-16. A properly executed CA-16 form creates a contractual obligation, which does not involve the employee directly to pay the cost of the examination or treatment regardless of the action on the claim.¹⁹ On return of the case record, OWCP should adjudicate, if it has not yet been adjudicated, as to whether appellant should be reimbursed for any incurred medical expenses.²⁰

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.

CONCLUSION

The Board finds that the medical evidence is not sufficient to establish an injury in the performance of duty on September 11, 2010.

¹⁷ See *L.D.*, 59 ECAB 648 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *B.B.*, (Docket No. 09-1858 (issued April 16, 2010)).

¹⁸ See *J.M.*, 58 ECAB 303 (2007); *Ellen L. Noble*, 55 ECAB 530 (2004).

¹⁹ See *Elaine M. Kreyborg*, 41 ECAB 256 (1989).

²⁰ *S.S.*, Docket No. 11-0354 (issued September 6, 2011).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 12, 2011 is affirmed.

Issued: November 2, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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