

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

C.H., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Malden, MA, Employer

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**Docket No. 11-261
Issued: September 12, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 10, 2010 appellant filed a timely appeal of an August 17, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on February 10, 2010, as alleged.

FACTUAL HISTORY

On February 12, 2010 appellant then a 40-year-old mail carrier, filed a traumatic injury claim alleging that she injured her left knee on February 10, 2010 while performing her job duties. She submitted form and narrative reports from Dr. Yesoda N. Rao, a Board-certified

¹ 5 U.S.C. § 8101 *et seq.*

internist, dated February 12, 2010 diagnosing left knee pain and reporting that she fell at work two weeks previously. Appellant underwent a left knee x-ray on February 12, 2010 which was negative.

In a report dated February 26, 2010, Dr. John H. Chaglassian, a Board-certified orthopedic surgeon, noted that appellant experienced left knee pain beginning on February 10, 2010 at work and diagnosed sprain left knee, torn meniscus, chondromalacia patella and possible loss body. He completed a form report on March 2, 2010 and repeated his findings and conclusions. Dr. Chaglassian did not provide an opinion as to whether appellant's condition was caused by her employment.

Dr. Rao completed a form report on March 8, 2010 and diagnosed left knee pain and again stated that appellant remembered falling approximately two weeks before she developed knee pain on February 10, 2010 while covering for someone at work. She stated that appellant's left knee pain "could have been" caused by her employment activity.

A magnetic resonance imaging scan dated March 10, 2010 demonstrated a complex tear of the medial meniscus, parameniscal cysts, possible tear of the lateral meniscus, Baker's cyst, effusion and chondromalacia patella. Dr. Chaglassian examined appellant and recommended arthroscopic knee surgery.

In a letter dated March 19, 2010, OWCP informed appellant that additional medical evidence was needed to support her claim. It allowed 30 days for a response. In a report dated March 23, 2010, Dr. Chaglassian stated that appellant reported no knee symptoms until February 10, 2010 while at work she developed swelling and pain in her left knee. He stated that her condition could not have been present for a long time as such complex tears will cause significant symptoms. Dr. Chaglassian stated that a meniscus could tear without a fall and as a result of tripping or twisting the knee, as the result of squatting, kneeling or attempting to stand from such a position. He explained that if the femur and the tibia pivot against each other the meniscus can tear noting that the meniscus was vulnerable as it was soft, between two bones and responsible for absorbing "a fair amount" of energy and could tear with a shearing force during a simple mechanism of injury. Dr. Chaglassian opined, "Based on the history given, the absence of preexisting symptoms prior to February 10, 2010 it is my opinion with a reasonable degree of medical certainty that the left knee symptoms of [appellant] are causally related to an injury which occurred while at work."

Dr. Chaglassian completed a form report on March 10, 2010 and noted that appellant reported left knee on February 10, 2010. He diagnosed torn meniscus and internal derangement of the left knee and indicated with a checkmark "yes" that appellant's condition was related to her employment activity.

In a narrative statement dated March 24, 2010, appellant stated that her left knee injury occurred on February 10, 2010 while setting up her route. She noticed stiffness in her knee which she believed would resolve, but the stiffness turned to pain during the delivery of her route. Appellant denied reporting a fall during late January or February 2010 and stated that she remembered responding to Dr. Rao's queries about a fall by stating that she last fell months before the initial examination by Dr. Rao.

By decision dated April 29, 2010, OWCP denied appellant's claim finding that she failed to submit any rationalized medical opinion evidence establishing that her left knee injury occurred in the performance of duty on February 10, 2010 as alleged.

Appellant requested a review of the written record on May 19 and 24, 2010. Dr. Chaglassian completed a form report on April 22, 2010 and diagnosed internal derangement and tear of the lateral meniscus. He checked "yes" to indicate that appellant's condition was due to her employment activity. Dr. Chaglassian performed an arthroscopy of the left knee with partial medial and lateral meniscectomy, debridement chondroplasty of the medial compartment and patellofemoral joint on April 7, 2010. In this report, he stated that appellant fell in February 2010 resulting in symptoms of pain, swelling and limitation of motion.

By decision dated August 17, 2010, OWCP's hearing representative affirmed OWCP's April 29, 2010 decision finding that Dr. Chaglassian's reports were not sufficient to meet appellant's burden of proof.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."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. First the employee must submit sufficient evidence to establish that he and she actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit

² *Id.*

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ 20 C.F.R. § 10.5(ee).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.⁷

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.⁸ Medical rationale 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 activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.⁹

ANALYSIS

Appellant filed a claim for a traumatic injury occurring on February 10, 2010. She stated that her knee began to hurt and swell during the course of her work activities on this date. However, appellant also submitted medical reports from Dr. Rao which included a history of a fall a few weeks before February 10, 2010. She has denied that she fell and indicated that Dr. Rao asked when she last fell and confused her statements. Dr. Chaglassian also included a history of a fall in his April 7, 2010 operative report. OWCP did not deny appellant's claim on the grounds that there was an inconsistent history of injury based on the two divergent statements regarding how the injury occurred. Instead, it found that there was insufficient rationalized medical opinion evidence to establish that appellant's implicated regular job duties were sufficient to result in the diagnosed condition.

The Board finds that appellant has clearly stated that she believed that her left knee condition arose on February 10, 2010 while she was performing her regular duties and that she did not recall a fall or reporting a fall in either January or February 2010, which caused or contributed to her knee condition. The Board finds that the weight of the evidence establishes that the employment incident occurred as alleged, through the course of appellant's regular job duties on February 10, 2010.

In regard to the medical evidence, the Board finds that Dr. Chaglassian has submitted evidence supporting that appellant's regular mail carrier duties of walking while carrying mail were sufficient to result in the diagnosed conditions. Dr. Chaglassian clearly opined in his March 23, 2010 report that he believed that her left knee conditions occurred on February 10, 2010 during the course of her regular duties. He stated that a meniscal tear could result from a trip, a twist or from squatting or kneeling and then standing. Dr. Chaglassian explained the forces exerted on menisci and the vulnerability of soft tissue between two bones. While this

⁷ *J.Z.*, 58 ECAB 529 (2007).

⁸ *T.F.*, 58 ECAB 128 (2006).

⁹ *A.D.*, 58 ECAB 149 (2006).

report is not sufficient to meet appellant's burden of proof to establish her claim, is sufficient to require OWCP to further develop the medical evidence and the case record.¹⁰

On remand, OWCP should develop a statement of accepted facts and list of specific questions and refer appellant to an appropriate physician to determine if her normal work activities on February 10, 2010 were sufficient to result in the diagnosed meniscal tear. After this and such other development as OWCP deems necessary, OWCP should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision and requires additional development of the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the August 17, 2010 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: September 12, 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

¹⁰ See also *Virginia Richard (Lionel F. Richard)*, 53 ECAB 430 (2002); *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989); *E.J.*, Docket No. 09-1481 (issued February 19, 2010).