



## **FACTUAL HISTORY**

On October 7, 2010 appellant, then a 57-year-old modified carrier, filed an occupational disease claim alleging that on July 12, 2010 he was walking down a flight of stairs when his right knee buckled. He caught his balance to prevent himself from falling. Appellant realized that his condition was caused or aggravated by his employment on September 21, 2010 when a torn medial meniscus in his right knee was diagnosed. He advised that he was not sure if his condition was related to a November 14, 1998 injury and his right knee was always in pain. Appellant did not stop work.

In a September 21, 2010 report, Dr. Paul J. Papanek, a Board-certified family practitioner, noted that appellant had several claims, including one for a November 14, 1998 injury which included the right knee. Appellant reported right knee swelling for the previous 12 years with a constant and sharp right knee pain and swelling for about two weeks. He denied any new injuries. Dr. Papanek noted that a right knee magnetic resonance imaging (MRI) scan on August 19, 2010 revealed a horizontal tear of the lateral meniscus anterior horn and body. He also diagnosed osteoarthritis of the knee.

In an October 6, 2010 statement, appellant reiterated how the July 12, 2010 incident occurred. He advised that he was off the next day and iced his leg and took some pain medication. Appellant noted that he had right knee pain from a prior injury on November 14, 1998. He advised that his physician diagnosed a torn meniscus, which he alleged occurred on July 12, 2010.

After OWCP requested, additional evidence, appellant provided a December 1, 2010 statement describing his injury. Appellant noted that he had prior problems with his right knee due to over compensating with his weight to his right leg. He walked with a cane since his November 14, 1998 injury to his left Achilles tendon. Appellant explained after receiving his MRI scan results, he confirmed that his injury, a medial meniscus tear, was a new injury on July 12, 2010, when his knee buckled. In a December 3, 2010 statement, Harold Provost, a maintenance engineer, confirmed that he witnessed appellant's July 12, 2010 injury at work. He walked with appellant down the stairs when his leg buckled. Mr. Provost indicated that appellant appeared to be in pain.

In a December 22, 2010 decision, OWCP denied the claim finding that appellant did not submit sufficient medical evidence in connection with the claimed injury.

On January 4, 2011 appellant requested reconsideration. He repeated his history of injury and advised OWCP that additional medical evidence was forthcoming. Appellant explained that, when he initially saw Dr. Papanek on July 27, 2010, he thought his condition was due to his November 14, 1998 injury. After his MRI scan, he realized that it was a new injury.

In a January 4, 2011 report, Dr. Papanek noted that appellant's case was complex as he had a previous November 14, 1998 claim that involved the right knee as well as left Achilles rupture and left plantar fascia. The right knee had a history of swelling on and off for 12 years and appellant had permanent work restrictions since 2002 that included walking and standing limited to 20 minutes an hour. Dr. Papanek explained that appellant wanted to amend his history

to note that, while descending stairs at work, his right knee buckled and he hyperextended it on July 12, 2010. Appellant initially thought his condition was due to the previous knee injury but the August 19, 2010 MRI scan revealed a horizontal tear of the lateral meniscus anterior horn and body. Dr. Papanek explained that the new finding of a meniscus tear was different from appellant's previous injury and opined that "it would be difficult to prove as an industrial injury." He stated "[I] CANNOT conclude that the current knee problem is the result [of the] industrial injury in 1998, but I also cannot rule out that possibility and would defer to [OWCP] as to whether they would accept [appellant's] current knee condition under the previous one." Dr. Papanek diagnosed osteoarthritis of the knee, trigger finger, carpal tunnel syndrome and tear of the right knee, lateral meniscus. He opined that "causation is a very difficult question." Dr. Papanek was "unable to resolve issues of the inconsistencies in [appellant's] previous history, since he denied any new injury to the right knee at the time of the visit with me on July 27, 2010." He noted that, while it was possible appellant overlooked important parts of his history, "the reliability of his history is plainly quite poor."

In a January 18, 2011 report, Dr. Yu Fon Lee, a Board-certified orthopedic surgeon and associate of Dr. Papanek, diagnosed osteoarthritis of the right knee and "meniscal tear-degenerative lateral." He noted that appellant had worsening right knee pain and intermittent swelling worsened by a slip on the stairs at work on July 12, 2010. Dr. Lee advised that the August 2010 MRI scan revealed a lateral meniscal tear.

In a February 1, 2011 report, Dr. Papanek noted that appellant had experienced right knee swelling for the past 12 years. He advised that on July 12, 2010 appellant related:

"[H]is knee had been bothering him more for about two weeks, but denied any new injuries to the right knee. Then, at a subsequent visit, [appellant] 'recalled' that he had in fact hurt his knee on July 12, 2010. He was descending the stairs while at work on July 12, 2010 and says that the right knee buckled and hyperextended. [Appellant] completed the shift despite the right knee pain. Over the next few days his knee swelled and he was unable to walk and then made an appointment to see me two weeks later."

Dr. Papanek opined that "the history of a new injury was inconsistent and that it was very difficult for [him] to sort out the issues of causation." He explained that "it was possible that [appellant] sustained a new injury to the right knee on July 12, 2011. There was NO evidence that any of his previous work[ers'] comp[ensation] claims would explain the current right knee problems." Dr. Papanek advised that appellant would have arthroscopic right knee surgery on March 16, 2011 and require about three to six weeks of total disability and four to six months of modified duty.

In an April 7, 2011 decision, OWCP denied the claim finding that the medical evidence was insufficient to establish causal relationship. It adjudicated the claim as a traumatic injury on July 12, 2010.

On April 19, 2011 OWCP received a January 4, 2011 industrial work status report from Dr. Papanek, who diagnosed osteoarthritis of the knee and a current tear of the lateral meniscus in the knee. Dr. Papanek advised that appellant continue his previous restrictions due to three

separate workers' compensation claims. He submitted additional reports continuing the restrictions on February 1 and May 10, 2011.

Appellant requested reconsideration on May 20, 2011. He repeated his history and noted that Dr. Papanek was aware of how he injured himself. Appellant noted that he had a witness and explained the delay in reporting was due to management's failure to cooperate.

In a March 22, 2011 report, Dr. Papanek repeated his explanation that on July 12, 2010, appellant related that "his knee had been bothering him more for about two weeks, but denied any new injuries to the right knee. Then, at a subsequent visit, [appellant] 'recalled' that he had in fact hurt his knee on July 12, 2010 and says that the right knee buckled and hyperextended. [Appellant] completed the shift despite the right knee pain. Over the next few days his knee swelled and he was unable to walk and then made an appointment to see me two weeks later."

In a May 10, 2011 report, Dr. Papanek noted appellant's case was complex due to his previous claims. He again reviewed his notes from January 4 to February 1, 2011. Dr. Papanek noted:

"[Appellant was] sure that he tore his meniscus at work on July 12, 2010, but as I previously related my concurrent notes indicate (sic) conflicting histories and I have not been able to conclude to a medical certainty that the episode of July 12, 2010 likely was the cause of his current meniscal tear. Please note that I am not saying that it would be impossible for the meniscal tear to have happened on that date—merely that given the conflicting histories and the concurrent examinations I am not able to conclude to a medical certainty that there was a work injury producing a meniscal tear on July 12, 2010."

In a June 14, 2011 report, Dr. Papanek repeated his previous opinion about the claim and stated that appellant had an episode of minor trauma to the right knee on July 12, 2010. In a July 12, 2011 report, he noted appellant's history and repeated his diagnoses. OWCP also received a report of diagnostic testing as well as previously submitted reports and progress notes from an occupational therapist.

By decision dated August 11, 2011, OWCP denied modification of the prior decision. It found that Dr. Papanek was unable to conclude that the episode on July 12, 2011 was the cause of his current meniscal tear.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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 FECA, 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 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 upon a traumatic injury or an occupational disease.<sup>4</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>5</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>6</sup>

### ANALYSIS

Appellant has established that on July 12, 2010 he was walking down a flight of stairs when he had to catch himself to prevent from falling. The issue, therefore, is whether the medical evidence establishes that this employment activity caused or contributed to any diagnosed condition. Appellant has submitted insufficient medical evidence to establish that his right knee meniscal tear was caused or aggravated by specific factors of his federal employment.

Appellant submitted several reports from his treating physician Dr. Papanek. However, he was unable to provide an unequivocal opinion that the meniscal tear was work related. On September 21, 2010 Dr. Papanek noted that appellant reported right knee pain and swelling for about two weeks and that he denied any new injuries. On January 4, 2011 he noted that appellant wanted to amend his history and asserted that his right knee symptoms were due to the July 12, 2010 work incident. Dr. Papanek asserted that appellant's condition "would be difficult to prove as an industrial injury." He opined that "causation is a very difficult question" as he was "unable to resolve issues of the inconsistencies" in appellant's history noting that he denied any new injury to the right knee when he saw appellant on July 27, 2010. Dr. Papanek noted that, while it was possible appellant overlooked important parts of his history, "the reliability of his history is plainly quite poor." In subsequent reports, he continued to note that appellant had provided an inconsistent history and that he could not state with medical certainty that appellant's right knee condition was caused or aggravated by the July 12, 2010 work incident.

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<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>6</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 4.

At best, Dr. Papanek provides only speculative support for causal relationship.<sup>7</sup> Because he was unable to provide an unequivocal opinion explaining the reasons why walking on steps on July 12, 2010 caused or aggravated a right knee condition, his reports are of limited probative value and insufficient to establish appellant's claim.

In a January 18, 2011 report, Dr. Lee diagnosed osteoarthritis of the right knee and "meniscal tear-degenerative lateral." He noted that appellant had worsening right knee pain and intermittent swelling worsened by a slip on the stairs at work on July 12, 2010 diagnosed lateral meniscal tear. The Board notes that Dr. Lee did not explain how he arrived at this conclusion. This is especially important in light of appellant's complex medical history. A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>8</sup>

Appellant also submitted several other reports and diagnostic reports. However, these reports are insufficient because they did not provide an opinion on the causal relationship. Therefore, these reports have no probative value in establishing causal relationship.<sup>9</sup>

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>10</sup> Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>11</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

As there is no probative, rationalized medical evidence addressing and explaining why appellant's right knee meniscal tear was caused and/or aggravated by factors of his employment, he has not met his burden of proof in establishing that he sustained a medical condition in the performance of duty causally related to factors of employment.

Appellant may submit evidence or argument with a written request for reconsideration 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 appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

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<sup>7</sup> See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

<sup>8</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980).

<sup>9</sup> See *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>10</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>11</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 11, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2012  
Washington, DC

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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