



treated it with ice and elevation and missed several days of work. He noted that when he returned to work on January 26, 2011, his knee felt pretty good but that half way through his route the pain was back and that he could barely walk by the end of the day.

In a January 27, 2011 report, Dr. Jessica Novotny, a Board-certified internist, noted that she treated appellant on January 20, 2011 with complaints of bilateral knee pain, left worst than right. She noted that x-rays taken at this time were largely unremarkable. Dr. Novotny assessed appellant with left knee pain. She noted concern for meniscal tear *versus* ligament tear laterally, and ordered a magnetic resonance imaging (MRI) scan. In the requested January 27, 2011 MRI scan report, Dr. Kimberly Apker, a Board-certified radiologist, noted: (1) mild nonspecific lateral soft tissue edema; (2) old lateral patellar retinaculum surgical release or injury; (3) mild medial and patellofemoral compartment degenerative disease; (4) two small ganglions; (5) small joint effusion; and (6) nonspecific edema with Hoff's fat pad. In a January 31, 2011 report, Dr. Novotny diagnosed joint effusion.

In a February 8, 2011 progress report, Dr. Miguel Daccarett, an orthopedic surgeon, noted that appellant had a history of right knee anterior cruciate ligament reconstruction, but had been asymptomatic until January 15, 2011 when he started having pain on the back of his left knee. He noted that appellant was completely asymptomatic from the knee at this point, except that the back of his knee was a little tender on palpitation, but noted that it is much better now than it was two weeks ago. Dr. Daccarett noted that the MRI scan showed remaining sign of a Baker's cyst that probably was broken two weeks ago, a myeloma specific lateral soft tissue edema over the lateral patellar retinaculum surgical release or injury and a very small joint effusion. He ordered an x-ray which was performed on the same date. In a February 8, 2011 report of an x-ray of appellant's bilateral knees, Dr. Mary Kay Drake, a Board-certified radiologist, noted mild left and moderate right patellofemoral degenerative disc disease with no evidence of subluxation.

Appellant also submitted reports by his physical therapist.

In a decision dated April 4, 2011, OWCP denied appellant's claim as the medical evidence did not demonstrate that the claimed medical condition was related to the established work-related factors.

### **LEGAL PRECEDENT**

An employee seeking compensation under FECA<sup>2</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,<sup>3</sup> including that he is an "employee" within the meaning of FECA<sup>4</sup> and that he filed his claim within the applicable time limitation.<sup>5</sup> The employee must also establish that he sustained an

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<sup>2</sup> *Id.* at §§ 8101-8193.

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

<sup>4</sup> *See M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *See* 5 U.S.C. § 8101(1).

<sup>5</sup> *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.<sup>6</sup> 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.<sup>7</sup>

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>8</sup>

Causal relationship is a medical issue<sup>9</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>10</sup> must be one of reasonable medical certainty,<sup>11</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>12</sup>

### ANALYSIS

OWCP denied appellant's claim as it found that although he established the employment factors, the medical evidence was insufficient to establish a causal relationship between the accepted factors of employment and his medical condition. The medical evidence of record is not sufficient to establish causal relationship. The diagnostic tests by Dr. Drake and Dr. Apker do not address causal relationship. Dr. Novotny assessed appellant with left knee pain. However, the Board has held that a diagnosis of pain does not constitute a basis of payment for compensation as pain is considered to be a symptom rather than a specific diagnosis.<sup>13</sup> Furthermore, Dr. Novotny never linked appellant's knee pain to accepted factors of his federal employment. Dr. Daccarett also did not provide any statement that there was a causal relationship between the duties of appellant's federal employment and his knee injury.

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<sup>6</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>7</sup> See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>8</sup> See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>9</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>10</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>11</sup> See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>12</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>13</sup> *M.D.*, Docket No. 10-39 (issued September 2, 2010); *Robert Broome*, 55 ECAB 339 (2004).

Furthermore, the reports from appellant's physical therapist do not constitute probative medical evidence as a physical therapist is not defined as a physician under FECA.<sup>14</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was caused by his employment or that it was an aggravation of a prior employment injury is sufficient to establish causal relationship.<sup>15</sup> As appellant has not submitted medical evidence establishing a causal relationship between his federal employment and the medical condition in his knee, OWCP properly denied his claim.

The Board notes that appellant submitted medical evidence after the issuance of OWCP's decision on April 4, 2011. However, evidence submitted by him after the final decision cannot be considered by the Board as the Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its decision.<sup>16</sup> 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 appellant has not established that he sustained an injury to his knees causally related to his federal employment.

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<sup>14</sup> *F.R.*, Docket No. 09-575 (issued January 4, 2010); *see also* 5 U.S.C. § 810(2) which provides the definition of a "physician" under FECA.

<sup>15</sup> *M.P.*, Docket No. 11-1194 (issued February 23, 2012); *Walter D. Morehead*, 31 ECAB 188 (1986).

<sup>16</sup> 20 C.F.R. § 501.2(c)(1).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 4, 2011 is affirmed.

Issued: May 9, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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