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

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| **A.J., Appellant** | ) | |
| **and** | ) | **Docket No. 12-548** |
| | ) | **Issued: November 16, 2012** |
| **U.S. POSTAL SERVICE, POST OFFICE, Charlotte, NC, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

### ***JURISDICTION***

On January 20, 2012 appellant filed a timely appeal from an August 17, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

### ***ISSUE***

The issue is whether appellant met his burden of proof to establish that he sustained a right knee injury in the performance of duty on June 28, 2011.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its August 17, 2011 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

## ***FACTUAL HISTORY***

On June 28, 2011 appellant, then a 58-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right knee injury on that same date when he was walking up the stairs (three steps) to a residence and felt his right knee tighten up as he approached the top step. He stated that when he went up to the next step his knee began to tighten up even more. Appellant reported that the incident happened at 11:35 a.m. while delivering mail and informed his supervisor at 11:40 a.m. on that same date. He first received medical care on June 28, 2011. On the reverse of the claim form, appellant's supervisor noted that appellant's injury occurred in the performance of duty, but also noted that it was not a job-related incident because "no debris or loose [particles] found in walking path, steps evenly in height and alignment, all steps secured in place."

By letter dated June 30, 2011, Jesse L. Flowers, a USPS investigator, reported that he investigated the residence where appellant alleged to have injured himself at 11:45 a.m. on June 28, 2011, immediately after the incident. He noted that appellant stated that his right knee almost gave out as he got to the top of the stairs. Mr. Flowers stated that inspection of the area showed three steps which were intact, aligned and secure, and that all bricks and stones were cemented in place. He further stated that appellant's shoes did meet USPS safety regulations.

By letter dated July 1, 2011, the employing establishment controverted the claim stating that the investigation did not show any deterioration or obstruction on the steps on which appellant allegedly injured himself.

On July 1, 2011 the employing establishment issued a Form CA-16 authorizing the North Cross Medical Center to furnish appellant medical treatment for his right knee injury.

In two narrative statements dated July 28, 2011, appellant reported that, while delivering mail, his right knee almost gave out on him as he reached the top of the stairs. He stated that his foot slipped on a piece of slate that had broken loose from the top of the stairs which was part of the slated rock from the stairs. Appellant reported that as he tried to go down the stairs his knee felt like it wanted to give out again. As he tried to walk, his right knee became stiffer. Appellant stated that Mr. Flowers found no problems with the stairs and porch. He reported, however, that there were loose slates on the stairs and the top of the porch which had begun to chip away and break in plates. Appellant stated that he had no prior injuries to his right knee.

By letter dated July 8, 2011, OWCP informed appellant that the evidence received was insufficient to support his claim. It requested additional factual and medical evidence and asked that he respond to the provided questions within 30 days.

In duty status reports (Form CA-17) dated June 28 to August 2, 2011, Dr. Mark T. Le, Board-certified in internal medicine, reported that, on June 28, 2011, appellant walked up three steps and felt his right leg tighten around the knee cap when he reached the top of the stairs. He noted knee pain and weakness and diagnosed trauma to the knee. Dr. Le stated that the diagnosis was due to the employment injury and restricted appellant from returning to work until August 3, 2011 under modified duty.

In an attending physician's report, Dr. Le stated that appellant's right knee hurt when standing for too long and gave out from the June 28, 2011 injury. He noted weakness in the meniscus and tendon and diagnosed torn meniscus. Dr. Le recommended a magnetic resonance imaging (MRI) scan to confirm the diagnosis. He checked the box marked "yes" when asked if the condition was caused or aggravated by the employment activity.

In a July 19, 2011 unsigned draft medical report from Northcross Medical Center, it was noted that appellant hurt his knee and "remembered that when he stepped off the truck it hurts more." It was also reported that appellant "accounted for the fact that there were some steps that were not well built and he had to put pressure and stress on it" and that he had this problem since June 28, 2011. An MRI scan was recommended and a diagnosis of trauma to the knee and ligament tear was noted.

By decision dated August 17, 2011, OWCP denied appellant's claim finding that the evidence did not establish that the incident occurred as alleged. It also noted that appellant failed to establish a diagnosed medical condition causally related to the alleged employment incident.

## ***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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are 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 on a traumatic injury or occupational disease.[4]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[5] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he or she sustained an injury in the performance of duty he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.[6] Once an employee establishes

[3] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Elaine Pendleton*, *supra* note 3.

[6] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation is causally related to the accepted injury.[7]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[8]

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[9] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[10]

## ***ANALYSIS***

The Board finds that appellant failed to establish that he sustained a right knee injury in the performance of duty on June 28, 2011.

Appellant must establish all of the elements of his claim in order to prevail. He must prove his employment, the time, place and manner of injury, a resulting personal injury and that his injury arose in the performance of duty. In its August 17, 2011 decision, OWCP found that appellant did not establish that the incident occurred at the time, place and in the manner alleged. The Board finds, however, that the evidence of record is sufficient to establish that appellant experienced knee tightening as he climbed up and down stairs while delivering mail on June 28, 2011.

Appellant alleged that he injured his right knee at work on June 28, 2011 when he was walking up three steps and he felt his knee tighten as he approached and then as he reached the top step. He has also explained that his knee tightened up again as he walked down the stairs.

[7] *Supra* note 4.

[8] *Betty J. Smith*, 54 ECAB 174 (2002).

[9] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[10] *James Mack*, 43 ECAB 321 (1991).

The duty status reports from Dr. Le are consistent in noting that appellant felt his knee tighten after he walked up three steps. Further, appellant sought medical treatment and timely filed his claim on the same date as the incident. The employing establishment controverted the claim and sent Mr. Flowers to investigate the premises where appellant alleged to have injured himself. Mr. Flowers stated that there were three steps which were intact, aligned and secure, and that all of the bricks and stones were cemented in place. Appellant later submitted a July 28, 2011 narrative statement where he reported that his right knee almost gave out as he got to the top of the steps because his foot slipped on a piece of slate that had broken loose. Despite this, his subsequent statement that there was a loose piece of slate does not cast such inconsistencies as to cast doubt that appellant did in fact climb the stairs while delivering mail. Though Mr. Flower's report states that the stones and bricks were secure with no obstructions on the steps, appellant has consistently stated that his right knee gave out when he was climbing the steps. A loose piece of slate could have been present at the time appellant climbed the steps, which was not visable during the subsequent investigation. Whether there was an obstruction present or not, this does not preclude the fact that appellant could have injured his right knee from the act of climbing the stairs. The fact that appellant later mentioned stepping on a piece of loose slate does not, by itself justify OWCP's finding that the June 28, 2011 incident, namely that appellant's right knee gave out while walking up the stairs, did not occur as alleged.[11]

The Board notes that OWCP also based its fact of injury denial on an unsigned July 19, 2011 draft of a medical report. The draft report noted that appellant complained of knee pain and "remembered that when he stepped off the truck it hurts more." This statement is equivocal as it can be read to mean that appellant felt pain stepping off a truck after the June 28, 2011 employment incident had already occurred. The draft goes on to state that appellant "accounted for the fact that there were some steps that were not well built and he had to put pressure and stress on it" and that he had this problem since June 28, 2011.

Given that appellant has established that he felt his knee give out while climbing up and down stairs while delivering mail on June 28, 2011, the question becomes whether this incident caused him an injury. In duty status reports and attending physician report forms dated June 28 to August 2, 2011, Dr. Le reported that on June 28, 2011, appellant walked up three steps and felt his right leg tighten around the knee cap when he reached the top. He noted weakness in the meniscus and tendon and diagnosed torn meniscus. Dr. Le recommended an MRI scan to confirm his diagnosis and checked the box marked "yes" when asked if the condition was caused or aggravated by the employment activity.

The Board finds that the opinion of Dr. Le is not well rationalized. Dr. Le did not provide any detail regarding appellant's medical condition. His diagnosis of torn meniscus is speculative and has not been substantiated with diagnostic testing. Further, Dr. Le failed to provide any examination findings regarding appellant's right knee injury to establish a firm medical diagnosis. Though he concluded, by check mark, that causal connection exists between appellant's condition and the June 28, 2011 employment incident, the medical forms provide no support for that conclusion. Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.

[11] *See Willie J. Clements*, 43 ECAB 244 (1991).

Rationalized medical opinion evidence is medical evidence which provides a physician's medical explanation as to how the employment incident would have physiologically caused the diagnosed condition. The opinion of the physician must be based on a complete factual and medical background of the employee and must be one of reasonable medical certainty.[12] The Board has held that an opinion on causal relationship, which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition or disability was related to the history, is of diminished probative value.[13]

Dr. Le's medical notes do not constitute probative medical evidence because they fail to provide a clear diagnosis and do not adequately explain, with medical rationale, the cause of appellant's injury.[14]

An award of compensation may not be based on surmise, conjecture or speculation.[15] To establish causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment alleged to have caused his condition and, taking these factors into consideration, as well as findings upon examination and appellant's medical history, explain how these employment factors caused or aggravated any diagnosed condition, and present medical rationale in support of his opinion.[16] Where an appellant fails to submit such medical evidence, he or she has not established that the injury occurred as alleged.[17]

In the instant case, the record is without rationalized medical evidence establishing a causal relationship between the June 28, 2011 employment incident and appellant's alleged right knee injury. Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

Although OWCP denied appellant's claim of injury, it did not adjudicate the issue of whether he should be reimbursed for incurred medical expenses. The employing establishment authorized treatment with a CA-16 form on July 1, 2011. 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 taken on the claim.[18] OWCP did not address this issue in its decision.

[12] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 6.

[13] *Lucrecia M. Nelson*, 42 ECAB 583, 594 (1991).

[14] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[15] *D.D.*, 57 ECAB 734 (2006).

[16] *See Robert Broome*, 55 ECAB 339 (2004).

[17] *Tracey P. Spillane*, 54 ECAB 608 (2003); 5 U.S.C. § 8101(5).

[18] *See M.M.*, Docket No. 11-1544 (issued March 12, 2012); *Elaine M. Kreymborg*, 41 ECAB 256 (1989).

## ***CONCLUSION***

The Board finds that appellant did not meet his burden of proof to establish that he sustained a right knee injury causally related to the accepted June 28, 2011 employment incident.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the August 17, 2011 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: November 16, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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