

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

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V.T., Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
VETERANS ADMINISTRATION MEDICAL )  
CENTER, Dublin, GA, Employer )

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**Docket No. 12-1090  
Issued: October 11, 2012**

*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 April 23, 2012 appellant filed a timely appeal from a January 17, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained a right knee condition causally related to the November 28, 2011 employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence following the January 17, 2012 merit decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

## **FACTUAL HISTORY**

On December 9, 2011 appellant, then a 45-year-old food service worker, filed a traumatic injury claim alleging that on November 28, 2011 she slammed her knee into the food cart when the wheels of a large food carrier cart she was pushing got caught on the elevator. She stated that she pulled and irritated her knee. The employing establishment controverted appellant's claim alleging that an investigation of the incident did not support her statements.

By letter dated December 16, 2011, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested her to provide specific details regarding the alleged November 28, 2011 incident and a medical report, which included a history of injury, examination findings, a firm medical diagnosis and a physician's opinion with medical rationale explaining how the alleged November 28, 2011 incident caused or aggravated her medical condition.

In a December 1, 2011 report, Dr. Jeremy Heath Richter, a Board-certified orthopedic surgeon, stated that appellant sustained a reinjury to her knee on Monday when she pushed a food cart onto the elevator and the wheel got stuck causing her to twist her knee. Appellant described her knee pain as moderate to severe. Upon examination, Dr. Richter observed mild swelling over the right knee, pain with range of motion, mild effusion and mild crepitus with range of motion. Appellant's knee was grossly stable and no lesions were noted. X-rays also revealed moderate-to-severe degenerative joint disease with no evidence of fracture or dislocation. Dr. Richter diagnosed right knee sprain and degenerative joint disease.

In a December 1, 2011 x-ray report, Dr. Richter observed moderate-to-severe degenerative joint disease with no evidence of fracture or dislocation.

Appellant provided an illegible December 4, 2011 prescription note from an unknown provider.

In a December 27, 2011 evaluation note, Anita Smith, an orthotist, examined appellant and observed mild swelling, pain with range of motion and mild effusion.

In a decision dated January 17, 2012, OWCP denied appellant's claim finding insufficient evidence to establish that she sustained a right knee injury in the performance of duty. It accepted that the November 28, 2011 incident occurred as alleged and that she had a diagnosed knee condition, but it denied her claim on the grounds of insufficient medical establishing that her right knee condition was causally related to the November 28, 2011 employment incident.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative and substantial evidence<sup>3</sup> including that she sustained an injury in the performance of duty and that any specific condition

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<sup>3</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

or disability for work for which she claims compensation is causally related to that employment injury.<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.<sup>5</sup> There are two components involved in establishing the 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.<sup>6</sup> Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup> An employee may establish that the employment incident occurred as alleged but fail to show that her disability or condition relates to the employment incident.<sup>8</sup>

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.<sup>9</sup> 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.<sup>10</sup> The weight of the 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.<sup>11</sup>

### ANALYSIS

OWCP accepted that on November 28, 2011 appellant struck her right knee on a food cart when its wheels got stuck on the elevator at work but found that the medical evidence failed to establish that her diagnosed right knee condition was causally related to the November 28, 2011 incident. The Board finds that she has failed to provide sufficient medical evidence demonstrating that she sustained a right knee condition as a result of the November 28, 2011 employment incident.

Appellant submitted medical reports by Dr. Richter who related that she sustained a reinjury to her knee when a food cart she was pushing onto the elevator got stuck and she struck

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<sup>4</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>6</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>7</sup> *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

<sup>9</sup> *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>10</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>11</sup> *James Mack*, 43 ECAB 321 (1991).

her knee against it. Dr. Richter conducted an examination and observed mild swelling over the right knee, pain with range of motion, mild effusion and mild crepitus with range of motion. X-rays also revealed moderate-to-severe degenerative joint disease but no evidence of fracture or dislocation. Dr. Richter diagnosed right knee sprain and degenerative joint disease. Although he provided an accurate history of injury and diagnoses of appellant's knee condition, he did not provide a medical explanation as to how physiologically the accepted incident caused appellant's right knee sprain or contributed to her diagnosed degenerative joint disease. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>12</sup> A rationalized medical opinion explaining how appellant's right knee condition resulted from the November 28, 2011 employment incident is especially warranted in this case because the evidence also supports that she suffers from preexisting right knee degenerative joint disease. Dr. Richter does not relate how striking her knee against a food cart caused or aggravated her right knee condition. Thus, the Board finds that his reports fail to establish appellant's claim.

The additional medical evidence is likewise insufficient to establish appellant's claim. Appellant submitted an evaluation note from Anita Smith, but she is not a physician as defined under FECA. The Board has held that a medical report may not be considered probative medical evidence if the person completing the report does not qualify as a physician under FECA.<sup>13</sup> Likewise, the December 4, 2011 prescription note lacks probative value because the ineligible signature lacks proper identification.<sup>14</sup> Thus, the Board finds that appellant has not submitted sufficient medical evidence to establish her claim.

On appeal, appellant again describes the November 28, 2011 employment incident. OWCP, however, has accepted that the November 28, 2011 occurred as alleged. The record still fails to establish that appellant's right knee condition was causally related to the November 28, 2011 employment incident. Causal relationship is a medical issue that can only be shown by reasoned medical opinion of reasonable medical certainty and supported by medical rationale.<sup>15</sup> Appellant has not provided such evidence in this case. Thus, the Board finds that she did not meet her burden of proof to establish her claim.

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.

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<sup>12</sup> *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

<sup>13</sup> *R.M.*, 59 ECAB 690 (2008); section 8101(2) of FECA provides as follows: 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. 5 U.S.C. § 8101(2).

<sup>14</sup> The Board has found that medical evidence lacking proper identification is of no probative medical value. *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

<sup>15</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

**CONCLUSION**

The Board finds that appellant did not establish that she sustained a right knee injury in the performance of duty on November 28, 2011.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 17, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 11, 2012  
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