

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

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**A.W., Appellant**

**and**

**DEPARTMENT OF DEFENSE, DEFENSE  
LOGISTICS AGENCY, Tracy, CA, Employer**

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**Docket No. 12-660  
Issued: September 25, 2012**

*Appearances:*

*Norman F. Nivens, Esq.*, for the appellant

*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On January 31, 2012 appellant, through counsel, filed a timely appeal of an August 26, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he is entitled to disability compensation for the period June 12, 2009 to January 16, 2010.

**FACTUAL HISTORY**

On January 20, 2009 appellant, then a 67-year-old police officer, sustained bilateral knee pain during a mandatory physical agility assessment that required him to run 1.5 miles in 17.5 minutes. He experienced pain after he ran four blocks and quickly walked the rest of the

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

distance to finish in 18.5 minutes. Appellant stopped work on January 27, 2009 and did not return. OWCP accepted his traumatic injury claim for bilateral knee sprains.<sup>2</sup>

Appellant stated in January 21 and 27, 2009 e-mails to the employing establishment's human resources personnel that he sustained a bilateral knee condition due to running. He did not indicate any other mechanism of injury.

February 10, 2009 bilateral knee x-rays obtained by Dr. Rajiv K. Chopra, a Board-certified diagnostic radiologist, exhibited mild-to-moderate degenerative arthritis but no clear evidence of acute osseous injuries.<sup>3</sup> A March 16, 2009 left knee x-ray provided by Dr. Dwight H. Mukuno, a Board-certified diagnostic radiologist, showed prepatellar soft tissue enlargement and possible joint effusion.

Appellant filed several claims for disability compensation for the combined period June 12, 2009 to January 16, 2010. He provided May 18 and July 3, 2009 progress report forms from Dr. John J. Champlin, a Board-certified family practitioner, which identified total disability for an unknown duration.<sup>4</sup>

OWCP informed appellant by letters of August 6 and 12, 2009 that additional evidence was needed to establish his claim. It gave him 30 days to submit a rationalized medical report from a qualified physician explaining how his accepted bilateral knee condition rendered him unable to perform his federal employment for the claimed period.

In a March 10, 2009 report, Dr. Champlin related that appellant developed bilateral knee, lower back and hip pain during a mandatory physical agility run on January 20, 2009. He specified that appellant "fell after this 1.5-mile run, landing on both knees and hands" and "has fallen several times." Previous radiographs exhibited bilateral degenerative knee changes, L4 and L5 retrolisthesis, and multilevel facet joint arthropathy most prominent at L4-L5 and L5-S1. Dr. Champlin also elicited bilateral diffuse lower extremity pain during straight leg raise testing. He remarked that appellant sustained a lumbar injury in 1994 and various knee ailments in the 1990s and 2002, but was largely asymptomatic prior to the January 20, 2009 assessment. Dr. Champlin diagnosed bilateral knee and hip pain and exacerbation of lumbar spondylolisthesis and facet syndrome. He opined that the run "caused a specific impact associated [with] worsening of lumbar stenosis resulting in global bilateral lower extremity symptomatology and low back pain" and that the knee pain was secondary to "effusion, likely from contusion, and chondral injury during the falls caused by [appellant's] lumbar

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<sup>2</sup> The foregoing information was incorporated into identical January 27 and April 1, 2010 statements of accepted facts. Appellant received continuation of pay from February 10 to March 26, 2009.

<sup>3</sup> February 12, 2009 x-rays from Dr. Chopra showed degenerative lumbar spine and left hip changes. The case record also contains an August 18, 2009 whole body bone scan from Dr. Craig D. Weiner, a Board-certified nuclear physician, which found possible L5-S1 facet joint arthritis, minor hip arthritis and other degenerative lumbar spine changes.

<sup>4</sup> Appellant later submitted additional forms for the period February 10, 2009 to June 28, 2011, all of which were signed by either Dr. Champlin or Dr. Robert C. Duncan, an osteopath Board-certified in family medicine. Although Dr. Champlin initially recommended sedentary duty in a February 10, 2009 form, subsequent documents advised that appellant was totally disabled for an unspecified period.

symptomatology.”<sup>5</sup> Dr. Champlin concluded that appellant was “suffering from significant impediments to full activities of daily living or occupational activities at the present time.”

An August 21, 2009 left knee magnetic resonance imaging (MRI) scan obtained by Dr. Ronald J. Friedman, a Board-certified diagnostic radiologist, showed posterior horn tear of the medial meniscus. An October 5, 2009 right knee MRI scan obtained by Dr. Gregory S. Shields, a Board-certified diagnostic radiologist, confirmed posterior horn tear of the medial meniscus and grade III chondromalacia.

In September 14 and October 15, 2009 reports, Dr. Randall K. Schaefer, a Board-certified orthopedic surgeon, reiterated that appellant injured his knees at work during a physical fitness run on January 20, 2009. Following a review of the medical file, he examined appellant and observed bilateral patellofemoral and medial joint line tenderness as well as positive McMurray’s tests. Dr. Schaefer diagnosed bilateral medial meniscal tears and patellofemoral pain syndrome. Regarding the extent of appellant’s disability, he deferred to Dr. Champlin’s opinion.<sup>6</sup>

In an October 24, 2009 report, Dr. Champlin commented that appellant had preexisting lower back and hip arthritis, but maintained that the bilateral knee injury arising from the mandatory physical agility run rendered him disabled.

OWCP referred appellant for a second opinion examination to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon. In a June 19, 2010 report, Dr. Hanley reviewed the April 1, 2010 statement of accepted facts and the medical file. On examination, he observed minor patellofemoral discomfort and generalized discomfort during range of motion (ROM) maneuvers. Dr. Hanley diagnosed resolved temporary bilateral knee aggravation with synovitis and opined that any work-related disability was limited to the first week following the January 20, 2009 injury.<sup>7</sup> He cited the lack of clinical findings showing an ongoing inflammatory condition or otherwise supporting a higher degree of physical limitation. Dr. Hanley added that appellant’s torn menisci were attributable to an underlying degenerative process rather than an acute consequence of the mandatory physical agility run and, in the absence of evidence demonstrating mechanical symptomatology, did not necessitate surgery. He restricted running to fewer than 500 yards.

By decision dated December 7, 2010, OWCP denied appellant’s compensation claim, finding that the medical evidence did not sufficiently establish total disability for the period June 12, 2009 to January 16, 2010.

Appellant’s counsel requested reconsideration on May 26, 2011 and submitted new evidence. In a February 9, 2011 report, Dr. Mohinder S. Nijjar, a Board-certified orthopedic

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<sup>5</sup> Dr. Champlin acknowledged that preexisting injuries contributed to appellant’s condition, but insisted that his federal employment “exacerbated ... and lit up previously quiescent symptomatology....”

<sup>6</sup> Dr. Schaefer’s January 14, 2010 report noted worsening symptoms and recommended surgery.

<sup>7</sup> Dr. Hanley also diagnosed nonindustrial degenerative disc and joint disease of the lumbar spine.

surgeon, detailed that appellant experienced bilateral knee discomfort halfway through the mandatory physical agility run on January 20, 2009. He added:

“By the time [appellant] reached the destination, he was having significant pain and stopped by a vehicle in the area and then went to sit down. When he got up, his knees were very stiff and he could hardly walk. [Appellant] was standing and suddenly his knee collapsed and he fell forward landing on both knees and hands.”

Appellant remained off duty since January 26, 2009. On examination, Dr. Nijjar observed limited lumbar ROM, diffuse tenderness, paraspinal muscle spasms and lordotic straightening. He also found coarse knee joint crepitus and retropatellar tenderness indicative of chondromalacia patella. Dr. Nijjar diagnosed lumbar strain and sprain, degenerative disc disease, facet arthropathy, bilateral chondromalacia patella and torn bilateral medial menisci based on prior MRI scans. He opined that the preexisting lumbar degenerative disc disease was permanently aggravated by the physical agility run and subsequent fall while the meniscal tears “could occur when there is not enough strength in knees and with running at a faster pace than ... accustomed to doing...”<sup>8</sup> Dr. Nijjar agreed with Dr. Champlin’s conclusion that appellant was totally disabled.<sup>9</sup>

On August 26, 2011 OWCP denied modification of the December 7, 2010 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA bears the burden of proof to establish the essential elements of his or her claim by the weight of the evidence. For each period of disability claimed, the employee must establish that he or she was disabled for work as a result of the accepted employment injury. Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of reliable, probative and substantial medical opinion evidence.<sup>10</sup> Such medical evidence must include findings on examination and the physician’s opinion, supported by medical rationale, showing how the injury caused the employee disability for his or her particular work.<sup>11</sup>

Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.<sup>12</sup> The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly

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<sup>8</sup> Dr. Nijjar attributed appellant’s bilateral chondromalacia patella to “repetitive kneeling, squatting and turning...”

<sup>9</sup> Nonetheless, Dr. Nijjar recommended modified assignment.

<sup>10</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

<sup>11</sup> *Dean E. Pierce*, 40 ECAB 1249 (1989).

<sup>12</sup> *Laurie S. Swanson*, 53 ECAB 517, 520 (2002). *See also Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>13</sup>

### ANALYSIS

OWCP accepted that appellant sustained bilateral knee sprains while running in the performance of duty on January 20, 2009. Appellant filed multiple claims for disability compensation and submitted medical evidence.

The Board finds that appellant did not establish his entitlement to wage-loss compensation because the medical evidence did not sufficiently demonstrate that he was disabled for the period June 12, 2009 to January 16, 2010 due to his accepted condition. In a March 10, 2009 report, Dr. Champlin related that appellant became symptomatic during a mandatory physical agility run on January 20, 2009. Following a physical examination and review of the medical file, he diagnosed bilateral knee pain and opined that appellant experienced “significant impediments to full activities of daily living or occupational activities.” Additional records through October 24, 2009 also specified total disability. Although Dr. Champlin concluded that appellant was disabled, he did not offer adequate medical rationale setting forth the pathophysiological mechanism by which his accepted condition rendered him unable to perform his regular duties as a police officer.<sup>14</sup> Medical reports consisting solely of conclusory statements without supporting rationale are of diminished probative value.<sup>15</sup> Furthermore, while appellant claimed that he was disabled from June 12, 2009 to January 16, 2010, Dr. Champlin did not identify this interval.<sup>16</sup>

Dr. Schaefer and Dr. Nijjar noted in reports from September 14, 2009 to February 9, 2011 that appellant injured his knees at work due to the January 20, 2009 physical agility run. Neither, however, provided an opinion as to whether the accepted bilateral knee sprains led to his disability for the claimed period. Both simply deferred to Dr. Champlin’s opinion on the matter. In the absence of sufficient medical rationale supporting a period of disability, Dr. Schaefer and Dr. Nijjar’s reports were of limited probative value.<sup>17</sup>

On the other hand, Dr. Hanley found in a June 19, 2010 report that appellant’s bilateral knee condition was temporary and any consequential disability lasted up to a week following the January 20, 2009 work event. He based his opinion on a comprehensive review of the April 1, 2010 statement of accepted facts and the medical file as well as objective findings on physical

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<sup>13</sup> *Jefferson, supra* note 10.

<sup>14</sup> *Emma R. Bowman*, Docket No. 94-2431 (issued September 13, 1996); *Arita M. Cruz*, Docket No. 94-1694 (issued June 11, 1996).

<sup>15</sup> *See William C. Thomas*, 45 ECAB 591 (1994).

<sup>16</sup> *M.F.*, Docket No. 08-1927 (issued April 16, 2009).

<sup>17</sup> *Tracy A. Thorsen*, Docket No. 93-1232 (issued July 21, 1994).

examination that did not support any continuing disability or mechanical deficiencies. In view of the totality of the evidence, the Board finds that appellant did not satisfy his burden of proof.

Counsel presents several contentions on appeal. First, he argues that OWCP should have accepted as factual that appellant fell on his hands and knees sometime after the January 20, 2009 physical agility assessment. Both Dr. Champlin and Dr. Nijjar, in fact, obtained this history of injury in their respective medical reports. The case record, however, contains e-mails from appellant to human resources personnel dated January 21 and 27, 2009, or within one week of the date of injury. In each e-mail, appellant attributed his bilateral knee condition to the run itself and did not mention any subsequent fall. Taking into consideration this contemporaneous evidence, the Board finds that OWCP properly confined the accepted mechanism of injury to the physical agility run.<sup>18</sup>

Counsel next asserts that OWCP should have expanded appellant's claim to include lumbar strain and sprain, permanent aggravation of lumbar degenerative disc disease and facet arthropathy, bilateral chondromalacia patella and bilateral torn medial menisci as diagnosed by Dr. Champlin, Dr. Schaefer and Dr. Nijjar, *inter alia*. The Board's review of a case is limited to final decisions of OWCP. Since OWCP has yet to formally adjudicate whether the claim should be expanded to include these new injuries, the issue is not presently before the Board.<sup>19</sup>

Finally, counsel contends that the medical evidence sufficiently established that appellant was disabled for work for the period June 12, 2009 to January 16, 2010 as a result of his accepted bilateral knee sprains and therefore entitled to disability compensation. The Board has already addressed the deficiencies of the medical evidence and determined that appellant failed to meet his burden of proof.

The Board notes that appellant submitted new evidence after OWCP issued its August 26, 2011 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.<sup>20</sup> However, appellant may submit new evidence or argument as part of a formal 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 did not establish that he is entitled to disability compensation for the period June 12, 2009 to January 16, 2010.

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<sup>18</sup> To the extent that Dr. Champlin and Dr. Nijjar relied on this alternative account, their reports were of diminished probative value. *See M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980).

<sup>19</sup> *D.P.*, Docket No. 12-55 (issued July 6, 2012); 20 C.F.R. § 501.2(c). *See also G.A.*, Docket No. 09-2153 (issued June 10, 2010) (for conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship).

<sup>20</sup> 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 26, 2011 merit decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 25, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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