



May 16, 2010 and that she did not file a claim within 30 days of that date because her station manager told her she could not because the injury did not happen at work. The claim form indicated that appellant was last exposed to the claimed condition on May 17, 2010 and received medical treatment that day. Appellant returned to modified duty on September 11, 2010. On the claim form, Michele Smith, customer service supervisor, challenged the claim. She stated that appellant had never spoken to management of being entitled to any claim and had requested light duty from John Zucchi, station manager.

In an undated statement, Mr. Zucchi noted that appellant submitted her claim form to him on September 23, 2010 and claimed that an accident occurred on September 16, 2010, which was a Sunday when the station was closed. He indicated that in the time frame appellant stated her injury happened she had applied for advanced sick leave that had been approved by the postmaster and had also applied for light duty, also approved by the postmaster. Mr. Zucchi attached a September 1, 2010 letter in which appellant requested light duty until further notice.

In a September 20, 2010 letter, William Rogers, manager of customer service operations, informed appellant that her request for light duty had been approved and informed her of the type of medical documentation she needed to continue light duty. In a letter of challenge dated September 29, 2010, Donna Jones, human resources management specialist, noted that appellant was also approved for leave under the Family Medical Leave Act (FMLA). In a September 30, 2010 statement, Ms. Smith stated that, from May 2010, appellant did not notify management of her alleged knee injury. She stated that the medical reports appellant submitted did not mention an employment injury.

In a May 10, 2010 report, Dr. Bruce Stein, Board-certified in internal medicine, advised that appellant should be off work from May 8 to 11, 2010. On June 8, 2010 Dr. Richard Seldes, a Board-certified orthopedic surgeon, advised that appellant was scheduled for left knee arthroscopic surgery on June 29, 2010 was totally disabled and should remain off work for at least four weeks after the surgery. On August 31, 2010 he reported that appellant had the scheduled surgery for a left knee meniscus tear and could return to work with restrictions on August 30, 2010. On a duty status report dated October 14, 2010, Dr. Seldes provided physical restrictions.

By letter dated October 26, 2010, OWCP advised appellant of the type of evidence needed to support her claim. This was to include a comprehensive medical report in which the physician should identify specific employment factors and explain how exposure to these factors contributed to a diagnosed condition.

In a November 18, 2010 statement, appellant disagreed with the facts as presented by Mr. Zucchi and Ms. Smith. She stated that the "accident" occurred on May 16, 2010, not September 16, 2010 as reported by Mr. Zucchi and that he told her earlier that she could not file a claim. Appellant reported that she then contacted Tony Paolillo and Joe Sabata, union representatives, who advised her to apply for FMLA and advanced sick leave. She also indicated that Miguel Vega, a union representative, witnessed a conversation between appellant and Ms. Smith and that appellant suffered from fibromyalgia. Appellant stated that both Mr. Zucchi and Ms. Smith spoke disparagingly to her regarding filing a claim, and that "long before my accident" she felt pain in both knees but thought it was due to her fibromyalgia but now thought

that it was a direct result of the physical requirements of her job, especially excessive stair climbing.

In a November 11, 2010 treatment note, Dr. Seldes noted appellant's report that her letter carrier duties required that she walk several miles a day up and down stairs and that this caused bilateral knee pain. He advised that postsurgery, her left knee was stable, and diagnosed status postarthroscopy of the left knee with meniscal tear and right knee pain. Dr. Seldes provided physical restrictions to her activity. He repeated her restrictions on November 18, 2010.

By decision dated December 22, 2010, OWCP denied appellant's claim on the grounds that the evidence was not sufficient to establish that she experienced employment factors sufficient to cause the alleged injury and that none of the medical evidence identified the factors that caused or aggravated the claimed condition.

On June 14, 2011 appellant requested reconsideration. A June 29, 2010 operative report indicated that Dr. Seldes performed arthroscopic surgery on appellant's left knee that day for a meniscal tear. In a December 23, 2010 duty status report, Dr. Seldes advised that appellant could work full-time restricted duty. A March 9, 2011 magnetic resonance imaging (MRI) scan of the left knee revealed a full thickness cartilage defect along the medial femoral condyle, a ruptured Baker's cyst, a lateral patellar tilt and mild lateral subluxation of the patella. In a June 1, 2011 report, Dr. Seldes reported that he had been treating appellant for approximately one and a half years for left knee pain. He noted appellant's history that she had difficulty walking and standing for long periods of time in her duties as a letter carrier, stating that she had to repetitively walk up and down stairs and that she verbally reported the knee pain to her employer in April 2010. Dr. Seldes advised that a left knee MRI scan on May 21, 2010 revealed a meniscus tear and sprain with patellar injury. He noted appellant's report that, after a day of work, she awoke at home on a Sunday with severe pain in her left knee, causing her to fall to the ground. Appellant then went to the emergency room and remained out of work until several months following the surgery and that she continued to have knee pain. Dr. Seldes provided physical examination findings and diagnosed articular cartilage injuries, status post meniscal tear with arthroscopy "stemming from occupational disease in her left knee." He stated:

"It is my medical opinion that the condition in [appellant's] left knee stemmed from her occupational duties consisting of walking, climbing stairs on repetitive basis, and carrying heavy weight as required by her job. Repetitive walking, climbing, and lifting put her at high risk for developing a knee problem. In my opinion, [appellant's] left knee pain is related to this occupational disease which has caused her knee problem. She has sustained permanent injury to her left knee and in my opinion will be unable to continue her work as a letter carrier. Restrictions for [appellant] would include no pushing or pulling[;] she is not to lift greater than 18 [pounds] and not have to repetitively climb stairs, bend or stoop."

In a merit decision dated September 22, 2011, OWCP denied modification of the prior decision. On November 29, 2011 appellant requested reconsideration. In an attached statement, she described her duties as a letter carrier on a walking route. Appellant stated that her knee gave out on May 17, 2010 and continued to be damaged following surgery. She maintained that Dr. Seldes' opinion established that her knee condition was caused by employment factors.

Appellant resubmitted Dr. Seldes' June 1, 2011 report and a May 27, 2010 treatment note in which the physician described a history of left knee pain for one month, with MRI scan findings of a complex tear of the lateral meniscus. In treatment notes dated September 16, 2010 through August 4, 2011, Dr. Seldes described her postoperative care and appellant's continued complaint of left knee pain. Appellant also submitted an FMLA application that was approved on May 7, 2010. Dr. Maria Staniloiu, a Board-certified internist, signed the application on April 4, 2010. She advised that appellant had a history of neck pain and lower back pain due to degenerative joint disease and herniated discs, with possible fibromyalgia. Dr. Staniloiu indicated that appellant had difficulty lifting, pushing and pulling heavy objects. She stated that the condition commenced in October 2005 and that appellant needed to take leave because she needed rest periods.

In a merit decision dated February 29, 2012, OWCP denied modification of the prior decisions. It found that the medical evidence was insufficient to establish that her knee condition was caused by work factors.

### **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 is causally related to the employment injury. These are the essential elements of each and every compensation claim, regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.<sup>2</sup>

OWCP regulations define the term "occupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift."<sup>3</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by medial rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>4</sup>

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<sup>2</sup> *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>3</sup> 20 C.F.R. § 10.5(ee).

<sup>4</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>5</sup>

### ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she sustained a left knee condition caused by a May 2010 incident or other factors of her federal employment because the medical evidence is insufficient to establish causal relationship.

The Board initially notes that the record has little information regarding the “incident” that occurred on May 16 or 17, 2010. On her claim form, appellant indicated that she was first aware of her knee condition and its relationship to employment on May 16, 2010. In a November 18, 2010 statement, she mentioned that an accident occurred on May 16, 2010, without further description, and on her November 29, 2011 reconsideration request, she stated that her knee gave out on May 17, 2010. The record does not contain any medical reports dated either May 16 or 17, 2010. Dr. Seldes stated that appellant went to the emergency room because she had severe pain and fell at home on a Sunday, but an emergency room report is not in the record. On the claim form, appellant indicated that she received medical treatment on May 17, 2010. Again, there is no medical report dated May 17, 2010. The Board also notes that, although appellant maintained that Mr. Paolillo, Mr. Sabata and Mr. Vega were aware that she sustained an employment-related left knee injury, the record does not contain statements from these union representatives.

The March 9, 2011 MRI scan of the left knee spine did not provide a cause of any diagnosed conditions, and 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>6</sup> The FMLA application signed by Dr. Staniloiu on April 4, 2010 contains no discussion of a left knee condition and indicates that the requested leave was for diagnoses of fibromyalgia, and neck and low back degenerative joint disease. In his May 10, 2010 report, Dr. Stein merely indicated that appellant should be off work from May 8 to 11, 2010. He did not provide a reason for the claimed absence.

Dr. Seldes, an attending orthopedic surgeon who performed left knee arthroscopy on June 29, 2010, submitted a number of reports dated from May 27, 2010 to August 4, 2011. While his opinion is somewhat supportive that appellant’s job duties such as excessive stair climbing could cause a knee condition, he also implicates the May 2010 incident but, as noted above, other than describing an incident that occurred at home on a Sunday, he does not discuss its significance in the development of appellant’s left knee condition.

Medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value.<sup>7</sup> The Board finds Dr. Seldes’ reports insufficient to meet

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<sup>5</sup> *Roy L. Humphrey, supra* note 2.

<sup>6</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>7</sup> *Frank Luis Rembisz*, 52 ECAB 147 (2000).

appellant's burden as he did not provide a sufficient explanation or opinion as to how employment factors caused appellant's left knee condition. Dr. Seldes described some of appellant's job duties and opined that excessive stair climbing and walking caused her knee problems. However, he did not discuss the significance of appellant's fall at home in May 2010 or discuss the mechanism of injury in detail. Dr. Seldes' opinion is therefore of diminished probative value.

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to his federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>8</sup> It is appellant's burden to establish that her claimed knee condition is causally related to factors of his federal employment. In this case, appellant submitted insufficient evidence to show that she sustained a left knee condition causally related to her federal employment.

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 did not establish that she sustained a left knee condition causally related to a May 2010 incident of additional factors of her federal employment in this occupational disease claim.

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<sup>8</sup> A.D., 58 ECAB 149 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated February 29, 2012 and September 22, 2011 be affirmed.

Issued: September 4, 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