



In a work status form report dated March 8, 2013, Dr. Douglas J. Corkum, Board-certified in emergency medicine, diagnosed a knee/leg sprain and advised that appellant could return to work on that date with restrictions on squatting and kneeling. In a March 8, 2013 progress report, he noted that appellant felt a pull in the right knee accompanied by pain and stiffness. On examination Dr. Corkum found no effusion, a negative drawer sign and mild tenderness at the lateral joint line. He diagnosed right knee strain and released appellant for modified activity.

In a March 11, 2013 disability certificate, Dr. David J. Applegate, an osteopath who is Board-certified in family medicine, diagnosed a knee/leg sprain and found that appellant could work with no squatting or kneeling. In a progress report dated March 11, 2013, he noted that appellant continued to have limited movement, swelling and stiffness of the knee. Dr. Applegate diagnosed a right knee strain and found that appellant could perform limited duty. In progress notes dated March 18, 2013, he noted that appellant's symptoms were exacerbated by stairs and listed work restrictions. On March 26, 2013 Dr. Janice Ribaud, Board-certified in family medicine, diagnosed a knee/leg sprain and meniscus tear and found that appellant could perform modified employment.

A March 21, 2013 magnetic resonance imaging (MRI) scan revealed a horizontal tear of the posterior horn of the lateral meniscus, a small joint effusion, low grade chondromalacia along the medial femoral condyle and low grade chondromalacia patellae.

By letter dated April 12, 2013, OWCP informed appellant that it had initially paid a limited amount of medical expenses as it appeared he sustained a minor injury. It would now adjudicate the merits of his claim and requested that he submitted additional factual and medical information, including a detailed medical report from his attending physician addressing the causal relationship between any diagnosed condition and the identified work incident.

In a report dated March 29, 2013, received by OWCP on April 22, 2013, Dr. Christopher Emond, a Board-certified orthopedic surgeon, discussed appellant's history of twisting his knee walking on uneven pavement at work. He diagnosed mild degenerative changes with a likely lateral meniscus tear. Dr. Emond stated, "His MRI [scan study] has changes in the lateral meniscus, but it is unclear if this is new or postoperative." In a medical report form dated March 29, 2013, he listed work restrictions.

On April 5, 2013 Dr. David Fowler, a Board-certified orthopedic surgeon, evaluated appellant for a "work-related injury to his right knee." He noted that appellant had a previous nonemployment-related right knee injury in 2008.<sup>2</sup> Dr. Fowler described the injury as occurring when appellant experienced a pull or tear while walking on his work route. He reviewed an MRI scan study that showed "what looks like a horizontal tear of the lateral meniscus. The question though is, is that truly a new tear or is that a residual from the old debridement." Dr. Fowler stated, "I told [appellant] that I think that Dr. Emond would treat him appropriately at this point as my initial assumption in his age group would at least initially be that of a degenerative tear." He deferred judgment regarding whether appellant required additional surgery.

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<sup>2</sup> The record indicates that on December 19, 2008 appellant underwent a right knee lateral meniscectomy and chondral shaving of the patella.

In a progress report dated April 10, 2013, Dr. Ribauda evaluated appellant's right knee and found that the swelling was decreased. She diagnosed a meniscus tear.

In a statement dated April 17, 2013, appellant related that on March 8, 2013 he was walking on uneven ground and believed that he twisted his knee. It began to get stiff and sore so he sought medical treatment.

By decision dated May 10, 2013, OWCP denied appellant's traumatic injury claim. It found that the medical evidence was insufficient to establish that he sustained a medical condition casually related to the March 8, 2013 work incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>4</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>5</sup>

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.<sup>6</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.<sup>7</sup> An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.<sup>8</sup>

### **ANALYSIS**

Appellant alleged that he sustained pain and stiffness in his right knee when he felt something pull while walking on his route. OWCP accepted that the March 8, 2013 incident occurred at the time, place and in the manner alleged. The issue is whether the medical evidence establishes that he sustained an injury as a result of this incident.

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

<sup>5</sup> *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>6</sup> *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

<sup>7</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>8</sup> *Id.*

The Board finds that appellant has not established that the March 8, 2013 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.<sup>9</sup>

On March 8, 2013 Dr. Corkum related that appellant provided a history of feeling a pull in his knee with pain and stiffness while walking on March 8, 2013. He listed findings on examination of tenderness at the lateral joint line with no effusion. Dr. Corkum diagnosed a right knee strain and found that appellant could work with restrictions. He did not, however, specifically relate the diagnosed condition to the March 8, 2013 work incident. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>10</sup>

In progress reports dated March 11 and 18, 2013, Dr. Applegate diagnosed a right knee sprain and listed work restrictions. On March 26, 2013 Dr. Ribaldo diagnosed a knee/leg sprain and meniscus tear and found that he could perform modified employment. In a progress report dated April 10, 2013, she provided findings on examination and diagnosed a meniscus tear. Neither physician, however, addressed the cause of the diagnosed conditions and thus their reports are of little probative value.<sup>11</sup>

On March 29, 2013 Dr. Emond reviewed appellant's history of injuring his knee at work walking on uneven pavement. He diagnosed mild degenerative changes with a likely lateral meniscus tear. Dr. Emond opined that it was unclear whether the tear resulted from a knee injury or from appellant's prior knee surgery. As he found the etiology of the meniscal tear uncertain, his opinion is of diminished probative value.<sup>12</sup>

In a report dated April 5, 2013, Dr. Fowler noted that appellant had sustained an employment-related right knee injury when he felt a pull or tear walking on his route. He further discussed appellant's history of a nonwork-related injury in 2008. Dr. Fowler questioned whether the findings on the MRI scan of an apparent lateral meniscus tear was new or a consequence of his prior surgery. He indicated that his assumption would be that it was a degenerative tear given appellant's age. As Dr. Fowler did not find the diagnosed condition of a lateral meniscal tear causally related to the March 8, 2013 work incident, his opinion is insufficient to meet appellant's burden of proof.

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 and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>9</sup> *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

<sup>10</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conrad Hightower*, 54 ECAB 796 (2003).

<sup>11</sup> *Id.*

<sup>12</sup> *See D.D.*, 57 ECAB 710 (2006) (medical opinions that are speculative or equivocal in character are of diminished probative value).

**CONCLUSION**

The Board finds that appellant has not established that he sustained an injury on March 8, 2013 in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 10, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board