



## **FACTUAL HISTORY**

On March 19, 2012 appellant, then a 45-year-old border patrol agent supervisor, filed a traumatic injury claim alleging that on March 7, 2012 he twisted his right knee during physical training. He did not stop work.

In an April 16, 2012 attending physician's report, Dr. Peter Gambacorta, an osteopath, stated that appellant injured his right knee during mock combat exercise with another agent and noted a date of injury of March 7, 2012. He reported that a magnetic resonance imaging (MRI) scan revealed prior meniscectomy, grade 4 and possible medial meniscus re-tear.

In an April 16, 2012 report, Dr. Gambacorta noted appellant's complaint of right knee pain. He listed a history that appellant injured his right knee during a March 7, 2012 training exercise when he was engaged in mock combat with another agent. Appellant stated that he felt a click in his knee and had some pain since the episode. Dr. Gambacorta reported that appellant had a history of a prior meniscectomy and some swelling. Upon examination, he observed pain upon deep flexion and palpatory tenderness to the medial joint line. There was no gross deformity, laceration, abrasion, ecchymosis, nor tenderness to the patella, parapatellar retinaculum medially and laterally, quadriceps tendon and patellar tendon. Lachman's, McMurray's, Ober's and posterior drawer tests were negative. Dr. Gambacorta noted a possible re-tearing of the medial meniscus and diagnosed right knee pain, arthritis and possible medial meniscus re-tear. He checked a box marked "yes" that the incident appellant described was the competent medical cause of this injury or illness.

In a June 11, 2012 attending physician's report, Dr. Gambacorta noted a history of injury of right knee pain and arthritis. He stated that appellant injured his knee during a combat exercise. Dr. Gambacorta diagnosed arthritis and knee pain. He checked "yes" that he believed appellant's condition was caused or aggravated by an employment activity.

In a June 11, 2012 report, Dr. Gambacorta stated that appellant returned to his office for follow-up with complaint of pain mostly in the medial aspect of his knee and of popping and clicking. He noted that appellant had been working full duties. Upon examination, Dr. Gambacorta found tenderness on the medial joint line. He reported full extension of the knee, flexion to over 120 and painful deep flexion. McMurray's test was positive. Lachman's test was negative. Dr. Gambacorta diagnosed right knee pain and arthritis. He checked a box marked "yes" that the incident appellant described was the competent medical cause of this injury.

On July 10, 2012 OWCP advised appellant that the evidence submitted was insufficient to establish his claim and requested additional evidence.

In a July 25, 2012 statement, Robert S. Wotring III, a supervisory border patrol agent, noted that appellant injured his knee while in the performance of duty as a physical techniques instructor. He explained that appellant was conducting a collapsible steel baton certification drill with his assigned class. Mr. Wotring stated that staff members were required to participate in all aspects of the physical conditioning program and noted that the activities in which the instructors

participated included work sprints, distance running, calisthenics, strength and plyometric training.

In a decision dated September 5, 2012, OWCP accepted that the March 7, 2012 incident occurred as alleged but denied appellant's claim finding insufficient medical evidence to establish that his diagnosed right knee condition was causally related to the accepted incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence<sup>3</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or 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 he or 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 establish that his or 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.<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

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<sup>2</sup> *Id.* at §§ 8101-8193.

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

<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).

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 March 7, 2012 appellant was participating in a mock combat exercise in the performance of duty. It denied his traumatic injury claim finding insufficient medical evidence to establish that his right knee condition was causally related to the accepted incident. The Board finds that appellant did not meet his burden of proof to establish that he sustained a right knee condition as a result of the March 7, 2012 employment incident.

Appellant submitted various reports by Dr. Gambacorta dated April 16 to June 11, 2012. Dr. Gambacorta obtained a history that appellant injured his right knee on March 7, 2012 during a training exercise at work. Upon examination, he observed pain upon deep flexion and palpatory tenderness to the medial joint line. Lachman's, McMurray's, Ober's and posterior drawer tests were negative. McMurray's test was positive. Dr. Gambacorta reported full extension of the knee, flexion to over 120 and painful deep flexion. He noted that appellant had a history of a prior meniscectomy and arthritis. Dr. Gambacorta stated that an MRI scan revealed prior meniscectomy and a possible medial meniscus re-tear. He diagnosed right knee pain and arthritis. In April 16 and June 11, 2012 reports, Dr. Gambacorta checked a box marked "yes" that he believed appellant's condition was caused or aggravated by an employment activity. The Board has held, however, that when a physician's opinion on causal relationship consists of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.<sup>12</sup>

Although he stated that appellant injured his right knee during a training exercise at work, Dr. Gambacorta did not provide any medical rationale explaining how appellant's current right knee condition was caused or aggravated by the March 7, 2012 employment incident. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>13</sup> Dr. Gambacorta's opinion fails to adequately address appellant's prior right knee condition for which he underwent a meniscectomy or how the accepted incident was competent to contribute to the arthritis or a re-tear of the medial meniscus. The Board finds that his opinion is of limited probative value on the issue of causal relationship because he does not explain how the March 7, 2012 employment incident caused or aggravated the right knee condition.

Appellant has not provided sufficient medical evidence to establish that he sustained a right knee condition causally related to the March 7, 2012 employment incident. Accordingly the Board finds that he did not meet his burden of proof to establish his claim.

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

<sup>12</sup> *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>13</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

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 his right knee condition was causally related to the March 7, 2012 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 5, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 5, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board