



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> In a December 5, 2011 decision, the Board affirmed a March 25, 2011 OWCP decision, finding that appellant did not sustain an injury in the performance of duty on March 1, 2010. The Board found that he failed to submit sufficiently rationalized medical evidence to establish a causal relationship between his claimed injury and the accepted March 1, 2010 employment incident. The facts of the case as set forth in the Board's prior decision are incorporated by reference.<sup>3</sup>

By letter dated August 3, 2012, appellant requested reconsideration before OWCP regarding the denial of his claim and submitted additional evidence. In a March 22, 2012 medical report, Dr. Zaid W. Jabbar, a Board-certified internist, noted appellant's complaint of left knee pain. He obtained a history of the March 1, 2010 employment incident and listed findings on physical examination. Dr. Jabbar diagnosed possible patellofemoral syndrome and a tear of the posterior horn of the medial meniscus. In addressing causal relationship between the history of injury and diagnoses, he noted that appellant was a mailman who walked in all conditions on a daily basis. Dr. Jabbar opined that appellant's slip and fall at work caused the tear in his knee. He concluded that appellant was disabled from work.

In an August 11, 2012 report, Dr. David M. Burt, a Board-certified orthopedic surgeon, advised that appellant sustained a left knee injury on March 1, 2010. He first treated appellant on July 22, 2010. In an undated attending physician's report (Form CA-20), Dr. Burt obtained a history that on March 1, 2010 appellant fell down the stairs at work. He diagnosed a medial meniscal tear. Dr. Burt indicated with a checkmark "yes" that the diagnosed condition was caused or aggravated by appellant's fall.

In a decision dated September 26, 2012, OWCP found that the medical evidence was insufficient to establish a causal relationship between the diagnosed left knee condition and the accepted March 1, 2010 employment incident.

By letter dated November 12, 2012, appellant, through his attorney, requested reconsideration and submitted additional evidence. In reports dated July 22, 2010, Dr. Burt noted appellant's complaint of left knee pain. He reviewed a May 2010 magnetic resonance imaging (MRI) scan which showed patellofemoral osteoarthritis and a medial meniscus tear. Dr. Burt reported findings on physical examination of the left knee. He advised that appellant had an acute medial meniscus tear. In an October 17, 2012 report, Dr. Burt reiterated his opinion that appellant sustained a knee injury due to his March 2010 fall at work. He stated that appellant had no symptoms or injury prior or subsequent to the date of injury. Dr. Burt advised that his symptoms arose out of and as a direct result of the work injury. Appellant's subsequent

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<sup>2</sup> Docket No. 11-1237 (issued December 5, 2011).

<sup>3</sup> On August 12, 2010 appellant, then a 55-year-old city carrier, filed a traumatic injury claim alleging that on March 1, 2010 he hurt his left knee when he fell down steps at work. On July 28, 2010 he underwent arthroscopic left knee surgery. In an October 15, 2010 decision, OWCP denied appellant's claim, finding that the March 1, 2010 incident occurred as alleged, but that the evidence failed to establish that the claimed medical condition was causally related to the accepted work-related incident. In a March 25, 2011 decision, an OWCP hearing representative affirmed the October 15, 2010 decision.

diagnosis of medial meniscus tear was consistent with this injury and his symptoms. Dr. Burt concluded that appellant's surgical treatment and all subsequent postoperative treatment related to the torn meniscus were directly causally related to the March 2010 work injury. In a September 7, 2010 Form CA-20, he provided identical information and findings as set forth in his previously submitted undated Form CA-20. Dr. Burt indicated with a checkmark "yes" that appellant's medial meniscal tear was caused by the March 1, 2010 employment incident.

In an October 4, 2012 report, Dr. Jabbar provided a history of injury and his treatment of appellant's left knee condition commencing March 3, 2010. He stated that two days before March 3, 2010, appellant sustained an injury when he fell while delivering mail at work. Dr. Jabbar first treated him with anti-inflammatory medications and physical therapy for several months. When appellant continued to have pain and swelling, Dr. Jabbar ordered an MRI scan. Dr. Jabbar advised that the MRI scan showed a tear which probably occurred when appellant fell in March 2010. This was most likely the reason why he was not improving with medications and physical therapy. As a result, Dr. Jabbar referred him to Dr. Burt.

In a January 9, 2013 decision, OWCP denied modification of the September 26, 2012 decision. It found that appellant failed to submit rationalized medical evidence to establish a causal relationship between the claimed injury and the accepted March 1, 2010 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</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>5</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>6</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>7</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>8</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>9</sup>

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>6</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>7</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>8</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>9</sup> *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

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>10</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>11</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>12</sup>

### **ANALYSIS -- ISSUE**

The Board previously found that the medical evidence of record was insufficient to establish that appellant sustained a left knee injury causally related to the accepted March 1, 2010 employment incident. Appellant requested reconsideration before OWCP and submitted additional medical evidence. The Board finds that the medical evidence submitted by him is insufficient to establish that his left knee condition was caused or aggravated by the March 1, 2010 employment incident.

In a March 22, 2012 report, Dr. Jabbar provided a history of the March 1, 2010 employment incident and listed findings on physical examination of the left knee. He diagnosed possible patellofemoral syndrome and a tear of the posterior horn of the medial meniscus. Dr. Jabbar noted that as a mailman appellant walked in all conditions on a daily basis. He opined that the March 1, 2010 employment incident caused the tear in his left knee. Dr. Jabbar's opinion on causal relation is of diminished probative value because he failed to provide adequate medical rationale explaining how appellant's fall caused his left knee condition.<sup>13</sup> The Board notes that his diagnosis of "possible" patellofemoral syndrome is speculative in nature.<sup>14</sup> Similarly, Dr. Jabbar's October 4, 2012 report which found that appellant's tear in the left knee "probably" occurred when he fell in March 2010 is speculative in nature.<sup>15</sup> Again, he did not provide adequate medical rationale explaining the nature of the relationship between appellant's left knee condition and the accepted employment incident. For the stated reasons, the Board finds that Dr. Jabbar's reports are insufficient to establish appellant's claim.

Dr. Burt's October 17, 2012 report found that appellant's torn medial meniscus of the left knee and resulting surgery were caused by the March 2010 employment incident. He explained

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<sup>10</sup> See *J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>11</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>12</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>13</sup> *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994); see *Thomas L. Hogan*, 47 ECAB 323, 328-29 (1996).

<sup>14</sup> Medical opinions that are speculative or equivocal in character are of little probative value. See *Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>15</sup> *Id.*

that appellant had no symptoms or injury prior to the date of injury. The Board has held that when a physician concludes that a condition is causally related to employment because the employee was asymptomatic before the employment injury, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.<sup>16</sup> Dr. Burt offered no rationale to explain how the March 1, 2010 employment incident caused or aggravated appellant's left knee condition and resultant surgery. The Board finds that his opinion on causal relationship is not sufficiently rationalized to establish appellant's left knee injury claim. Dr. Burt's undated and September 7, 2010 Form CA-20 reports are also insufficiently rationalized to establish appellant's claim. By a checkmark "yes" he indicated that appellant's medial meniscal tear was caused by the March 1, 2010 employment incident. Dr. Burt did not explain, however, how the diagnosed condition was causally related to the accepted employment incident. The Board has held that an opinion consisting of a physician's checkmark is of diminished probative value without any explanation or rationale for the conclusion reached.<sup>17</sup> The Board finds that Dr. Burt's form reports are insufficient to establish appellant's claim. His other reports addressed appellant's left knee condition, but failed to provide an opinion on the causal relationship between this condition and the accepted March 1, 2010 employment incident. The Board has held that 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>18</sup> These reports, therefore, are also insufficient to meet appellant's burden of proof.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a left knee injury causally related to the accepted March 1, 2010 employment incident. He did not meet his burden of proof.

For reasons stated above, the Board finds that appellant did not submit sufficient evidence establishing that he sustained an injury due to the accepted March 1, 2010 employment incident.

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 failed to establish that he sustained a left knee injury causally related to the accepted March 1, 2010 employment incident.

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<sup>16</sup> *Michael S. Mina*, 57 ECAB 379 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>17</sup> *D.D.*, 57 ECAB 734 (2006); *Sedi L. Graham*, 57 ECAB 494 (2006).

<sup>18</sup> *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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