



Henotified his supervisor on November 19, 2011, stopped work on November 20, 2011 and first received medical care on November 21, 2011.

In a November 12, 2011 narrative statement, appellant reported that he was unwrapping the power cord from the handle of the vacuum when Hong Jung, a fellow employee, walked over and kicked his vacuum, causing it to fall down and partially hit his leg. In a November 19, 2011 statement, he stated that, though he reported the incident to his supervisors immediately, he did not request medical attention for his knee because he thought he was fine.

In a November 13, 2011 statement, Mr. Jung stated that he did not see the vacuum and accidentally tripped over it.

In a November 21, 2011 medical report and Duty Status Report (Form CA-17), Dr. Ajendra Sohal, Board-certified in physical medicine and rehabilitation, reported that appellant was seen in his office for an initial evaluation of a work-related injury on November 12, 2011. Appellant stated that a vacuum hit his right knee after another employee intentionally kicked the vacuum.

By letter dated November 30, 2011, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was asked to respond to the questions provided in the letter within 30 days.

In medical and Attending Physician Reports (Form CA-20) dated November 21 to December 8, 2011, Dr. Sohal reported that appellant was a postal service employee who sought treatment after a vacuum cleaner struck his right knee. He noted a history of left knee arthroscopic surgery caused by a previous accident. Physical examination of the right knee revealed joint line tenderness with limited range of motion. Dr. Sohal diagnosed right knee pain and internal derangement and checked the box marked "yes" when asked if the injury was caused or aggravated by an employment activity.

By decision dated January 12, 2012, OWCP denied appellant's claim finding that the evidence of record failed to establish that his right knee internal derangement was causally related to the accepted November 12, 2011 employment incident.

By letter dated January 31, 2012, appellant requested reconsideration of OWCP's decision and stated that he was submitting additional medical evidence in support of his claim.

In medical reports dated November 22 to December 20, 2011, Dr. Laxmidhar Diwan, a Board-certified orthopedic surgeon, reported that appellant sought treatment for pain and stiffness in the right knee due to a November 12, 2011 job-related accident. He stated that appellant was vacuuming the floor when he fell and sustained injuries to the right knee. Dr. Diwan reported that x-rays of the right knee revealed normal with no fracture or dislocation. Upon physical examination, he diagnosed internal derangement of the right knee, traumatic chondromalacia of the patella, joint effusion and medial lateral meniscus tear. Dr. Diwan opined that if the history given by appellant was accurate, within a reasonable degree of medical certainty, the noted injuries were a direct result of the job-related accident.

In medical reports dated January 20 to February 15, 2012, Dr. Sohal reported that appellant complained of continued right knee pain and recommended a magnetic resonance imaging (MRI) scan. Appellant was cleared for regular duty on February 15, 2012.

By decision dated May 25, 2012, OWCP accepted that appellant's right knee was struck by a vacuum that had been kicked, but affirmed its January 12, 2012 decision finding that the evidence of record failed to establish that his injury was causally related to the November 12, 2011 employment incident.

By letter dated December 17, 2010, appellant, through counsel, requested reconsideration of OWCP's decision and submitted an October 7, 2012 report from Dr. Sohal in support of his claim.

In an October 7, 2012 medical report, Dr. Sohal stated that appellant sustained a work-related injury on November 12, 2011. Appellant stated that there was an argument with a coworker and his vacuum cleaner and power cord fell down, partially hitting his right leg. Dr. Sohal also stated that appellant indicated that he sustained injury to the right knee as the vacuum cleaner was hit by a coworker, causing him to hit his leg and twist his right knee. Appellant sought treatment with Dr. Sohal after having intermittent pain for seven days and began treatment with Dr. Diwan on December 20, 2011. Dr. Sohal opined that there was a causal relationship of the episode to the right knee sprain/strain.

By decision dated February 4, 2013, OWCP affirmed its May 25, 2012 decision finding that the evidence of record failed to establish that appellant's injury was caused by the accepted November 12, 2011 employment incident.

### **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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</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>3</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>4</sup> The second

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<sup>2</sup>Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

<sup>3</sup>Michael E. Smith, 50 ECAB 313 (1999).

<sup>4</sup>Elaine Pendleton, *supra* note 2 at 1143 (1989).

component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he sustained an injury in the performance of duty he must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.<sup>5</sup> Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation is causally related to the accepted injury.<sup>6</sup>

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>7</sup>

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>8</sup> The opinion of the physician must be based on 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 claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of 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>9</sup>

### ANALYSIS

OWCP accepted that on November 12, 2011 a vacuum was kicked and struck appellant's right knee. Therefore, appellant has established that the employment incident occurred as alleged. The issue is whether he established that the incident caused his right knee injury. The

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<sup>5</sup>See generally *John J. Carlone*, 41 ECAB 354 (1989); see also 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). See *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup>*Supra* note 4.

<sup>7</sup>*Betty J. Smith*, 54 ECAB 174 (2002).

<sup>8</sup>See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>9</sup>*James Mack*, 43 ECAB 321 (1991).

Board finds that appellant did not submit sufficient medical evidence to support that his right knee injury is causally related to the November 12, 2011 employment incident.<sup>10</sup>

In support of his claim, appellant provided medical reports dated November 21, 2011 to October 7, 2012 from Dr. Sohal. In a November 21, 2011 report, Dr. Sohal reported that a vacuum cleaner struck appellant's right knee during a November 12, 2011 work-related injury. He diagnosed right knee pain and internal derangement. In a November 21, 2011 CA-17 form, Dr. Sohal noted that a vacuum hit appellant's right knee after another employee intentionally kicked the vacuum. On a Form CA-20 he checked the box marked "yes" when asked if the injury was caused or aggravated by an employment activity. In an October 7, 2012 medical report, Dr. Sohal stated that appellant sustained a work-related injury on November 12, 2011. Appellant stated that there was an argument with a coworker and his vacuum cleaner and power cord from the handle fell down, partially hitting his right leg. Dr. Sohal also stated that appellant sustained injury to the right knee when the vacuum cleaner was hit by a coworker, causing it to hit his leg and twist his right knee. He opined that there was a causal relationship of the episode to the right knee sprain/strain.

The Board finds that the opinion of Dr. Sohal is not well rationalized. Dr. Sohal did not provide a detailed medical history other than noting a prior left knee surgery. He did not have a clear and accurate understanding of the November 12, 2011 employment incident or injury as he provided three varying accounts of the incident. Dr. Sohal stated that the vacuum cleaner struck appellant's right knee, that there was an argument with a coworker and the vacuum cleaner and power cord hit his right leg and that the vacuum cleaner was hit by a coworker causing it to hit appellant's leg and twist his right knee. The different accounts provided by him makes the mechanism of injury unclear. Moreover, Dr. Sohal's opinion on causal relationship is equivocal as he failed to state how appellant's contact with a vacuum cleaner would cause him a sprain/strain to the right knee. Not having a clear mechanism of injury makes it almost impossible to establish the cause of appellant's right knee injury. Thus, Dr. Sohal's statement that appellant suffered an injury at work is equivocal in nature and of limited probative value.<sup>11</sup> Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.<sup>12</sup> The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.<sup>13</sup> Without medical reasoning explaining how the November 12, 2011 employment incident caused or contributed to appellant's right knee injury, Dr. Sohal's report is insufficient to meet appellant's burden of proof.<sup>14</sup>

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<sup>10</sup>See *Robert Broome*, 55 ECAB 339 (2004).

<sup>11</sup>*S.W.*, Docket No. 08-2538 (issued May 21, 2009).

<sup>12</sup>*Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>13</sup>See *Lee R. Haywood*, 48 ECAB 145 (1996).

<sup>14</sup>*C.B.*, Docket No. 08-1583 (issued December 9, 2008).

In medical reports dated November 22 to December 20, 2011, Dr. Diwan reported that appellant sought treatment for pain and stiffness in the right knee after a November 12, 2011 job-related accident. He stated that appellant was vacuuming the floor when he fell and sustained injuries to the right knee. Dr. Diwan reported x-rays of the right knee revealed normal with no fracture or dislocation and diagnosed internal derangement of the right knee, traumatic chondromalacia of the patella, joint effusion and medial lateral meniscus tear. He opined that if the history given by appellant was accurate, within a reasonable degree of medical certainty, the noted injuries were a direct result of the job-related accident.

The Board notes that Dr. Diwan's medical reports also contain a different account of the November 12, 2011 employment incident. Dr. Diwan attributed appellant's injury to a work-related accident, which occurred when appellant was vacuuming the floor and fell, sustaining injuries to the right knee. Appellant's CA-1 form alleged that a coworker kicked his vacuum which caused the vacuum to hit his right knee. At no point has appellant alleged that his right knee injury was caused from falling to the floor. As Dr. Diwan is attributing appellant's right knee injury to an incident that, has not been established factually, which also contradicts his initial allegation, the physician's report is of little probative value and fails to establish appellant's claim. Furthermore, his opinion is speculative in nature and failed to provide an unequivocal opinion regarding the cause of appellant's injury. Thus, Dr. Diwan's reports are insufficient to establish appellant's claim.<sup>15</sup>

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the November 12, 2011 employment incident and appellant's right knee injury. The varying accounts of the November 12, 2011 incident cast doubt on the validity of his claim and the mechanism of injury. Thus, appellant has failed to meet his burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that his right knee injury is causally related to the November 12, 2011 employment incident, as alleged.

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<sup>15</sup>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 February 4, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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