

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Greenwood, IL, Employer**

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**Docket No. 14-1653  
Issued: December 24, 2014**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 23, 2014 appellant filed a timely appeal from an April 9, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her recurrence of disability claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant sustained a recurrence of disability on January 23, 2014 causally related to her March 26, 2004 employment injury.

**FACTUAL HISTORY**

On March 26, 2004 appellant, then a 33-year-old mail carrier, sustained a right knee injury when she slipped on stairs. She stopped work on March 26, 2004, but later returned to

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

light-duty work on April 2, 2004. On May 14, 2004 appellant was released to full duty without restrictions and the record indicates that she returned to full duty on that date.

In a March 26, 2004 x-ray report, Dr. Gabrielle Bosley, Board-certified in diagnostic radiology, advised that a right knee x-ray revealed normal knee alignment and that there was no evidence of fracture, bone lesions, or significant degenerative changes. In an April 27, 2004 report, Dr. Harun Durudogan, an orthopedic surgeon, diagnosed medial collateral ligament (MCL) strain. He noted that appellant had full knee extension and 120 degrees of knee flexion assessed in long sitting. He stated that appellant's symptoms were consistent with MCL strain with residual tenderness over the origin of the MCL, mild edema, and functional impairments with slight strength deficits.

On July 6, 2014 OWCP accepted her claim for sprain/strain of the right MCL.

In a December 5, 2009 claim for compensation (Form CA-7), appellant requested a schedule award. In support of her claim, she submitted a January 7, 2010 magnetic resonance imaging (MRI) scan report of the right knee by Dr. Amjad Safvi, Board-certified in diagnostic radiology, who advised that imaging revealed a tear of the lateral meniscus. In a January 12, 2010 report, Dr. Jacob Salomon, a Board-certified general surgeon, advised that an MRI scan revealed a lateral meniscus tear of the right knee. He opined that the lateral meniscus tear was related to appellant's 2004 work-related injury and that in 2004 her injury was misdiagnosed as a medial collateral ligament strain.

In a May 10, 2010 report, an OWCP medical adviser questioned what happened to appellant between 2004, when she was initially injured, and 2010 when, she presented to Dr. Salomon. He noted that appellant had an accepted claim for medial collateral injury in 2004, but was now seeking compensation for a lateral meniscus tear. OWCP medical adviser further noted that a medial tear typically heals in six weeks and rarely if ever leads to any long-term disability. He opined that appellant's lateral meniscus tear was not related to her accepted injury.

By decision dated June 16, 2010, OWCP denied appellant's schedule award claim.

In a February 2, 2010 claim for compensation (Form CA-7), appellant requested compensation for December 23, 2009 through January 10, 2010. By decision dated July 6, 2010, OWCP denied appellant's claim for compensation because medical evidence did not establish that she was disabled for work.

In a July 2, 2013 report, Dr. Eugene Lopez, Board-certified in orthopedic surgery and sports medicine, noted that appellant complained of pain in the right lower leg and right knee. He stated that appellant injured herself when she slipped on stairs while delivering mail. Dr. Lopez advised that right knee x-rays revealed mild arthritis with a slight loss of joint space. He diagnosed osteoarthritis of the knee and tear of the medial meniscus knee. Dr. Lopez also referred appellant to a podiatrist for an unrelated foot condition. In a July 22, 2013 report, he advised that a right knee MRI scan revealed normal joint alignment without evidence of fracture. Dr. Lopez diagnosed medial and lateral meniscal tears. He also advised that appellant had joint effusion and some synovial hypertrophy which represented probable synovitis.

In an August 26, 2013 report, Dr. Lopez stated that appellant's injuries were the result of a work injury that occurred on March 26, 2004 while she was working for the employing establishment. He requested that OWCP add right knee medial and lateral meniscus tear and right knee osteoarthritis to appellant's accepted diagnoses. In another August 26, 2013 report, Dr. Lopez advised that appellant complained of right knee pain and swelling, but that there had been significant improvement in her symptoms since her last visit.

In an October 7, 2013 report, Dr. Lopez reiterated that appellant had the same diagnosis and advised that she had improving knee pain. In a December 9, 2013 report, he advised that appellant's symptoms worsened. Dr. Lopez stated that appellant related to him that her knee was stiff and achy as a result of the weather getting colder. He also recommended that appellant undergo a right arthroscopic knee surgery. In a January 17, 2014 report, Dr. Lopez stated that appellant's right knee was painful and that she believed that it was due to sitting in her truck all day and to the change in the weather. Appellant also submitted several physical therapy reports from August 29 through September 16, 2013.

By letter dated March 3, 2014, OWCP notified appellant that she could file a claim for a recurrence of a work-related medical condition since she was receiving additional medical treatment after a significant gap in treatment for the work injury. Appellant was advised to provide evidence to support a worsening of her condition without intervention.

Appellant subsequently submitted additional evidence. In a January 27, 2014 disability status report, Dr. Lopez advised that appellant was unable to return to work from January 23, 2013 until her next appointment on February 20, 2014.

In a February 20, 2014 report, Dr. Lopez advised that appellant had been out of work for four weeks. He noted that appellant's right knee swelled and gave out on her while at work. Dr. Lopez further noted that appellant was doing a standing only work assignment all day and her knee could not tolerate it. He advised that appellant had work-related right knee medial and lateral meniscal tears and an MCL sprain. Dr. Lopez opined that appellant's condition was worsening due to the reluctance to allow her to proceed with the appropriate treatment. He further advised that appellant was likely to develop a more permanent and profound partial disability if she did not have surgery. Dr. Lopez noted that appellant was unable to work for another month.

On March 4, 2014 appellant filed a claim for compensation (Form CA-7) for January 23, 2013 to February 28, 2014.

By letter dated March 5, 2014, OWCP advised appellant to submit a recurrence of disability claim (Form CA-2a). Appellant was informed that a recurrence is a spontaneous change in medical condition which resulted from a previous injury. She was also advised to submit medical evidence to establish that her current condition was due to her work-related injury.

In a March 10, 2014 recurrence of disability claim, appellant noted that on June 12, 2013 she had a recurrence as she had difficulty stepping in and out of her postal vehicle. She noted that she first sought treatment for her recurrence on July 20, 2013. Appellant advised that her

recurrence caused her to stop work on January 23, 2014. She indicated that she was not in any way limited in performing her usual duties after returning to work following the original injury.

In an accompanying statement, appellant stated that she continued to have pain from her original injury in 2004. She advised that in May and June 2013 her pain became more frequent and that she had increasing difficulty walking up and down stairs. Appellant stated that she was advised by the Department of Labor that she did not need to submit a CA-2a because her case was still open.

In a March 11, 2014 report, Dr. Lopez advised that he had been treating appellant since 2013 for a right knee injury which occurred while she was working for the employing establishment. He noted that appellant had also complained of left knee pain for quite some time and that based on x-rays and an MRI scan he recommended a left knee scope. Dr. Lopez advised that appellant was currently diagnosed with right knee lateral and medial meniscus tear, right knee osteoarthritis, and right knee MCL sprain. He advised that her diagnoses were proven and shown in the past with x-rays and an MRI scan. Dr. Lopez requested that OWCP update appellant's diagnosis codes to reflect his reports in order to get authorization for surgery. He opined that the delay in surgery resulted in appellant missing more time from work due to the severity of the pain, swelling, and her inability to perform her work duties.

Dr. Lopez opined, in a March 19, 2014 report, that it was with medical certainty that appellant's condition was the result of an aggravation of her March 26, 2004 injury. He advised that a January 8, 2008 MRI scan showed a right knee lateral meniscus tear and right knee osteoarthritis. Dr. Lopez stated that a July 22, 2013 MRI scan revealed a right knee medial meniscus tear, right knee lateral meniscus tear and right knee osteoarthritis. He advised that on March 26, 2004 appellant was delivering mail when she slipped on stairs and injured her right knee. Dr. Lopez again requested that OWCP update its records to show appellant's proper and current work-related diagnoses. In a March 20, 2014 report, he reiterated appellant's diagnoses and stated that appellant's right knee was still painful and stiff.

By decision dated April 9, 2014, OWCP denied appellant's recurrence claim because the medical evidence did not establish that she had further disability due to a material worsening of the accepted condition.

### **LEGAL PRECEDENT**

FECA provides compensation for the disability of an employee resulting from a personal injury sustained while in the performance of duty.<sup>2</sup> Disability means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.<sup>3</sup>

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous

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<sup>2</sup> *Id.* at § 8102(a).

<sup>3</sup> 20 C.F.R. § 10.5(f).

injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>4</sup> An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.<sup>5</sup> In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.<sup>6</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>7</sup>

### ANALYSIS

The Board finds that appellant did not establish that she sustained a recurrence of disability. OWCP accepted her traumatic injury claim for sprained right MCL on July 6, 2004. Appellant returned to full duty on May 14, 2004. In 2014, she claimed entitlement to compensation for time lost from work due to her condition and claimed a recurrence of disability. The Board finds that there is insufficient medical evidence to establish that her current condition and disability are causally related to her work-related injury.

In his March 19, 2014 report, Dr. Lopez opined with medical certainty that appellant's condition was the result of aggravation of her March 26, 2004 injury. He advised that an MRI scan performed on January 8, 2008 showed a right knee lateral meniscus tear and right knee osteoarthritis. Dr. Lopez further advised that a July 22, 2013 MRI scan revealed a right knee medial meniscus tear, right knee lateral meniscus tear, and right knee osteoarthritis. In his August 26, 2013, March 11 and 19, 2014 reports, he requested that OWCP change appellant's accepted diagnoses from right knee sprain to right knee lateral and medial meniscus tear, right knee osteoarthritis, and right knee MCL sprain. Dr. Lopez supported this contention by pointing to a 2008 MRI scan performed four years after the accepted work injury and a 2013 MRI scan performed nine years after the accepted work injury. However, he failed to explain with medical reasoning how these conditions and her disability are causally related to appellant's 2004 sprained right MCL. The Board has held that a claimant who alleges that he or she has experienced a recurrence of an accepted condition must submit rationalized medical evidence that addresses how his or her current symptoms are causally related to the accepted employment injury.<sup>8</sup> Although Dr. Lopez stated that appellant's current condition was caused by her original 2004 injury, he did not provide any medical reasoning to substantiate his opinion nor did he explain his opinion in view of the fact that appellant was released to full duty in May 2004

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<sup>4</sup> *Id.* at § 10.5(x).

<sup>5</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956).

<sup>6</sup> *Rickey S. Storms*, 52 ECAB 349 (2001). For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>7</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>8</sup> *D.B.*, Docket No. 13-717 (issued July 24, 2013).

following her original injury. Dr. Lopez did not explain how the accepted 2004 MCL sprain would cause or aggravate other conditions that were first diagnosed years later after appellant had been released to full duty without restriction. There is no “bridging evidence” which would relate the additional conditions to the accepted employment injury. As noted, the medical evidence is of diminished probative value where it is unsupported by rationale regarding causal relationship.

Other reports by Dr. Lopez are insufficient to establish appellant’s claim because they do not offer an opinion on causal relationship. The Board has held that a report without an opinion as to causal relationship is of little probative value.<sup>9</sup> Likewise, other medical evidence of record, such as reports of diagnostic testing, are insufficient to establish the claim as they do not address how appellant’s current condition and disability, beginning January 23, 2014, are causally related to the accepted injury. As a result, the medical evidence of record is insufficient to discharge appellant’s burden of proof.

Appellant also submitted several physical therapy reports. However, records from a physical therapist do not constitute competent medical opinion in support of causal relationship. A physical therapist is not a physician as defined under FECA.<sup>10</sup> Thus, records from physical therapists are insufficient to establish the claim.<sup>11</sup>

On appeal appellant argues that OWCP was aware of the tear in her knee in 2009 and still allowed treatment. She further argues that if there was a question as to the relation of the tear to her work injury then it should have been addressed in 2009. To the extent that OWCP may have paid for any treatment in 2009 or thereafter, the Board held that the mere fact that OWCP authorized and paid for medical treatment does not establish that the condition for which the employee received treatment was employment related.<sup>12</sup> As noted, a recurrence of disability claim requires medical findings that establish the basis for the renewed disability for work supported by medical rationale. Because appellant has not provided such medical opinion evidence in this case, she has failed to meet her burden of proof.

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<sup>9</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer an opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

<sup>10</sup> *A.C.*, Docket No. 08-1453 (issued November 18, 2008). Under FECA, a “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2).

<sup>11</sup> *Allen C. Hundley*, 53 ECAB 551 (2002); *Lyle E. Dayberry*, 9 ECAB 369 (1998).

<sup>12</sup> See *Gary L. Whitmore*, 43 ECAB 441 (1992); *James F. Aue*, 25 ECAB 151 (1974). With regard to whether OWCP should have further developed the matter in 2009 and 2010, the Board notes that OWCP issued a June 16, 2010 decision denying appellant’s schedule award claim. Appellant did not pursue the appeal rights that accompanied this decision.

Appellant may submit new evidence or argument as part of a formal 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.<sup>13</sup>

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability causally related to her accepted injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 9, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 24, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>13</sup> Appellant submitted new evidence after the issuance of OWCP's April 9, 2014 merit decision. However, the Board may not consider this evidence as it may only review the evidence that was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c).