

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

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**P.I., Appellant**

**and**

**U.S. POSTAL SERVICE, NATIONAL SERVICE  
CENTER, Los Angeles, CA, Employer**

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**Docket No. 13-1983  
Issued: February 11, 2014**

*Appearances:*  
*Alan J. Shapiro, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 28, 2013 appellant, through his attorney, filed a timely appeal from a May 30, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 an injury on February 1, 2012 in the performance of duty, as alleged.

**FACTUAL HISTORY**

On April 15, 2012 appellant, then a 59-year-old mailhandler, filed a traumatic injury claim alleging that on February 1, 2012 he sprained his right knee when he stepped on a piece of

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

mail on the floor and twisted his knee. He stopped work on February 1, 2012. The employing establishment related that appellant was on permanent limited duty at the time of the injury.

In a February 1, 2012 authorization for examination and/or treatment, (Form CA-16) a physician's assistant provided a history of appellant twisting his right knee after stepping on a piece of mail and diagnosed right knee sprain.

In a form report dated February 2, 2012, Dr. Anton Volpicelli, an osteopath, indicated the date of injury as February 1, 2012. He diagnosed a right knee and leg sprain and a right medial meniscal tear.

The record contains a June 21, 2010 magnetic resonance imaging (MRI) scan study of the right knee, which revealed "a large horizontal tear in the posterior horn of the medial meniscus with meniscal cyst formation" and chondromalacia of the patella and lateral tibial plateau.

In a report dated February 10, 2012, Dr. Andrzej Bulczynski, a Board-certified orthopedic surgeon, provided a history of appellant twisting his right knee on February 1, 2012 after slipping on metal. He noted that he denied "a history of injury or disability to the right knee on an industrial or nonindustrial basis." Dr. Bulczynski diagnosed a right medial meniscus tear and recommended surgery. He related that, based on appellant's history and the examination, "it appears that [he] did sustain an injury to the right knee arising out of and caused by the industrial exposure of February 1, 2012." In a form report dated March 9, 2012, Dr. Bulczynski found that appellant could resume work on that date with restrictions.

In a progress report dated June 1, 2012, Dr. Bulczynski diagnosed a right medial meniscus tear and chondromalacia. He listed work restrictions. In a form report dated June 1, 2012, Dr. Bulczynski noted the date of injury as February 1, 2012 and diagnosed a right medial meniscal tear. He provided similar progress reports and form reports on July 13 and August 3, 2012.

On September 20, 2012 OWCP advised appellant that it had initially paid some medical expenses on his claim as it appeared to be minor but was now formally adjudicating his claim. It requested additional factual and medical information, including a detailed report from his attending physician addressing the causal relationship between any diagnosed condition and the identified work incident.

In a report dated October 19, 2012, Dr. Bulczynski noted that appellant described pain after he stood all day for two days at work operating a forklift. On examination he found mild effusion and moderate medial joint tenderness. Dr. Bulczynski diagnosed a right medial meniscus tear and chondromalacia patella and lateral tibial plateau. He stated, "It appears in the past, [appellant] had an MRI [scan study] of the right knee on June 21, 2010, which showed a tear of the posterior horn of the medial meniscus. [He] was able to function relatively well." Dr. Bulczynski noted that appellant became "significantly more symptomatic" after he again injured his knee on February 1, 2010 "when he was walking, slipped on metal causing him to twist his right knee and fall, landing on the right side. Since this incident, [he] had occasional sensation of giving way, medial-sided joint pain and swelling." He listed work restrictions.

By decision dated November 8, 2012, OWCP denied appellant's claim after finding that he had not established a condition causally related to the accepted February 1, 2012 employment incident.

On November 8, 2012 appellant, through his attorney, requested a telephone hearing before an OWCP hearing representative.

In a report dated September 6, 2012, received by OWCP on January 25, 2013, Dr. Bjorn A. Nordstrom, an osteopath, discussed appellant's history of right knee pain for the past two years that had increased over the past two weeks. He reviewed appellant's history of a "[right] meniscal tear that was unrepaired." Dr. Nordstrom diagnosed right knee pain "related to a work issue." On September 21, 2012 he noted that appellant continued to experience right knee pain. Dr. Nordstrom diagnosed right knee pain and found that appellant should continue working limited duty.

In a report dated November 16, 2012, Dr. Erik Lundquist, Board-certified in family practice, evaluated appellant for bilateral knee pain. He diagnosed left knee arthritis and degenerative right knee arthritis.

In a report dated November 28, 2012, Dr. Bulczynski discussed appellant's continued symptoms of pain when walking. He indicated that appellant did not want to proceed with surgery. Dr. Bulczynski listed findings on examination of mild medial joint line tenderness. He diagnosed a right medial meniscus tear and chondromalacia patella and lateral tibial plateau. Dr. Bulczynski listed work restrictions.

At the telephone hearing, held on March 14, 2013, appellant related that he tore the meniscus in his right knee in 2010 but did not have surgery. On February 1, 2012 he tripped on mail on the ground and twisted his right knee. Appellant experienced a different kind of pain in his right knee following the incident and his right knee condition worsened.

By decision dated May 30, 2013, the hearing representative affirmed the November 8, 2012 decision. She found that appellant had not submitted rationalized medical evidence supporting that he sustained a right knee condition due to the accepted February 1, 2012 work incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</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

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<sup>2</sup> *Id.*

employment injury.<sup>3</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>4</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>5</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>6</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>7</sup>

### ANALYSIS

Appellant alleged that he sustained an injury to his right knee on February 1, 2012 when he twisted his knee after stepping on a piece of mail on the floor. He has established that the incident occurred at the time, place and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that he sustained an injury as a result of this incident.

The Board finds that appellant has not established that the February 1, 2012 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.<sup>8</sup>

In a February 1, 2012 Form CA-16, a physician’s assistant diagnosed a right knee sprain.<sup>9</sup> A physician’s assistant, however, is not considered a physician under FECA and thus the report is of no probative value.<sup>10</sup>

In a February 2, 2012 form report, Dr. Volpicelli provided the date of injury as February 1, 2012 and diagnosed a right knee and leg sprain and a tear of the right medial meniscus. He did not, however, describe the history of injury or specifically attribute the diagnosed conditions to the February 1, 2012 work incident. Medical evidence that does not

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<sup>3</sup> *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

<sup>4</sup> *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>5</sup> *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

<sup>6</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>7</sup> *Id.*

<sup>8</sup> *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

<sup>9</sup> A properly executed Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. *See Elaine M. Kreyborg*, 41 ECAB 256, 259 (1989). OWCP did not address this issue in its decisions.

<sup>10</sup> *See 5 U.S.C. § 8101(2); Allen C. Hundley*, 53 ECAB 551 (2002).

offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>11</sup> Consequently, Dr. Volpicelli's report is of diminished probative value.

On February 10, 2012 Dr. Bulczynski discussed appellant's history of twisting his right knee on February 1, 2012 and noted that he had denied any prior injury to the right knee, *i.e.*, work related or nonwork related. He diagnosed a right medial meniscus tear. Dr. Bulczynski asserted that based on his examination and the history obtained it appeared that appellant's knee injury arose from the February 1, 2012 work incident. A June 21, 2010 MRI scan study of the right knee, however, revealed that appellant had a preexisting tear in the posterior horn of the medial meniscus and chondromalacia of the patella and lateral tibial plateau. Dr. Bulczynski therefore relied on an inaccurate history when he found that appellant had no prior right knee condition. Consequently, his report is of diminished probative value.<sup>12</sup> Further, Dr. Bulczynski's finding that it "appeared" that appellant's injury resulted from the February 1, 2012 employment incident is couched in speculative terms and thus insufficient to meet his burden of proof.<sup>13</sup>

In progress and form reports dated June through August 2012, Dr. Bulczynski provided findings on examination and diagnosed a right medial meniscus tear and chondromalacia. He listed work restrictions. Dr. Bulczynski did not, however, address causation and thus his reports are of little probative value.<sup>14</sup>

On October 19, 2012 Dr. Bulczynski indicated that appellant experienced pain after standing for two days operating a forklift. He diagnosed a medial meniscal tear and chondromalacia of the right knee. Dr. Bulczynski noted that a 2010 MRI scan of the right knee showed a right medial meniscus tear but that appellant sustained a considerable increase in symptoms after he slipped and twisted his knee on February 1, 2010, including a sensation of the knee giving way, pain and swelling. He provided work restrictions. Dr. Bulczynski, however, did not explain how a February 1, 2010 incident aggravated the preexisting meniscal tear and chondromalacia sufficient to cause an injury in 2012. A physician must provide a reasoned opinion on whether an employment incident caused or contributed to appellant's diagnosed medical condition.<sup>15</sup>

On November 28, 2012 Dr. Bulczynski diagnosed a right medial meniscus tear and chondromalacia patella and lateral tibial plateau. He provided work restrictions. Dr. Bulczynski

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<sup>11</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

<sup>12</sup> *Joseph M. Popp*, 48 ECAB 624 (1997) (to establish causal relationship, a physician's opinion must be based on a complete and accurate factual and medical background and must be supported by medical rationale).

<sup>13</sup> *Rickey S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

<sup>14</sup> *See supra* note 11.

<sup>15</sup> *John W. Montoya*, 54 ECAB 306 (2003).

did not, however, address causation and thus his report is of little probative value on the issue of causal relationship.<sup>16</sup>

On September 6, 2012 Dr. Nordstrom evaluated appellant for knee pain of two years duration that had increased over the past two weeks. He diagnosed right knee pain due to a work issue. On September 21, 2012 Dr. Nordstrom again diagnosed right knee pain. He did not, however, discuss the February 1, 2012 work injury or attribute any condition to the identified incident; consequently, his opinion is of diminished probative value.

On November 16, 2012 Dr. Lundquist diagnosed left knee arthritis and right knee degenerative arthritis. As he did not address causation, his report is of little probative value.

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.<sup>17</sup> Appellant must submit a physician's report in which the physician reviews those factors of employment identified by him as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.<sup>18</sup> He failed to submit such evidence and therefore failed to discharge his 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.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained an injury on February 1, 2012 in the performance of duty, as alleged.

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<sup>16</sup> See *Conrad Hightower*, *supra* note 11.

<sup>17</sup> *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

<sup>18</sup> *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 11, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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