

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

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**J.P., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Rome, GA, Employer**

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**Docket No. 14-454  
Issued: June 23, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On December 23, 2013 appellant filed a timely appeal of an August 26, 2013 merit decision and a December 11, 2013 nonmerit 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.

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish an occupational disease in the performance of duty; and (2) whether OWCP properly denied appellant's request for reconsideration.

**FACTUAL HISTORY**

On March 12, 2013 appellant, then a 60-year-old letter carrier, filed a Form CA-2, occupational disease claim, alleging that she developed right knee pain as a result of performing

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

her work duties. She first became aware of her condition and realized that it was causally related to her employment on October 23, 2012.

In a statement dated March 12, 2013, appellant indicated that her job duties included casing mail, bending, stooping, pushing and pulling equipment including mail hampers, loading her mail truck, mounting and dismounting her mail truck and walking on concrete floors. She believed that these work duties caused her right knee problem. Appellant was treated by Dr. Charles B. May, a Board-certified orthopedist, on October 23, 2012 for right knee pain. She reported right knee pain for several years beginning with a work-related fall in the 1980's and increased right knee discomfort and stiffness over the past few months without known injury or incident. Dr. May noted intact motor and sensory function in the upper and lower extremities. Right knee examination revealed soft tissue swelling, moderate effusion, tenderness to palpation about the medial joint line of the medial meniscus and positive McMurray's examination. Right knee x-rays demonstrated minimal arthritic changes about the mediolateral and patellofemoral compartments without fracture or acute injury and diagnosed moderate effusion. On November 6, 2012 Dr. May noted findings of trace effusion, mild patellofemoral crepitus, focal medial joint line tenderness and mild lateral tenderness. A right knee magnetic resonance imaging (MRI) scan demonstrated signal in the posterior and medial meniscus but no definitive sign of meniscal tear. Dr. May noted that appellant had a full thickness chondral defect of the patella and possible meniscus tear of the right knee and recommended an intra-articular injection. In a January 24, 2013 report, he noted that her examination was unchanged and diagnosed possible meniscal tear of the right knee. An October 30, 2012 MRI scan of the right knee revealed a full thickness chondral defect at the patellar lateral facet with chondral flaps, intact right knee menisci and cruciate and collateral ligaments, small joint effusion and a Baker's cyst.

On March 22, 2013 OWCP advised appellant of the type of evidence needed to establish her claim. It particularly requested that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific work factors.

In a questionnaire dated March 25, 2013, appellant indicated that she experienced right knee pain and had no history of injuries to her knees. She noted working at the employing establishment for over 26 years. Appellant first noticed right knee swelling about three weeks before her physician appointment in October 2012. She submitted an April 1, 2013 report from Dr. May who treated her for pain over the anterior and medial aspect of her knee. Dr. May noted that conservative treatment such as intra-articular injections were not successful in alleviating appellant's pain. He diagnosed a chondral injury, patellofemoral joint and possibly a medial meniscus tear and recommended diagnostic arthroscopic surgery. Dr. May noted a right knee x-ray which showed minimal arthritic changes and an MRI scan, which showed a Baker's cyst and cartilage defects in the patella with a signal in the medial meniscus but not diagnostic for a tear. Appellant reported that her symptoms began in the 1980's when she fell while exiting a mail truck and felt her activities at work exacerbated her symptoms. Dr. May opined that certainly climbing in and out of trucks, getting up and down frequently from a seated position would aggravate her symptoms.

In a May 21, 2013 decision OWCP, denied the claim on the grounds that the medical evidence was insufficient to establish that appellant's claimed conditions were casually related to work events.

Appellant requested reconsideration. She submitted a July 3, 2013 report from Dr. May who treated her for pain over the anterior and medial aspect of her knee. Dr. May noted that intra-articular injections were not successful in alleviating appellant's pain. He diagnosed a chondral injury, patellofemoral joint and possibly a medial meniscus tear and recommended diagnostic arthroscopic surgery. Dr. May noted that appellant had an x-ray of the right knee which showed minimal arthritic changes in the knee and an MRI scan which showed a Baker's cyst and cartilage defects in the patellar with signal in the medial meniscus. Appellant reported that her symptoms began in the 1980's when she fell while exiting a mail truck and she felt as though her activities at work exacerbated her symptoms. Dr. May opined that it was highly probable that climbing in and out of trucks, getting up and down frequently from a seated position have aggravated her symptoms.

In a decision dated August 26, 2013, OWCP denied modification of the May 21, 2013 decision.

Appellant requested reconsideration on November 30, 2013. In an undated statement she indicated that in the 1980's she tripped when exiting her mail truck and landed on her right knee; however, she never filed a claim. Appellant indicated that she had injections and fluid drawn from her knee for temporary relief. She asserted that her employment is contributing to her underlying condition.

In a December 11, 2013 decision, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she 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. Appellant must also establish that such event, incident or exposure caused an injury.<sup>2</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a

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<sup>2</sup> See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989). See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury).

physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.<sup>3</sup>

### **ANALYSIS -- ISSUE 1**

It is not disputed that appellant's work duties included casing mail, bending, stooping, pushing and pulling equipment including mail hampers, loading her mail truck, mounting and dismounting her mail truck and walking. It is also not disputed that she has been diagnosed with a chondral injury, patellofemoral joint and possibly a medial meniscus tear. However, appellant has not submitted sufficient medical evidence to establish that any of these conditions are causally related to specific employment factors or conditions.

In an April 1, 2013 report, Dr. May diagnosed a chondral injury, patellofemoral joint and possibly a medial meniscus tear. He noted that a right knee x-ray showed minimal arthritic changes and an MRI scan which showed a Baker's cyst and cartilage defects in the patella with signal in the medial meniscus. Dr. May noted that appellant related her symptoms to work activities since the 1980's when she fell getting out of a mail truck. He opined that certainly climbing in and out of trucks, getting up and down frequently from a seated position would aggravate appellant's symptoms. Although Dr. May supported causal relationship in a conclusory statement, he did not provide medical rationale explaining the basis of his opinion regarding causal relationship. Dr. May did not sufficiently explain how climbing in and out of trucks, getting up and down frequently from a seated position at work would cause the diagnosed conditions.

Similarly, in a July 3, 2013 report Dr. May noted diagnoses and recommended diagnostic arthroscopic surgery. He opined that it was highly probable that climbing in and out of trucks, getting up and down frequently from a seated position aggravated appellant's symptoms. The Board notes that Dr. May's report provides some support for causal relationship but is insufficient to establish that the claimed right knee condition was causally related to his employment duties. In that report, he opined that it "was highly probable." However, at best, this report provides only speculative and unreasoned support for causal relationship as the physician qualifies his support by noting that it was "highly probable" that appellant's employment caused her condition. Dr. May provided no medical reasoning to explain how particular work activities caused or aggravated a diagnosed condition.<sup>4</sup>

Other reports from Dr. May did not relate a history of the claimed work injury or specifically address how particular work duties caused or contributed to appellant's diagnosed medical condition. Rather, Dr. May appeared to attribute her condition to a traumatic fall she

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<sup>3</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>4</sup> Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

sustained in the 1980's. These reports were of little probative value and insufficient to establish appellant's occupational illness claim. Likewise, other medical evidence is insufficient to establish the claim as it did not provide an opinion on the causal relationship between her job duties and her diagnosed right knee condition.

On appeal, appellant disagrees with OWCP's decision denying her claim for compensation and noted that she submitted sufficient evidence to establish her claim. As noted above, the medical evidence does not establish that her diagnosed conditions were causally related to her employment. Reports from appellant's physician's failed to provide sufficient medical rationale explaining the reasons why appellant's diagnosed right knee conditions were caused or aggravated by particular employment duties. The need for such rationale is particularly important in view of her preexisting arthritic changes in the right knee.

### **LEGAL PRECEDENT -- ISSUE 2**

Under section 8128(a) of FECA,<sup>5</sup> OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(1) Shows that OWCP erroneously applied or interpreted a specific point of law;  
or

“(2) Advances a relevant legal argument not previously considered by OWCP; or

“(3) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”<sup>6</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.<sup>7</sup>

### **ANALYSIS -- ISSUE 2**

OWCP denied appellant's claim on the grounds that she failed to provide sufficient medical evidence to establish that the diagnosed condition was causally related to her work duties. Thereafter, it denied her reconsideration request, without a merit review.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In her request for reconsideration, appellant did not show that OWCP erroneously applied or

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<sup>5</sup> 5 U.S.C. § 8128(a).

<sup>6</sup> 20 C.F.R. § 10.606(b)(2).

<sup>7</sup> *Id.* at § 10.608(b).

interpreted a specific point of law. She did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. In her undated statement she indicates that in the 1980's she tripped when she exited her mail truck and landed on her right knee; however, she never filed a claim. Appellant indicated that she had injections and fluid drawn from her knee for temporary relief. She asserts that her employment is contributing to her underlying condition. These assertions do not show a legal error by OWCP or a new and relevant legal argument. The underlying issue in this case is whether appellant's diagnosed condition is causally related to her workplace exposures. That is a medical issue which must be addressed by relevant new medical evidence.<sup>8</sup> However, appellant did not submit any new and relevant medical evidence in support of her claim.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or constitute relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that her claimed conditions were causally related to her employment. The Board finds that OWCP properly denied her request for reconsideration.

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<sup>8</sup> See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 11 and August 26, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 23, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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