

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

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**B.M., Appellant** )

**and** )

**DEPARTMENT OF VETERANS AFFAIRS,** )  
**VETERANS HEALTH ADMINISTRATION** )  
**MEDICAL CENTER, Murfreesboro, TN,** )  
**Employer** )

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**Docket No. 13-1119**  
**Issued: March 18, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 10, 2013 appellant, through her attorney, filed a timely appeal from a February 28, 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's claim should be expanded to include a left knee meniscus tear or right shoulder rotator cuff tear as causally related to her December 8, 2011 employment injury.

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

## **FACTUAL HISTORY**

On December 8, 2011 appellant, then a 57-year-old full-time nurse, sustained a large left knee and right buttocks hematoma and lumbar vertebra compression fracture due to a slip and fall on ice in the parking lot. OWCP accepted the claim for closed lumbar vertebra fracture without spinal cord injury and left knee and lower leg contusions and authorized lumbar spinal fusion surgery, which occurred on January 12, 2012. Appellant stopped work on January 29, 2012 and returned to modified work for two hours a day on March 26, 2012, which was gradually increased to six hours a day as a permanent restriction.

In an April 17, 2012 report, Dr. Charles R. (Bob) Kaelin, a treating Board-certified orthopedic surgeon, diagnosed a left knee lateral meniscus tear. On physical examination there was no swelling, crepitus, tingling or effusion. An x-ray interpretation was reviewed and revealed no acute disease process and no fracture.

An April 20, 2012 magnetic resonance imaging (MRI) scan revealed advanced left tricompartmental osteoarthritis and chondromalacia and a lateral meniscal tear which might be postsurgical or related to a recurrent meniscal tear. The study also revealed complex joint effusion and a popliteal cyst with suspected synovitis; and markedly abnormal morphology signal of the medial meniscal anterior and posterior horns, which could be due to extensive meniscal tearing or a postsurgical finding.

On April 24, 2012 Dr. Kaelin diagnosed left knee lateral and medial meniscus tears and right rotator cuff tear. The physical examination revealed right shoulder moderate swelling, tenderness, crepitus and pain, supraspinatus weakness, with diminished left knee range of motion and no left knee swelling, crepitus, pain or tenderness.

In a May 2, 2012 report, Dr. James W. Dyer, an OWCP medical adviser, reviewed the medical record. He opined that appellant's left knee meniscal tears and right shoulder rotator cuff tear were unrelated to her accepted December 8, 2011 slip and fall. Dr. Dyer attributed her left knee meniscal tears to her advanced degenerative arthritis, which was not employment related. He noted that it took several years for degenerative meniscal tears to evolve in near end-stage global arthritis and would not be caused by a fall.

On May 7, 2012 OWCP received appellant's April 20, 2012 claim for a recurrence of disability. Appellant sought medical treatment and time lost from work. In an attached letter, the employing establishment requested OWCP to develop appellant's recurrence claim as a consequential injury claim.

In a May 9, 2012 letter, OWCP informed appellant of the definition for a recurrence of disability. It also informed her that the evidence of record was insufficient to warrant acceptance of her claim to include the additional conditions. Appellant was advised as to the medical and factual evidence required to support her claim and given 30 days to provide the requested evidence.

In a May 17, 2012 treatment report, Dr. Kaelin diagnosed left knee lateral and medial meniscus tears and right rotator cuff tear and provided physical examination findings. He

attributed appellant's conditions to her fall at work. Dr. Kaelin stated that her right shoulder condition was due to the employment injury as she had no problems prior to her fall and based on the magnitude of the fall. Similarly, he opined that appellant's left knee condition was also due to the fall, absent any history of a preexisting knee condition prior to the injury and the pictures obtained of the bruising.

In reports dated June 7 and July, 2012, Dr. Kaelin diagnosed left knee lateral and medial meniscus tears and right rotator cuff tear and provided physical examination findings. He reiterated that appellant's conditions were due to the December 8, 2011 employment incident as she had no symptoms prior to the fall.

By decision dated August 14, 2012, OWCP denied appellant's claim. It found that the medical evidence from Dr. Kaelin was not sufficient to establish a consequential right shoulder or left knee condition.

In an August 20, 2012 letter, counsel requested a telephonic hearing before an OWCP hearing representative, which occurred on December 12, 2012.

In reports dated September 4 to October 23, 2012, Dr. Kaelin diagnosed left knee lateral and medial meniscus tears and right rotator cuff tear, which he attributed to the December 8, 2011 slip and fall. The physical examination findings and appellant complaints were noted in the report. Dr. Kaelin opined that the conditions occurred due to the work injury and resulting trauma.

In a November 7, 2012 report, Dr. Kaelin stated that appellant sustained a lumbar spine, and left knee injury as a result of the December 8, 2011 employment injury. He noted that the evidence established that she sustained acute bruising of the left knee and a magnetic resonance imaging (MRI) scan showed meniscal pathology. Dr. Kaelin noted that the MRI scan showed tricompartmental arthritic changes, which were present prior to the fall. As appellant was totally asymptomatic prior the December 8, 2011 employment injury, he opined that her condition was causally related to the fall. Dr. Kaelin opined that the recommended left knee surgery was not for treatment of the arthritis, but for the mechanical symptoms occurring subsequent to the fall.

In reports dated November 20 to January 17, 2013, Dr. Kaelin again diagnosed left knee lateral and medial meniscus tears and right rotator cuff tear. He reiterated his opinion on causal relationship.

On December 12, 2012 Dr. Kaelin opined that the left knee meniscal tears were consistent with the description of the fall provided by appellant. He noted that the fall was quite extensive as it required spinal surgery. Dr. Kaelin noted that the tear was at the root, which was indicated that it was due to the fall and not the degenerative tears seen elsewhere in the knee. He stated that particularly in the absence of a prior history, the meniscal tears were due to appellant's fall.

By decision dated February 28, 2013, OWCP's hearing representative affirmed the August 14, 2012 decision. She found that the reports of Dr. Kaelin were not based on a full or

accurate medical history. Further, there was no evidence that he took into account any prior injury or surgery as noted on the April 20, 2012 MRI scan.<sup>2</sup>

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence,<sup>4</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>5</sup>

The evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>6</sup> The claimant must submit a rationalized medical opinion that supports a causal connection between his or her current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.<sup>7</sup>

### **ANALYSIS**

The accepted conditions in this case are closed lumbar vertebra fracture without spinal cord injury and left knee and lower leg contusions. OWCP authorized lumbar spinal fusion surgery, which occurred on January 12, 2012. Appellant requested that her claim be expanded to include left knee meniscus tear and right shoulder rotator cuff tear. OWCP denied that request in decisions dated August 14, 2012 and February 28, 2013. The issue on appeal is whether the medical evidence establishes that appellant's left knee meniscus tear and right shoulder rotator cuff tear are directly a part of the accepted December 8, 2011 employment injury or are consequential injuries which occurred after the accepted injury but were caused by it. The Board finds that appellant has failed to meet her burden of proof to establish that her claim should be expanded to include the conditions of left knee meniscus tear and right shoulder rotator cuff tear.

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<sup>2</sup> The Board notes that, following the February 28, 2013 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. See 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>3</sup> 5 U.S.C. §§ 8101-8103.

<sup>4</sup> *C.B.*, Docket No. 08-2268 (issued May 22, 2009); *J.P.*, 59 ECAB 178 (2007); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>5</sup> *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *G.T.*, 59 ECAB 447 Docket No. 07-1345 (issued April 11, 2008); *Frankie A. Farinacci*, 56 ECAB 723 (2005); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *W.D.*, Docket No. 09-658 (issued October 22, 2009); *T.H.*, 59 ECAB 388 (2008); *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Thomas L. Agee*, 56 ECAB 465 (2005).

<sup>7</sup> *D.U.*, Docket No. 10-144 (issued July 27, 2010); *D.G.*, 59 ECAB 734 (2008); *Donald W. Wenzel*, 56 ECAB 390 (2005).

In support of her claim, appellant submitted medical reports from Dr. Kaelin, who diagnosed a right rotator cuff tear and left knee tears, which he attributed to the December 8, 2011 employment injury.

In reports dated April 17 and 24, 2012, Dr. Kaelin noted diagnoses of left lateral and medial meniscus tears and right rotator cuff tear. He provided physical findings, but offered no opinion as to the cause of appellant's condition. The Board has held that reports offering no opinion regarding the cause of an employee's condition are of limited probative value on the issue of causal relationship.<sup>8</sup> Thus, these reports are insufficient to support appellant's contention that her claim should be expanded to include left knee meniscal tears and right rotator cuff tear.

In multiple reports for the period May 17 to January 17, 2013, Dr. Kaelin generally attributed appellant's left lateral and medial meniscus tears and right rotator cuff tear to her December 8, 2011 employment injury. He noted that she had been asymptomatic prior to the fall and that the fall was severe. Dr. Kaelin's rationale for concluding that appellant's left knee and right shoulder conditions were employment related and that she lacked symptoms prior to the December 8, 2011 employment injury and had symptoms after her employment injury. The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without sufficient rationale, to establish causal relationship.<sup>9</sup> Thus, these reports from Dr. Kaelin are insufficient to support appellant's claim.

In a December 12, 2012 report, Dr. Kaelin provided a one-paragraph statement on causal relation. He opined that the left knee lateral and medial meniscal tears were connected to the spinal surgery resulting from the extensive fall. Dr. Kaelin concluded that the location of the meniscus tear indicated that the fall was the cause rather than a degenerative process which had produced tears seen elsewhere in the knee. He did not adequately explain why the tear at the root was not due to appellant's preexisting degenerative disease or how the fall caused this condition. Medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.<sup>10</sup> Furthermore, Dr. Kaelin did not sufficiently explain how appellant's left knee meniscal tears were caused by the December 8, 2011 employment injury. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.<sup>11</sup> In view of the inadequate rationale provided by Dr. Kaelin on the issue of causal relationship, the Board finds that his opinion fails to establish appellant's left knee lateral and medial meniscal tears were caused by the December 8, 2011 employment injury.

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<sup>8</sup> *A.F.*, 59 ECAB 714 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>9</sup> *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>10</sup> See *T.M.*, *supra* note 9; *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *William C. Thomas*, 45 ECAB 591 (1994) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>11</sup> See *D.U.*, *supra* note 7; *S.S.*, 59 ECAB 315 (2008); *Elizabeth H. Kramm*, *supra* note 6; *William C. Thomas*, *supra* note 10.

Appellant also submitted an April 20, 2012 MRI scan. The MRI scan reported advanced left tricompartmental osteoarthritis and chondromalacia; a lateral meniscal tear which might have been postsurgical or related to a recurrent meniscal tear; complex joint effusion and popliteal cyst with suspected synovitis; and markedly abnormal morphology and signal of the medial meniscal anterior and posterior horns. Causal relationship was not addressed in this report and it is insufficient to support appellant's claim that her left knee meniscal tear was caused by the December 8, 2011 employment injury.<sup>12</sup>

Lastly, the record contains a May 2, 2012 report from an OWCP medical adviser negates any causal relationship between appellant's left knee meniscal tears and right shoulder rotator cuff tear to her advanced degenerative arthritis and her unrelated to the December 8, 2011 slip and fall. The medical adviser further noted that degenerative arthritis meniscal tears take years to develop and would not be caused by a fall.

Thus, the Board finds that appellant's reports are insufficient to establish any causal relationship between her left knee and right shoulder conditions and the December 8, 2011 employment injury.

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 has established that her claim should be expanded to include left knee meniscus tears and right shoulder rotator cuff tear as causally related to the December 8, 2011 employment injury.

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<sup>12</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Jaja K. Asaramo*, 55 ECAB 200 (2004) (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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 28, 2013 is affirmed.

Issued: March 18, 2014  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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