

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

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**T.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Hesperia, CA, Employer**

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**Docket No. 14-929  
Issued: October 23, 2014**

*Appearances:*

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On March 14, 2014 appellant, through counsel, filed a timely appeal from the February 12, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her 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 has met her burden of proof to establish that she sustained an occupational disease claim causally related to factors of her federal employment.

**FACTUAL HISTORY**

On November 14, 2012 appellant, then a 59-year-old city carrier, filed an occupational disease claim alleging a right knee and foot condition in the performance of duty. She used her right leg and foot repeatedly while applying the gas and brake pedals in her employing establishment vehicle while delivering mail. Appellant's route consisted of 600 to 900 stops,

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

five to seven hours a day, five days a week. She first became aware of her condition and realized it was work related on November 12, 2012.

In a November 12, 2012 treatment note, Dr. David Gutierrez, Board-certified in family medicine, advised that appellant could perform limited-duty work on November 13, 2012. In a separate November 12, 2012 note, he stated that she was seen for right knee pain which “had been increasing due to work.” Dr. Gutierrez diagnosed right knee pain and causalgia of the lower limb. He provided a prescription for a right knee x-ray and noted that appellant had a history of osteoarthritis and pain exacerbated by work.

By letter dated November 20, 2012, OWCP advised appellant that additional evidence was needed to establish her claim. Appellant was requested to provide a physician’s opinion supported by a medical explanation as to how her work activities caused the claimed conditions.

In a December 10, 2012 response, appellant noted that she had worked at the employing establishment for almost 26 years as a carrier. For the last 22 years, she performed mounted deliveries. Appellant’s job duties consisted of driving a truck to deliver the mail with 600 to 900 deliveries per shift. This required constant repetitive motion of her right leg and knee, when applying gas or the brake pedal. Appellant indicated that about a year earlier, her knee started hurting off and on. After a day’s work, her knee became swollen, in pain and popped when she was trying to sleep. Appellant noted that the pain became so severe that her physician ordered a magnetic resonance imaging (MRI) scan, which she had not yet obtained.

In a December 10, 2012 treatment note, Dr. Gutierrez stated that appellant was seen on December 10, 2012 for increasing problems with the right knee since December 11, 2012. He related that her duties included repetitive motion of her right knee.

A December 14, 2012 MRI scan of the right knee read by Dr. Sholbi Zaidi, a Board-certified diagnostic radiologist, revealed grade four chondromalacia in the lateral compartment of the knee with full thickness cartilage defect in the lateral and central femoral trochlea; large complex degenerative tear involving the entire lateral meniscus with moderate extrusion; complex degenerative tear involving the body of the medial meniscus; mucoid degeneration of the anterior cruciate ligament associated with a pericruciate cyst; small joint effusion; and small Baker’s cyst.

In a January 23, 2013 decision, OWCP denied appellant’s claim. It found that the factual evidence of record was not sufficient to establish that she sustained a knee injury, as alleged.

On February 20, 2013 appellant requested a review of the written record. In a February 20, 2013 treatment note, Dr. Gutierrez stated that she was released to work limited duty due to a low back work injury. Appellant indicated that the factual date of injury for the right knee was November 12, 2012. Dr. Gutierrez also noted that she admitted that “the right knee injury and pain 100 percent due from work.” OWCP also received copies of previously submitted reports.

In a June 20, 2013 decision, an OWCP hearing representative affirmed the January 23, 2013 decision. He found that the medical evidence was insufficient to establish causal relationship between appellant’s right knee condition and her employment duties.

Counsel submitted new medical evidence in support of appellant's claim. In an April 18, 2013 report, Dr. Sunny Cheung, a Board-certified orthopedic surgeon, noted that appellant was seen for complaints of right knee pain. The pain was located at the anteriorlateral area with a duration of six months. Dr. Cheung advised that appellant's "knee pain was not related to an injury." He diagnosed: a grade 4 chondromalacia in the lateral compartment of the right knee with full-thickness cartilage defect in the lateral and central femoral trochlea; a large complex degenerative tear involving the entire lateral meniscus with moderate extrusion; complex degenerative rear involving the body of the medial meniscus; a mucoid degeneration of the anterior cruciate ligament associated with a per cruciate cyst; small joint effusion; and small Bakers cyst. In a May 23, 2013 report, Dr. Cheung noted that appellant was seen in follow up of right knee lateral pain which was worse with walking and included painful popping. He examined the knee and determined that she still had effusion, no flexion contracture, localized osteoarthritis of the knee and acute lateral meniscal tear. Dr. Cheung recommended a steroid injection.

In a letter dated January 22, 2014, counsel requested reconsideration. In a July 24, 2013 report, Dr. Cheung noted that appellant returned for follow up of right knee synovial injection. Appellant reported sharp "9/10" right knee pain after work as opposed to "6-7/10" in the morning. Dr. Cheung examined her and determined that her lateral joint line tenderness was worse than the medial in the right knee. There was not much effusion. Dr. Cheung diagnosed acute lateral meniscal tear and localized osteoarthritis of the knee.

In a December 5, 2013 treatment note, Dr. Gutierrez noted that appellant was driving and constantly using her right knee foot at work. He advised that she had swelling, stiffness, pain on movement and weight-bearing in the right knee. Dr. Gutierrez indicated that appellant had right knee pain on the lateral meniscus test on November 12, 2012. He diagnosed chondromalacia of the right knee and a lateral meniscus tear.

In undated notes, appellant described her activities at work, which included driving and using her right knee and foot constantly to deliver mail in her vehicle to 600 to 1,000 houses on her route for 21 years.

By decision dated February 12, 2014, OWCP denied modification of its prior decisions.

### **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 timely filed within the applicable time limitation period of FECA, that an injury was sustained 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 employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

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<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

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) a 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, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a 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>4</sup>

### ANALYSIS

The Board finds that appellant submitted insufficient medical evidence to establish that her right knee condition was caused or aggravated by her work activities as a city carrier.

Appellant provided treatment notes from Dr. Gutierrez. On November 12, 2012 Dr. Gutierrez indicated that she was seen for right knee pain which "had been increasing due to work." To the extent that his statement may be construed as providing support for causal relationship, it is insufficient as he did not address how particular work duties caused or contributed to appellant's right knee condition. In a December 10, 2012 treatment note, Dr. Gutierrez stated that she was seen for increasing problems with the right knee since December 11, 2012. He noted that appellant's duties included repetitive use of her right knee. However, Dr. Gutierrez did not describe the repetitive duties at work or explain how they caused or aggravated her medical condition. In his February 20, 2013 treatment note, he advised that appellant was released to limited duty due to a low back work injury. Dr. Gutierrez related that she stated that the date of injury for the right knee was November 12, 2012 and that the right knee injury and pain was 100 percent due from work. The Board notes that he repeated appellant's opinion and belief that her condition was due to work. Dr. Gutierrez did not provide adequate medical reasoning to explain how specific work duties contributed to her condition.

In a December 5, 2013 treatment note, Dr. Gutierrez noted that appellant was driving and constantly using her right knee and foot at work. He further noted her symptoms and diagnosed chondromalacia of the right knee and a lateral meniscus tear, but he did not explain how appellant's work duties caused or contributed to the diagnosed conditions. Appellant's burden of proof includes the submission of rationalized medical evidence supporting causal relationship. As Dr. Gutierrez has not provided a reasoned report on causal relationship, his reports are of limited probative value.

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<sup>4</sup> *Id.*

OWCP also received reports from Dr. Cheung. On April 18, 2013 Dr. Cheung noted that appellant was seen for complaints of right knee pain. He offered diagnoses that included right knee chondromalacia and large complex degenerative tears of the medial and lateral meniscus but stated that her “knee pain was not related to an injury.” In a May 23, 2013 report, Dr. Cheung, noted that appellant was seen for follow up of right knee lateral pain which was worse with walking and included painful popping. He listed findings but did not offer a specific opinion on causal relationship. On July 24, 2013 Dr. Cheung noted that appellant reported worse right knee pain after work than before work but he did not specifically provide his own opinion regarding whether particular work activities caused or contributed to her diagnosed right knee condition. As, he did not address causal relationship, this report is of limited probative value.<sup>5</sup>

The other medical evidence of record is also insufficient to establish her claim. It does not specifically support how any particular work activity caused or contributed to her diagnosed right knee condition.

There is insufficient reasoned medical evidence addressing how appellant’s employment duties caused or aggravated her right knee. Appellant has not met her burden of proof to establish that she sustained a medical condition causally related to factors of her employment.

Appellant may submit evidence or argument with a written request for reconsideration 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 did not meet her burden of proof in establishing that she sustained an injury causally related to factors of her federal employment.

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<sup>5</sup> *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of diminished probative value on the issue of causal relationship).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 12, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 23, 2014  
Washington, DC

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

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

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