



## **ISSUES**

The issues are: (1) whether OWCP properly denied appellant's request for an oral hearing as untimely; and (2) whether appellant met her burden of proof to establish that she sustained a left knee injury in the performance of duty on March 6, 2013.

## **FACTUAL HISTORY**

On March 7, 2013 appellant, then a 48-year-old security assistant, filed a traumatic injury claim (Form CA-1) alleging that on March 6, 2013 she sustained a left knee injury when she struck it on her desk as she was turning to exit. She first received medical care on March 6, 2013 and notified her supervisor on March 7, 2013. Appellant stopped work on March 7, 2013 and returned to full duty without restrictions on March 13, 2013.

In a March 6, 2013 diagnostic report, Dr. Nina L. Brogle, a Board-certified diagnostic radiologist, reported that an x-ray of appellant's left knee revealed mild osteoarthritis and no fracture or dislocation.

Medical reports dated March 11 to April 19, 2013 were submitted from Dr. Suresh G. Belani, Board-certified in internal medicine. On April 2, 2013 Dr. Belani reported that he first treated appellant on March 11, 2013 due to complaints of constant left knee pain and swelling from a March 6, 2011 work accident. He released her to work on March 13, 2013. Appellant returned for further treatment on March 25, 2013 because the pain and swelling had not subsided.

Dr. Belani provided a Form CA-20 noting fluid buildup with swelling and tenderness of the left knee. He found no evidence of a preexisting or concurrent injury. Dr. Belani listed a history that on March 6, 2013, appellant hit her left knee on the corner of her desk as she was getting up. He diagnosed osteoarthritis and checked the box marked "Yes" as to whether he believed the condition was caused or aggravated by the employment activity. Dr. Belani provided appellant with work restrictions and referred her to an orthopedic physician.

In an April 4, 2013 diagnostic report, Dr. Norka J. Suarez, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of the left knee revealed a small amount of joint fluid and a horizontal grade 2 increased intrameniscal signal in the posterior horn of the medial status representing mucinous degeneration. She further noted that correlation was made with the 2006 and 2011 x-rays. Dr. Suarez diagnosed a small amount of joint fluid and mucinous degeneration of the posterior horn of the medial meniscus.

By letter dated April 19, 2013, the employing establishment reported that appellant stopped work on March 25, 2013.

By letter dated May 2, 2013, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical evidence needed and asked that her physician submit a narrative medical report within 30 days. In an April 19, 2013 work capacity evaluation form, Dr. Belani provided clinical findings of left knee inflammation and diagnosed osteoarthritis.

In medical reports dated April 22 and May 2, 2013, Dr. Allen S. Glushakow, a Board-certified orthopedic surgeon, reported that he evaluated appellant on April 22, 2013 for complaints of left knee pain. He stated that she was turning around with her chair and struck her left knee. Dr. Glushakow noted a history of a cartilage problem in the left knee around 2006 which had improved with conservative treatment. He reviewed the April 4, 2013 left knee MRI scan which showed a tear of the medial meniscus and moderate amount of joint fluid. Upon physical examination, Dr. Glushakow noted soft tissue swelling. He diagnosed internal derangement of the left knee with a tear of the medial meniscus. Dr. Glushakow noted that degeneration could cause a positive MRI scan with regards to torn cartilage. Appellant opted for arthroscopic surgery in view of her symptoms and lack of improvement. In a May 2, 2013 work capacity evaluation form and Form CA-20, Dr. Glushakow noted a history of left knee pain and diagnosed internal derangement of the left knee and tear of the medial meniscus. He stated that appellant was out of work pending arthroscopic surgery.

By decision dated June 5, 2013, OWCP denied appellant's claim. It found that the medical evidence of record failed to establish that the diagnosed left knee condition was causally related to the accepted March 6, 2013 employment incident.

On June 18, 2013 appellant submitted an appeal request form which she had not signed and did not indicate the appeal right she was requesting. She submitted the May 9 and June 13, 2013 reports from Dr. Glushakow, who again reported a history that she was turning around with her chair, struck her left knee and twisted her knee. Dr. Glushakow noted an MRI scan of the left knee revealed a horizontal grade 2 increased signal tear which was compatible with a torn meniscus and further stated that appellant's physical findings corroborated with a torn medial meniscus. He noted a history of a 2006 left knee problem in which she responded to conservative treatment and had no problems until the March 6, 2013 accident. Dr. Glushakow diagnosed internal derangement of the left knee and a probable torn medial meniscus. He requested that OWCP approve arthroscopic surgery in light of the fact that appellant had continued locking in the left knee and soft tissue swelling.

By letter dated July 2, 2013, OWCP instructed appellant to specify the right appeal she was requesting and to sign and date the form.

On July 2, 2013 appellant requested an oral hearing before the Branch of Hearings and Review. The appeal was postmarked July 9, 2013.

By decision dated August 30, 2013, the Branch of Hearings and Review denied appellant's request for a hearing finding that it was not made within 30 days of OWCP's June 5, 2013 decision. The Branch of Hearings and Review further determined that the issue in the case could equally well be addressed by requesting reconsideration before OWCP and submitting evidence not previously considered.

On September 15, 2013 appellant requested reconsideration of the June 5, 2013 decision. She did not submit any additional medical evidence.

By decision dated November 25, 2013, OWCP affirmed its June 5, 2013 decision. It found that the medical evidence of record failed to establish that her left knee condition was caused by the accepted March 6, 2013 employment incident.

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

A claimant for compensation not satisfied with a decision by OWCP is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.<sup>3</sup> According to 20 C.F.R. § 10.615, a claimant shall be afforded a choice of an oral hearing or a review of the written record.<sup>4</sup> The regulations provide that a request for a hearing or review of the written record must be made within 30 days as determined by the postmark or other carrier's date marking, of the date of the decision.<sup>5</sup> A claimant is not entitled to a hearing or a review of the written record as a matter of right if the request is not made within 30 days of the date of OWCP's decision.<sup>6</sup> OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>7</sup> In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.<sup>8</sup>

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

Appellant requested an oral hearing on July 2, 2013 from the June 5, 2013 decision; however, her reconsideration request was not postmarked until July 9, 2013.<sup>9</sup> The date of the postmark is deemed the date of the request. Therefore, it was more than 30 days after the date of issuance of OWCP's June 5, 2013 decision. The Board finds that OWCP properly found in its August 30, 2013 decision that appellant was not entitled to a hearing as a matter of right because her request was not made within 30 days of the June 5, 2013 decision.<sup>10</sup>

OWCP, however, has the discretionary authority to grant a hearing if the request was not timely filed. In its August 30, 2013 decision, it considered the issue involved and properly exercised its discretion. OWCP determined that appellant could equally well address the issue of causal relationship by requesting reconsideration before OWCP and submitting new evidence.

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<sup>3</sup> 5 U.S.C. § 8124(b)(1).

<sup>4</sup> 20 C.F.R. § 10.615.

<sup>5</sup> *Id.* at § 10.616(a).

<sup>6</sup> See *James Smith*, 53 ECAB 188 (2001).

<sup>7</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>8</sup> *Id.*

<sup>9</sup> The Board notes that appellant did not specifically request a hearing until July 9, 2013. While appellant submitted an appeal request form on June 18, 2013, postmarked on June 24, 2013, the form was not signed by appellant or specify appeal right requested. *Jeff Micono*, 39 ECAB 617 (1988).

<sup>10</sup> 20 C.F.R. § 10.616(a); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (October 2011).

The Board has held that the only limitation on OWCP's authority is reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.<sup>11</sup> The Board finds that OWCP did not abuse its discretion in denying a discretionary hearing and properly denied appellant's request for an oral hearing under section 8124 of FECA.<sup>12</sup>

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

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.<sup>13</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>14</sup>

In order to determine whether an employee sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>15</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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. He or she must also establish that such event, incident or exposure caused an injury.<sup>16</sup>

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>17</sup> The opinion of the physician must be based on one of reasonable medical

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<sup>11</sup> *Teresa M. Valle*, 57 ECAB 542 (2006); *Daniel J. Perea*, 42 ECAB 214 (1990).

<sup>12</sup> *See Hubert Jones, Jr.*, 57 ECAB 467 (2006); *D.F.*, Docket No. 11-42 (issued August 1, 2011).

<sup>13</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>14</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>15</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>16</sup> *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

<sup>17</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>18</sup>

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

OWCP accepted that the March 6, 2013 employment incident occurred as alleged. The issue is whether appellant established that the incident caused her left knee injury. The Board finds that she did not submit sufficient medical evidence to support that her left knee injury is causally related to the March 6, 2013 employment incident.<sup>19</sup>

Dr. Belani reported that he began treating appellant on March 11, 2013 for complaints of left knee pain and swelling. His form reports noted findings of fluid buildup and swelling and tenderness of the left knee. Dr. Belani's found no evidence of a preexisting injury. He listed that on March 6, 2013, appellant hit her left knee on the corner of her desk as she was getting up. Dr. Belani diagnosed osteoarthritis and checked the box marked "Yes" when asked if he believed the condition was caused or aggravated by the employment activity.

The Board finds that the opinion of Dr. Belani is not well rationalized. Dr. Belani failed to provide any details regarding appellant's prior medical history and stated that there was no evidence of a preexisting left knee injury. His assessment of appellant's medical history is inaccurate as the reports of Dr. Suarez and Dr. Glushakow note appellant had a prior 2006 left knee injury. Without an accurate medical history or details regarding appellant's prior knee injury, Dr. Belani's opinion is not based on a proper factual or medical background.<sup>20</sup> While he provided a diagnosis of osteoarthritis and checked the box marked "Yes" when asked if he believed appellant's condition was caused or aggravated by her employment condition, he failed to explain how bumping her knee on a desk would cause her osteoarthritis. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of diminished probative value.<sup>21</sup> Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.<sup>22</sup> The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the

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<sup>18</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>19</sup> *See Robert Broome*, 55 ECAB 339 (2004).

<sup>20</sup> C.S., Docket No. 13-1037 (issued September 9, 2013).

<sup>21</sup> *Alberta S. Williamson*, 47 ECAB 569 (1996).

<sup>22</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

established incident or factor of employment.<sup>23</sup> Dr. Belani's reports are insufficient to meet appellant's burden of proof.

In medical reports dated April 22 to June 13, 2013, Dr. Glushakow reported that he evaluated appellant for complaints of left knee pain. On May 2, 2013 he reported that she was turning around in her chair and struck her left knee. Dr. Glushakow also noted a history of a 2006 left knee cartilage problem which had improved with conservative treatment. He reviewed the April 4, 2013 left knee MRI scan and opined that appellant sustained a tear of the medial meniscus. Upon physical examination, Dr. Glushakow noted soft tissue swelling and diagnosed internal derangement of the left knee with tear of the medial meniscus.

In a June 13, 2013 report, Dr. Glushakow reported that appellant was turning around in her chair, struck and twisted her knee. He noted that the April 4, 2013 MRI scan of the left knee revealed a horizontal grade 2 increased signal tear which was compatible with a torn meniscus and that her physical findings also corroborated with a torn medial meniscus. Dr. Glushakow noted after treatment of appellant's 2006 left knee injury, she had no problems until the March 6, 2013 accident. He diagnosed internal derangement of the left knee and a probable torn medial meniscus.

While Dr. Glushakow noted internal derangement of the left knee, his diagnosis of torn medial meniscus is speculative as his June 13, 2013 report noted "probable torn medial meniscus." He failed to provide a detailed medical history, only noting a 2006 preexisting cartilage problem in the left knee which had improved with conservative treatment. While Dr. Glushakow stated that appellant did not have issues with the left knee until the March 6, 2013 accident, it remains unclear if her injury is a result of a preexisting condition.<sup>24</sup> While he opines that she sustained a tear of the medial meniscus, he also reports that degeneration can also cause a positive MRI scan with regards to torn cartilage. The Board further notes that Dr. Glushakow failed to provide sufficient medical opinion on the cause of appellant's injury. The Board has held that 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.<sup>25</sup> As Dr. Glushakow failed to provide an opinion regarding the cause of appellant's injury, his reports are insufficient to meet her burden of proof.

The remaining medical evidence is also insufficient to support appellant's claim. The reports of Dr. Brogle and Dr. Suarez provide diagnostic findings with no history of injury, findings on physical examination or opinion on causation. These reports of are of diminished probative value and insufficient to establish appellant's claim.<sup>26</sup>

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<sup>23</sup> See *Lee R. Haywood*, 48 ECAB 145 (1996).

<sup>24</sup> *Supra* note 22.

<sup>25</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>26</sup> *Id.*

The Board finds that the record lacks sufficient rationalized medical evidence to establish a causal relationship between the March 6, 2013 employment incident and appellant's left knee condition. Appellant failed to meet her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

**CONCLUSION**

The Board finds that OWCP did not abuse its discretion by denying appellant's request for an oral hearing as untimely. The Board also finds that appellant failed to meet her burden of proof to establish that her left knee injury was a result of the March 6, 2013 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 25 and August 30, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 9, 2014  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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