

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

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**R.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Boston, MA, Employer**

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**Docket No. 15-1834  
Issued: December 23, 2015**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 8, 2015 appellant filed a timely appeal of an August 19, 2015 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 has met his burden of proof to establish bilateral knee conditions causally related to factors of his federal employment.

**FACTUAL HISTORY**

On March 15, 2015 appellant, a 44-year-old letter carrier, filed a Form CA-2 claim for benefits based on an occupational disease, alleging that he developed bilateral knee conditions causally related to employment factors. Appellant noted that he first became aware of his

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

condition on September 14, 2013. He explained that as a mail carrier he had walked five miles a day since 1973. Appellant's supervisor noted on the claim form that appellant had stopped work on September 14, 2013, had returned to work on June 2, 2014, and was currently working.

On May 20, 2015 OWCP informed appellant that it required factual and medical evidence to determine whether he was eligible for compensation benefits. It requested that he submit a comprehensive report from a treating physician describing his symptoms and the medical reasons for his condition, with an opinion as to whether his claimed condition was causally related to his federal employment. OWCP allotted appellant 30 days to submit this evidence.

In Form CA-17 duty status reports dated April 30, 2013 and September 30, 2013, Dr. Glen Seidman, a Board-certified orthopedic surgeon and appellant's treating physician, related that appellant had sustained injury to the meniscus of both knees and was experiencing bilateral knee pain causally related to employment factors. He outlined work restrictions stemming from appellant's bilateral knee condition. Dr. Seidman also completed a Form CA-20, attending physician's report, on September 30, 2013 in which he indicated by checking a box marked "yes" that appellant's diagnosed conditions of bilateral knee osteoarthritis and meniscal tears were caused or aggravated by his employment.

By decision dated June 26, 2015, OWCP denied the claim, finding that he failed to submit medical evidence establishing that a diagnosed condition was causally related to the accepted employment factors.

In a letter dated November 14, 2013, received by OWCP on June 30, 2015, appellant advised that he had worked as a letter carrier for the employing establishment for 20 years, during which he had carried mail for six to eight hours per day, climbing hundreds of stairs and walking up and down hills. He related that, at the top of each staircase, he needed to twist his knees to the left or right to access mail slots. Appellant noted that he underwent left meniscus surgery in 2009 and 2012; he returned to work in October 2012 and was pain-free until the summer of 2013. He continued to work through the pain until September 2013, at which time the pain and swelling in both knees made it impossible for him to continue working. At this time appellant underwent a magnetic resonance imaging (MRI) scan, the results of which showed a torn meniscus in both knees. He was examined by Dr. Seidman, his treating physician, who prescribed physical therapy. Appellant noted that he was waiting approval for a claim for recurrence of disability.

In an August 18, 2014 report, Dr. Seidman provided an impairment rating and advised that appellant had a 10 percent permanent impairment in his left knee and a two percent permanent impairment in his right knee. He reported that appellant had recently sustained a new injury to his right and left knees which significantly interfered with his activities of daily living and his work-related activities as a letter carrier. This necessitated additional knee surgery on January 10, 2014, a procedure which involved a right knee arthroscopy, partial medial meniscectomy, chondroplasty or articular shaving; left knee medial and lateral partial meniscectomies and medial and lateral compartment chondroplasty or articular shaving. Dr. Seidman related findings of right knee partial medial meniscus tear, patellofemoral and medial compartment; grade three chondromalacia, left knee; partial medial and lateral meniscal tears, patellofemoral chondromalacia, and medial and lateral compartment chondromalacia in the

left knee. He examined appellant on April 30, 2014, at which time he showed left and right knee small effusion; he also had a popliteal cyst and decreased range of motion in his left knee. Dr. Seidman concluded that, based on a reasonable degree of medical certainty, appellant's bilateral findings and symptomatology constituted a new work-related injury.

On July 14, 2015, appellant requested reconsideration.

By decision dated August 19, 2015, OWCP denied modification of the June 26, 2015 decision. It noted that he currently had a claim for bilateral knee injury under OWCP File No. xxxxxx564, which was accepted for tear of lateral and medial menisci of right knee, tear of anterior horn of lateral meniscus and posterior horn of medial meniscus of the left knee. OWCP further noted that appellant had filed a recurrence claim on September 16, 2013 after stopping work and had returned to full-duty work on June 16, 2014. It advised that he was currently receiving medical benefits for continued treatment due to the original injury. OWCP found that while Dr. Seidman opined in his August 18, 2014 report that appellant sustained a new injury to both knees, the record indicated that he developed recurrent symptoms of the original, accepted conditions, not a new injury. OWCP therefore denied the claim, finding that because he was already receiving benefits for his recurrence claim for the same bilateral knee condition, he was not entitled to benefits for the instant, new occupational disease claim he filed on March 15, 2015.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of establishing that 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>3</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>4</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) 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 is usually rationalized medical

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

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>5</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his bilateral knee conditions and his federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>6</sup>

### ANALYSIS

The Board finds that appellant was not entitled to compensation for a claimed bilateral knee condition because he was already receiving compensation for a recurrence claim filed under case number xxxxxx564, which pertained to the same bilateral knee condition.<sup>7</sup> In addition, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates any new claimed bilateral knee condition to factors of his employment. For these reasons, he has not discharged his burden of proof to establish his claim that he sustained a bilateral knee condition in the performance of duty.

Appellant submitted the August 18, 2014 report from Dr. Seidman. He related appellant's complaints of bilateral knee pain and presented diagnoses of meniscal tears in both knees and left-sided patellofemoral chondromalacia, but did not provide a rationalized medical opinion that these findings were causally related to factors of his employment and that they constituted a new injury. Dr. Seidman advised that appellant underwent surgery on both knees, most recently in January 2014, and continued to experience pain in his knees. He examined appellant on April 30, 2014, at which time he showed left and right knee small effusion; he also had a popliteal cyst and decreased range of motion in his left knee. Dr. Seidman concluded that, based on a reasonable degree of medical certainty, appellant's bilateral findings and symptomatology constituted a new work-related injury. Dr. Seidman's report, however, did not provide a probative, rationalized medical opinion that appellant had a new claimed condition or disability causally related to employment factors. His opinion on causal relationship is of limited probative value as it does not contain any medical rationale of how or why appellant's claimed bilateral knee condition was currently affected by or related to factors of employment.<sup>8</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>7</sup> The Board notes that, for reasons of judicial economy and clarity, it would be in OWCP's interest and to appellant's benefit to consolidate the records for case numbers xxxxxx600 and xxxxxx564.

<sup>8</sup> *William C. Thomas*, 45 ECAB 591 (1994).

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>9</sup> Dr. Seidman did not sufficiently describe appellant's job duties, following the accepted claim, and he did not explain the medical process through which such duties would have been competent to cause the claimed new bilateral knee condition. His opinion is of limited probative value as it does not contain any medical rationale explaining how appellant's job duties, after he returned to work, physiologically caused the diagnosed bilateral knee condition. Furthermore, the form reports which support causal relationship only with a check mark in a box are insufficient to establish the claim, as the Board has held that without further explanation or rationale, a box checked "yes" is not sufficient to establish causation.<sup>10</sup> Dr. Seidman's reports thus did not constitute adequate medical evidence to establish that appellant's claimed new bilateral knee condition was causally related to his employment.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship.<sup>11</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

OWCP advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Consequently, appellant has not met his burden of proof in establishing that his claimed bilateral knee condition was causally related to his employment.

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 failed to meet his burden of proof to establish that his bilateral knee conditions were causally related to the alleged employment factors.

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<sup>9</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>10</sup> *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

<sup>11</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 19, 2015 decision of the Office of Workers' Compensation Programs' be affirmed.

Issued: December 23, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board