



In support of his claim, appellant submitted an October 25, 2011 physical therapy report cosigned by Dr. Izhar Haque, an orthopedic surgeon, noting that appellant complained of severe left knee pain and that he received education with regard to breathing exercises and a home exercise program. In an October 27, 2011 progress note, Dr. Haque stated that appellant had all indications for a left total knee replacement due to advanced osteoarthritis and needed to meet the implant surgeon to plan for the date of definitive surgery. In an October 27, 2011 attachment to a general medical and surgery authorization request form, he stated that appellant had progressing pain and decreased quality of life related to advanced osteoarthritis in his left knee. Dr. Haque noted that appellant had failed to improve with conservative management and was scheduled for a left total knee arthroplasty on December 6, 2011. The record also contains notes signed by Dr. Haque's physician's assistant as well as an October 3, 2011 work capacity evaluation with an illegible signature.

In response to OWCP's November 16, 2011 letter asking appellant to submit further evidence, appellant submitted a radiology report dated October 3, 2011, containing an illegible signature, wherein an unidentified person noted in clinical history that appellant was lifting a bag over his head to throw into a larger bin when his left knee buckled and went out from under him and he landed on both knees. The radiographic report was interpreted as showing degenerative arthritis with no obvious acute fracture or dislocation. In an October 4, 2011 radiology report containing no signature, an unidentified person noted degenerative arthrosis most advanced at the patellofemoral articulation.

In an October 6, 2011 progress note, Dr. Jeffrey Goldstein, an orthopedic surgeon, noted that appellant's left knee evinced pain and swelling, but no specific loose body type symptoms.

By decision dated January 23, 2012, OWCP denied appellant's claim. It determined that he had not established fact of injury as he failed to provide evidence to support that the event occurred as he alleged and did not provide medical evidence containing a definitive medical diagnosis in connection with the injury or events.

In a June 7, 2012 report, a nurse for the employing establishment noted that several weeks ago appellant had a left total knee replacement using his health insurance and veteran status. She further noted that appellant had injured his knee twice in recent years, once on June 24, 2008, which was accepted for a left knee sprain, and once on October 3, 2011, which was denied for left knee sprain.

On August 6, 2012 appellant requested reconsideration. He submitted progress notes from the employing establishment dated from August 16, 2011 through August 28, 2012, which included operative notes and follow up notes by physicians, nurse practitioners, and physical therapists. These notes indicate that on February 6, 2012 appellant underwent a left knee total knee arthroplasty and was discharged on February 21, 2012. However, due to insufficient progress on range of motion, appellant underwent a left knee manipulation under anesthesia on March 22, 2012.

By decision dated July 31, 2014, OWCP found that the factual component of appellant's claim was established but that he had not provided medical evidence sufficient to connect his claimed conditions to the employment incident of October 3, 2011.

## 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. 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>2</sup>

In order to determine whether an employee actually 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 or exposure, which is alleged to have occurred.<sup>3</sup> In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.<sup>4</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>5</sup> The medical evidence required to establish causal relationship is usually rationalized medical 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>6</sup>

## ANALYSIS

OWCP accepted that an employment incident occurred as alleged on October 3, 2011. However, the Board finds that appellant has not met his burden of proof to establish a causal relationship between his left knee injury and surgeries and the accepted employment incident of October 3, 2011.

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<sup>2</sup> *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

<sup>3</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>4</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>6</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

Appellant has submitted evidence that establishes that he had degenerative arthritis in his left knee and underwent surgery including a total knee arthroplasty on February 6, 2012. However, there is no medical evidence to establish that his surgery or the medical condition in his left knee was causally related to the accepted employment incident of October 3, 2011. The Board notes that appellant submitted evidence that either contains an illegible signature or no signature and thus the author cannot be identified as a physician. The Board has held that incomplete medical reports, containing no signature or illegible signatures, do not constitute probative medical evidence.<sup>7</sup> Appellant also submitted notes by physical therapists, nurse practitioners, and physician's assistants. The Board has held that treatment notes signed by a nurse, physical therapist, or a physician's assistant are not considered medical evidence as these providers are not physicians under FECA.<sup>8</sup>

The remaining progress notes or reports signed by physicians do not address the issue of causal relationship. In this regard, none of the radiologic evidence of record addresses the issue of causal relationship. Dr. Haque noted that appellant had advanced osteoarthritis in his left knee, that this resulted in a decreased quality of life, that conservative treatment had not been successful, and that he had been scheduled for a total left knee arthroplasty. However, he does not address the cause of appellant's osteoarthritis. Dr. Goldstein noted that appellant's left knee evidenced pain and swelling, but did not discuss appellant's employment or any causal relationship.

In order to establish his claim, appellant must submit a rationalized medical opinion addressing the causal relationship between his left knee condition and the October 3, 2011 employment incident. An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor is his belief that the condition was caused by his employment sufficient to establish causal relationship.<sup>9</sup>

The Board finds that appellant has not submitted sufficient medical evidence to establish his claim. As noted, causal relationship is a medical question that must be established by a probative medical opinion from a physician.<sup>10</sup> The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which this incident would have caused or aggravated his condition.<sup>11</sup> The Board finds that there is no rationalized medical opinion in the record discussing the October 3, 2011 incident and explaining

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<sup>7</sup> See *R.M.*, 59 ECAB 690, 693 (2008); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>8</sup> See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

<sup>9</sup> *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

<sup>10</sup> *W.P.*, Docket No. 14-1076 (issued September 18, 2014).

<sup>11</sup> *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). See also *S.T.*, Docket No. 11-237 (issued September 9, 2011).

how appellant's left knee condition and subsequent surgery are related to this accepted incident. Because appellant has not provided such medical opinion evidence in this case, he has failed to meet his burden of proof.

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 failed to establish that he sustained an injury in the performance of duty on October 3, 2011, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 31, 2014 is affirmed.

Issued: February 3, 2015  
Washington, DC

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

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

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