

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

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C.M., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Bellmawr, NJ, Employer )

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**Docket No. 14-1713  
Issued: January 7, 2015**

*Appearances:*  
Thomas R. Uliase, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 4, 2014 appellant, through her attorney, filed a timely appeal from a May 9, 2014 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 the claim.

**ISSUE**

The issue is whether appellant established a recurrence of total disability beginning May 7, 2013 causally related to her January 22, 2011 employment injury.

**FACTUAL HISTORY**

On January 26, 2011 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim alleging that she fell in the performance of duty. OWCP accepted the claim for a right knee strain and medial meniscus tear. It also accepted claims for recurrences of disability on

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

December 1, 2011 and August 20, 2012 due to OWCP-approved surgery.<sup>2</sup> Appellant returned to full-duty work on February 19, 2013 and worked in that capacity until she stopped work on May 7, 2013. On May 21, 2013 she filed a claim for a recurrence of disability.

Evidence received with the claim included: right knee radiographs dated April 5, 2013; an April 15, 2013 note from Dr. Scott Miller, a Board-certified orthopedic surgeon, releasing appellant from his care; a September 6, 2011 magnetic resonance imaging (MRI) scan of the right knee; and home health certification and plan of care dated August 24 and September 5, 2012 from Dr. Miller.

A radiology report dated April 5, 2013 was submitted from Dr. Dennis Balgowan, a Board-certified diagnostic radiologist, which related that x-rays performed of appellant's right knee showed no significant interval change. While postoperative changes were seen in the medial compartment with medial compartment arthroplasty, no hardware fracture or abnormal lucency was seen. Mild patellofemoral degenerative change and minimal lateral compartment degenerative changes were noted, along with possible dystrophic calcification.

Medical documentation from Dr. Laura Ross, an osteopath and a Board-certified orthopedic surgeon, were also received.<sup>3</sup> In an April 9, 2013 letter, Dr. Ross referred appellant to Rothman Institute for total knee arthroplasty. In an April 9, 2013 report, she noted the history of the January 22, 2011 work injury, appellant's subsequent knee surgeries and current symptoms. X-rays revealed further degenerative changes in the lateral compartment of the right knee which appeared to be an uneven medial prosthesis. An impression of failed right medial knee arthroplasty and right trochanteric bursitis of the hip was provided. Dr. Ross recommended a revision of her unicompartmental arthroplasty to a total knee arthroplasty. In a May 8, 2013 duty status report, she diagnosed internal derangement due to the January 22, 2011 work injury and noted restrictions. In a May 7, 2013 note, Dr. Ross advised that appellant could return to limited-duty work on May 7, 2013 which restrictions with involved no pushing/pulling, no climbing stairs, no repetitive motion, standing for no more than two hours, and lifting no more than five pounds of weight.

On May 8, 2013 appellant wrote to the postmaster relating that she had received a letter stating that she would be returning to the annex as a carrier effective May 18, 2013. She stated that she was still on limited duty and she questioned what reasonable accommodations would be provided to her.

Patricia Teehan, supervisor, distribution operations, advised appellant on May 23, 2013 that the employing establishment had no work available due to the severity of her restrictions. Appellant was further advised however that she still had a responsibility as an employee of the United States Postal Service to be in regular attendance.

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<sup>2</sup> On December 1, 2011 appellant underwent a right knee diagnostic arthroscopy, partial medial meniscectomy, chondroplasty of the medial femoral condyle as well as the patella, limited synovectomy, and debridement of the inner rime of the lateral meniscus. On August 21, 2012 she underwent a right medial knee replacement.

<sup>3</sup> On April 18, 2013 appellant requested a change in physicians from Dr. Miller to Dr. Ross.

By letter dated July 31, 2013, OWCP informed appellant that the evidence received was insufficient to establish a return or increase of disability due to a change/worsening of her accepted work-related conditions. It determined that none of the medical evidence indicated why or how her condition worsened without an intervening injury or new exposure to the work environment. OWCP further noted the medical evidence failed to explain how the diagnosed failed right medial knee arthroplasty and right trochanteric bursitis of the hip were related to the January 22, 2011 work injury, or to explain how she could no longer perform the duties she was performing when she stopped working. It requested that appellant provide, within 30 days, a narrative statement from her physician containing a medical explanation as to how her disability was due to the original injury and demonstrated that the accepted condition is materially worsened/changed, without intervening cause, to the point that she was totally disabled.

Appellant provided her August 8, 2013 response to OWCP's questions along with a July 29, 2013 note from Dr. Ross referring her for a consult at Rothman Institute and additional CA-7 claims for compensation.

By decision dated September 4, 2013, OWCP denied the claimed recurrence as the evidence did not indicate why or how her condition had worsened nor did it provide a description of the work duties she could no longer perform as of the date of the recurrence.

On September 13, 2013 appellant requested an oral hearing, which was held on February 18, 2014. She testified that she returned to work as a mail handler and that her work restrictions were accommodated. But, after the May 2013 work restrictions from Dr. Ross, appellant was told by the employing establishment there was no work within her restrictions. She eventually saw Dr. Gwo-Chin Lee, a Board-certified orthopedic surgeon, and had a total knee replacement on October 22, 2013.

Additional evidence received included requests for authorization, diagnostic reports, and medical evidence pertaining to the October 22, 2013 right total knee revision for the failed unicompartmental knee replacement.

In a January 16, 2014 report, Dr. Lee provided a statement as to the reason for performing the October 22, 2013 revision surgery, converting her right unicompartmental knee replacement to a total knee replacement. He stated that the initial unicompartmental knee replacement performed in August 2012 had not improved appellant's knee pain due to arthritis in both the lateral and patellofemoral joint compartments of the knee as well as an unstable unicompartmental arthroplasty, which was performed as a result of a job-related injury. To relieve the pain of arthritis in the other joint spaces, it was deemed medically necessary to convert appellant's unicompartmental knee replacement to a full knee replacement, fully treating her arthritis.

By decision dated May 9, 2014, an OWCP hearing representative affirmed the September 4, 2013 decision.<sup>4</sup>

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<sup>4</sup> See *supra* note 2. OWCP subsequently authorized the October 22, 2013 surgery and approved the claim for recurrence of disability effective October 22, 2013.

## LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>5</sup>

The term disability as used in FECA means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.<sup>6</sup> For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>7</sup> Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>8</sup> The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>9</sup>

## ANALYSIS

OWCP accepted that appellant sustained a right knee strain and medial meniscus tear and paid compensation benefits, including authorization for two knee surgeries on December 1, 2011 and August 21, 2012.<sup>10</sup> Appellant returned to full-duty work on February 19, 2013, following the accepted August 21, 2012 knee surgery and was working full duty when she stopped work on May 7, 2013. She subsequently filed a recurrence claim for the May 7, 2013 work stoppage. OWCP denied the claim.

The evidence of record does not provide a reasoned opinion to support the claim that appellant sustained a spontaneous change in her medical condition on or about May 7, 2013, causing disability due to the January 22, 2011 accepted work injury.

The radiology report dated April 5, 2013 from Dr. Balgowan showed no significant interval change of appellant's right knee. Postoperative changes were seen in the medial compartment with medial compartment arthroplasty, but with no hardware fracture or abnormal lucency was seen. Mild patellofemoral degenerative change and minimal lateral compartment degenerative changes were noted, along with possible dystrophic calcification. This report primarily notes degenerative changes, and does not substantiate a worsening of the accepted conditions warranting total disability.

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<sup>5</sup> 20 C.F.R. § 10.5(x).

<sup>6</sup> *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>7</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>8</sup> *G.T.*, 59 ECAB 447 (2008); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>9</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>10</sup> *See supra* note 2. These surgeries were accompanied with periods of disability.

In her April 9, 2013 treatment note, Dr. Ross noted that appellant's symptoms regarding her right knee and, based on her examination, found that appellant had a failed right medial knee arthroplasty. She recommended a total revision and also diagnosed right trochanteric bursitis of the hip. This report preceded appellant's recurrence claim, and Dr. Ross did not address appellant's work status or mention any disability appellant may have had as a result of the failed right medial knee arthroplasty or how it related to the original work injury.

In her May 7, 2013 note, Dr. Ross indicated that appellant could work limited duty with restrictions on prolonged walking; however, her note provided no reasoned medical opinion to establish that appellant's condition had worsened without an intervening cause to now require new work restrictions.

Appellant stopped work on May 7, 2013 allegedly because the employing establishment did not have available work within Dr. Ross' restrictions. However the record substantiates that appellant was informed on May 23, 2013, not May 7, 2013, that there was no work available within appellant's restrictions. In this May 23, 2013 letter, the supervisor of distribution operation noted that appellant was still expected to be regular in attendance. Furthermore, appellant's letter dated May 8, 2013 substantiates that appellant had been informed that she was to report to the annex as a carrier effective May 18, 2013. The record thus indicates that appellant did not receive pay after May 7, 2013 because she was not available for work by choice, even following notice of her required attendance.

In his January 16, 2014 report, Dr. Lee provided a reason for appellant's total knee replacement. However, he did not address appellant's disability status in May 2013 or provide any medical rationale as to whether there had been a material change in her medical condition requiring new work restrictions back on May 7, 2013. Dr. Lee's report is insufficient to establish appellant's claim for recurrence from May 2013.

The other evidence pertaining to appellant's prior surgeries or her October 22, 2013 surgery does not address whether appellant had a material change in her condition in May 2013.<sup>11</sup>

On appeal, counsel contends that appellant has provided *prima facie* evidence to establish that she suffered an overall worsening of her right knee condition leading to a recurrence of disability and that she was placed off work because the employing establishment could not provide work within her restrictions. As explained above, there is no probative medical opinion evidence to establish that she had a material change in her medical condition that caused disability beginning May 7, 2013 or that the employing establishment had no work for appellant due to her accepted conditions.

Appellant may submit new evidence or argument as part of a formal 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.

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<sup>11</sup> See *supra* note 2.

**CONCLUSION**

The Board finds that appellant failed to establish a recurrence of disability on or after May 7, 2013 causally related to her January 22, 2011 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated May 9, 2014 is affirmed.

Issued: January 7, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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