



## **FACTUAL HISTORY**

On April 9, 2013 appellant, then a 45-year-old letter carrier, filed a traumatic injury claim alleging that on that day he injured his right knee and leg when he fell down on uneven pavement in the performance of duty. He stopped work and returned to full duty on April 18, 2013. OWCP accepted appellant's claim for right knee contusion and right medial meniscus tear.

In an April 9, 2013 magnetic resonance imaging (MRI) scan of the right knee, Dr. Vijay Sankhla, a Board-certified diagnostic radiologist, reported bones of normal density and development with no evidence of fracture or dislocation. He concluded that appellant had a normal examination of the right knee.

In a July 10, 2013 report, Dr. Nicole Glynn, a Board-certified diagnostic radiologist, stated that appellant had medial greater than lateral pain after a fall. She reported that an MRI scan of the right knee showed a complex tear of the posterior horn of the medial meniscus and a small amount of fluid posterior to the posterior cruciate ligament. Dr. Glynn noted no significant joint effusion and intact lateral meniscus, anterior and posterior cruciate ligament, and medial and lateral collateral ligament. She diagnosed complex tear of the posterior horn of the medial meniscus and mild chondromalacia patella.

In a July 18, 2013 medical note, Dr. William Kennard, a Board-certified orthopedic surgeon, related appellant's complaints of continued pain and discomfort on the medial side of the knee and difficulty with stairs and squatting. Upon examination, he observed patellar tenderness and small effusion. No swelling or instability was present. Dr. Kennard stated that appellant had loss of extension by five degrees. McMurray test was moderately positive. Dr. Kennard reported that the MRI scan revealed a tear of the posterior and medial meniscus of the right knee. He diagnosed tear of medial cartilage or meniscus of the knee. Dr. Kennard recommended surgery and stated that appellant could work for another 10 days while the surgery was approved.

On July 30 and August 13, 2013 appellant filed claims for disability compensation for the period July 26 to August 9, 2013. He continued to submit additional CA-7 forms claiming ongoing disability due to his April 9, 2013 employment injury.

In a letter dated August 9, 2013, OWCP advised appellant that it received his claim for disability compensation beginning July 26, 2013. It informed him that before any compensation could be paid it would need to make a decision on his claimed disability. OWCP requested that appellant complete a recurrence of disability (CA-2a) claim form and also provide evidence to explain why he stopped working on July 26, 2013.

On August 20, 2013 appellant filed a recurrence claim alleging that on July 26, 2013 he sustained a recurrence of his April 9, 2013 injury. He stated that his right knee pain progressively worsened as he continued to work after the April 9, 2013 injury. Appellant noted that an MRI scan revealed a torn meniscus. He explained that he could not return to work because he could not stand or walk for long periods of time due to the pain in his knee and limping.

In a letter dated August 28, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish his recurrence of disability claim. It requested that he provide responses to the attached questions and a medical report which explained, based on medical rationale, how appellant's disability was due to his accepted employment injury.

In a decision dated October 4, 2013, OWCP denied appellant's recurrence of disability beginning July 26, 2013 finding that the medical evidence was insufficient to establish that he was unable to work as of July 26, 2013 as a result of the April 9, 2013 employment injury.

In a letter postmarked October 22, 2013, appellant requested an oral hearing.

In a November 11, 2013 report, Dr. Kennard related appellant's complaints of persistent right knee pain. He noted that appellant had known degenerative joint disease affecting the right knee after a traumatic injury of mild degree. Upon examination, Dr. Kennard observed localized tenderness over the medial joint line of both knees. He also noted a small amount of synovitis in the left knee and small effusion in the right. Range of motion was full in both knees. McMurray's test was positive. Dr. Kennard diagnosed osteoarthritis involving the lower leg, sprain of medial collateral ligament of the knee, tear of medial cartilage or meniscus of the knee.

On November 27, 2013 appellant underwent approved right knee arthroscopy.<sup>3</sup> He submitted a November 27, 2013 operative report and various physical therapy reports.

In a December 9, 2013 report, Dr. Kennard related appellant's complaints of pain. He stated that arthroscopic evaluation revealed a tear in the medial meniscus and intercondylar trochlear groove damage. Dr. Kennard reported that examination revealed no deformity and full flexion. McMurray test remained mildly positive, localized to the medial joint. Dr. Kennard diagnosed osteoarthritis, localized primarily involving the lower leg.

In a December 23, 2013 work capacity evaluation form, Dr. Kennard noted that appellant was not capable of performing his usual job. He stated that appellant had right knee arthroscopy and should not work until approximately February 5, 2014.

On March 8, 2014 appellant returned to unrestricted duty.

On March 11, 2014 an oral hearing was held. Appellant's counsel was present. Appellant testified that from May to July 2013 he worked his regular duties but still experienced a lot of knee pain and swelling. He explained that he drove, walked, and dismounted routes every day. Appellant reported that he was awaiting the results of an MRI scan, which took a few months. When the MRI scan examination revealed a tear, his physician advised him to have an operation and to wait about 10 days. Appellant told his physician that "he would hold out as long as he could, but his leg was really bothering him." He stated that within five days "he could not handle the pain and swelling in his right knee anymore." Appellant called his physician who

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<sup>3</sup> The record reveals that on November 29, 2013 appellant filed another recurrence claim and several claims for ongoing disability alleging that on November 27, 2013 he underwent right knee surgery. OWCP subsequently accepted this recurrence of disability claim and began paying compensation for temporary total disability effective November 27, 2013. On February 21, 2014 appellant was placed on the periodic rolls.

advised him to stay out of work until the surgery was completed. He reported that he underwent surgery on November 27, 2013 and returned to work on March 8, 2014. Appellant testified further that he continued to experience pain in both knees.

In a May 8, 2014 report, Dr. Kennard stated that he examined appellant on April 16, 2013 for a right knee injury sustained on April 9, 2013. He noted that the examination revealed mild synovitis, minimal effusion, and positive McMurray test. Dr. Kennard referred appellant for an MRI scan, which showed a complex tear of the posterior horn of the medial meniscus in the right knee, along with chondromalacia. He related that he examined appellant again on July 18, 2013 and advised him that he was requesting authorization for surgery. Dr. Kennard stated that approximately one week after the appointment appellant called his office with complaints of markedly increased knee pain, especially while bending, and increased swelling while working. He advised appellant that due to the complex tear and chondromalacia of the patella, appellant could work only if the employer could accommodate sedentary duty. Dr. Kennard reported that sedentary duty was not available for appellant so he stopped work while waiting for authorization for surgery. He stated that appellant had surgery on November 27, 2013 and remained out of work until March 8, 2014.

In a May 12, 2014 letter, appellant's attorney stated that in addition to the evidence submitted at the April 16, 2014 hearing he was including a new report from Dr. Kennard which showed that appellant was unable to work from July 26, 2013 until the date of surgery due to the April 9, 2013 employment injury.

In a decision dated June 25, 2014, an OWCP hearing representative affirmed the October 4, 2013 denial decision finding that the medical evidence was insufficient to establish that he was unable to work beginning July 26, 2013 as a result of his April 9, 2013 employment injury.

### **LEGAL PRECEDENT**

OWCP's implementing regulations define a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>4</sup> An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical

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<sup>4</sup> 20 C.F.R. § 10.5(x).

reasoning.<sup>5</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>8</sup>

### ANALYSIS

OWCP accepted that appellant sustained right knee contusion and right medial meniscus tear as a result of an April 9, 2013 employment injury. Appellant stopped work and returned to full duty on April 18, 2013. On July 26, 2013 he stopped work again. Appellant filed a recurrence of disability and various claim forms requesting disability compensation beginning July 26, 2013. OWCP denied his claim for recurrence of disability finding that the medical evidence failed to establish that he was disabled from work beginning July 26, 2013 as a result of the April 9, 2013 employment injury. The Board finds that appellant failed to establish a recurrence of disability on July 26, 2013.

In support of his recurrence claim, appellant submitted reports dated July 18, 2013 to May 8, 2014 by Dr. Kennard who related appellant's complaints of continued pain, discomfort, and swelling in the right knee. Upon examination, Dr. Kennard observed patellar tenderness and small effusion. Range of motion was full in both knees. McMurray's test was positive. Dr. Kennard also noted that an MRI scan revealed a tear of the posterior and medial meniscus of the right knee. He diagnosed osteoarthritis and tear of medial cartilage or meniscus of the knee. In a July 18, 2013 note, Dr. Kennard opined that appellant could work for another 10 days while awaiting approval for surgery. In a May 8, 2014 report, he stated that appellant called his office approximately one week after the July 18, 2013 examination with complaints of markedly increased knee pain. Dr. Kennard advised appellant that due to the complex tear and chondromalacia of the patella he could only work sedentary duty. He reported that appellant's employer could not accommodate sedentary duty so appellant stopped work. The Board notes, however, that Dr. Kennard does not provide any medical rationale for why appellant could only work sedentary duty on July 23, 2013 as a result of his accepted April 9, 2013 employment injury. His report is also vague as he does not provide any dates for the claimed disability, rather he only states that it was approximately one week after appellant's July 18, 2013 examination. Furthermore, the Board notes that in his July 18, 2013 report, Dr. Kennard opined that appellant could work for 10 days. Thus, the Board finds that his reports are contradictory regarding whether appellant was unable to work on July 23, 2013. Without medical reasoning showing

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<sup>5</sup> See *Ronald C. Hand*, 49 ECAB 113 (1997).

<sup>6</sup> *Thaddeus J. Spevack*, 53 ECAB 474 (2002).

<sup>7</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

<sup>8</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

how appellant was unable to work on July 26, 2013 as a result of the April 9, 2013 employment injury, the Board finds that these reports are of diminished probative value.<sup>9</sup>

The additional April 9 and July 10, 2013 MRI scan reports are likewise insufficient to establish appellant's recurrence claim. Although they provide findings on examination and a firm diagnosis, they do not specifically address whether appellant's disability beginning July 23, 2013 was related to the April 9, 2013 injury.<sup>10</sup>

On appeal, appellant's counsel alleged that appellant met his burden of proof to establish his claim. Counsel pointed out that the July 10, 2013 MRI scan showed that appellant still had a complex tear of the right knee. As noted above, however, while the MRI scan examination revealed that appellant still suffered from a right knee condition, there was no opinion or explanation for a determination that appellant was unable to work beginning July 23, 2013. Counsel further alleged that OWCP should have developed the medical evidence and had a second opinion examination. The decision to refer a case for a second opinion examination rests wholly with an OWCP claims examiner.<sup>11</sup> Appellant has not submitted sufficient medical evidence explaining how his disability beginning July 23, 2013 was causally related to his accepted employment injuries. Accordingly, the Board finds that appellant has not met his burden of proof to establish his recurrence claim.

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 did not establish that he sustained a recurrence of disability on July 23, 2013 causally related to the April 9, 2013 employment injury.

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<sup>9</sup> *E.A.*, 58 ECAB 677 (2007).

<sup>10</sup> *D.P.*, Docket No. 14-1256 (issued March 9, 2015); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.5000.3(a) (July 2011).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 25, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 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