

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

J.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Portland, ME, Employer**

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**Docket No. 15-1443
Issued: October 21, 2015**

Appearances:
Paul A. Bureau, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 22, 2015 appellant, through her representative, filed a timely appeal from an April 30, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 met her burden of proof to establish that she sustained a traumatic injury on March 18, 2014 in the performance of duty.

FACTUAL HISTORY

On April 24, 2014 appellant, then a 71-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on March 18, 2014 she sustained a right knee medial meniscus tear as a result of trying to load a wheeled container into a dumpster at work. In an attached

¹ 5 U.S.C. § 8101 *et seq.*

statement, she explained that she was loading the dumpster with a postcon and as she pushed it she felt a sudden pain from the back of her right knee to the front. Appellant was able to finish her work despite the pain, but she stayed home from work the next day. She stopped work on March 19, 2014.

Appellant initially received treatment from Dr. Heather C. Killie, a Board-certified orthopedic surgeon, who stated in a March 3, 2014 report, that appellant injured her right knee at work when she felt a snap in the posterolateral aspect of the right knee while she pushed some mail, approximately two weeks previously. She related that she experienced persistent pain since the event. Dr. Killie discussed appellant's history and conducted an examination. She observed superficial varicosities around appellant's leg and tenderness to palpation over the anterolateral and anterior medial aspect of the knee joint. Dr. Killie further reported mild tenderness around the patella and some mild tenderness in the posterolateral joint line. Range of motion was good. Dr. Killie stated that x-rays revealed arthritic changes in all three compartments of appellant's right knee.

In a March 24, 2014 report, Dr. Killie stated that appellant continued to experience pain in the medial and anterior aspect of her right knee. Upon examination, she observed tenderness to palpation over the medial joint line and medial femoral condyle. Dr. Killie stated that the right knee pain was likely arthritic, but she could not rule out a meniscus tear as a result of appellant's injury at work. She provided a state workers' compensation medical form and checked a box marked "yes" that appellant's injury was a result of the injury described.

On March 28, 2014 appellant underwent a magnetic resonance imaging (MRI) scan examination of her right knee by Dr. Michael Luck, a Board-certified diagnostic radiologist. Dr. Luck observed spontaneous osteonecrosis of the knee with subarticular focus of extensive edema, complex tear of the posterior horn and root of the medial meniscus, mild degenerative osteoarthritis, and indeterminate hematopoietic marrow involving the distal femoral shaft and proximal table.

Appellant was again examined by Dr. Killie, who stated in an April 3, 2014 report that an MRI scan revealed significant change in appellant's knee. Dr. Killie opined that appellant had spontaneous osteonecrosis and that it could have been from her fall on impact. She explained that the fall caused some subchondral collapse and an insufficiency fracture. Dr. Killie also found a tear of appellant's medial meniscus and stated that it could have been from her injury. She diagnosed significant right knee injury with possible insufficiency fracture. Dr. Killie advised that appellant not return to work.

By letter dated April 29, 2014, the employing establishment controverted appellant's claim. Ellen Crosby, a Health and Resource Management Specialist, expressed concern that appellant was submitting a claim in an attempt to cover medical costs incurred for a preexisting condition unrelated to her employment.

In a Supervisor's Investigation into the Reported Injury letter, appellant stated that there were no witnesses of the March 18, 2014 injury and that she reported the incident to her supervisor at the end of her tour. She explained that she did not indicate that her absence from duty on March 19 and 20, 2014 was due to an injury on duty because she was not sure whether

her injury was a traumatic injury or occupational disease claim. Appellant further reported that in February 2014 she felt a pop in the back of her right knee, but it did not hurt at the time. When her right knee began to hurt later that night, she then went to see a doctor and underwent x-rays. The physician informed appellant that her right knee pain was due to arthritis, but it may or may not be a pulled muscle. Appellant stated that, between March 24 and 28, 2014, she informed her union of the injury and thought that the union would handle the filing of her workers' compensation claim.

On May 14, 2014 OWCP informed appellant that the information submitted was insufficient to establish her claim. It requested that she provide a detailed description of how the alleged injury occurred and respond to specific questions. OWCP also advised appellant to submit a detailed report from her treating physician which included a history of how the claimed injury occurred, a diagnosis, and an opinion on how the condition was causally related to the alleged injury.

In a May 1, 2014 report, Dr. Killie stated that appellant's right knee was still painful, especially if she twisted, and she had not yet returned to work. Upon examination, she observed tenderness to palpation over the posteromedial joint line and the anteromedial femoral condyle and lateral femoral condyle. Range of motion had improved. Dr. Killie diagnosed right knee pain with meniscus tear and spontaneous osteonecrosis. She stated that, although she reported previously that appellant's injury was from a fall at work, the injury actually occurred when appellant was pushing a large cart which got stuck. Dr. Killie opined that "it was more likely than not that this was the cause of her knee pain." She stated that, although there was some underlying degenerative joint disease, there was also a medial meniscus tear which was "more likely than not from the acute injury." Dr. Killie stated that appellant could do some light-duty work with restrictions of no climbing, squatting, bending, or kneeling, no lifting over 10 pounds, and no carrying over 10 pounds. She submitted a state workers' compensation form and indicated that appellant could return to work with restrictions.

On May 23, 2014 appellant responded to OWCP's development letter. She stated that her injury occurred when she pushed a heavy loaded postcon into the dumpster and one of the front wheels got stuck on the metal edge. Appellant explained that, during the struggle to push the postcon, she felt severe pain in the front and back of her right knee. She reported that there were no direct witnesses, but she informed her supervisor as soon as she saw her. When she continued to experience pain the next day, appellant called her physician and scheduled the first appointment available on March 24, 2014. She explained that she did not immediately file a workers' compensation claim because she was confused on who was to file the claim and because she was waiting for all her medical paperwork from her physician to submit all of it together. Appellant reported that she had an incident that occurred at the end of February 2014 when she felt a snap at the back of her knee when she reached forward to remove a package that was jammed at the end of a belt. She explained that she did not report it because it did not prevent her from working.

In a decision dated June 13, 2014, OWCP denied appellant's claim finding insufficient evidence to establish fact of injury. It explained that the factual component, *i.e.*, that the incident occurred as alleged, was not established.

On July 16, 2014 OWCP received appellant's request for an oral hearing before an OWCP hearing representative. Appellant stated that the February 2014 incident at work was unrelated to the March 18, 2014 employment incident. She explained that she did not file a claim for the February 2014 incident because Dr. Killie was unable to identify a specific injury during the March 3, 2014 examination and she did not miss work. Appellant clarified that she had already scheduled a March 24, 2014 follow-up appointment to the March 3, 2014 examination when she injured herself again on March 18, 2014. She stated that this injury occurred when she pushed a postcon into a dumpster and experienced severe pain. Appellant noted that she reported this injury to her supervisor, Leslie Scales. She stated that when she called Dr. Killie to schedule an appointment they decided to just wait for her previously scheduled March 24, 2014 examination.

Appellant continued to receive treatment from Dr. Killie. In reports dated June 30 to September 25, 2014, Dr. Killie related that appellant continued to have difficulty with soreness in the right knee. Upon examination, she observed significant crepitus with range of motion and tenderness to palpation over the medial, and lateral joint lines. Range of motion was good. Dr. Killie diagnosed right knee pain with meniscus tear after twisting injury and likely resolving osteonecrosis of the knee with degenerative changes. In May 29, June 30, April 11, and September 25, 2014 state workers' compensation forms, she continued to indicate that appellant could work with restrictions.

On the September 25, 2014 form Dr. Killie checked the box marked "yes" that appellant's of knee injury resulted from the March 18, 2014 incident. She indicated that appellant had not reached maximum medical improvement and scheduled a follow-up examination for December 4, 2014.

On February 12, 2015 a telephone hearing was held. Appellant's representative was present. He stated that on March 18, 2014 appellant injured herself while pushing a postcon mail container, into a dumpster station. Appellant's representative related that when one of the wheels jammed up she experienced a sudden sharp pain that extended from the back of her right knee to the front. He stated that appellant informed her supervisor of the incident and when her knee still hurt the next day, she called Dr. Killie's office to make an appointment. They advised appellant to come in on her already scheduled March 24, 2014 follow-up appointment for a separate February 2014 incident. Appellant's representative clarified that when appellant injured herself on March 18, 2014 she used this prescheduled appointment from February 2014 to address the new injury. He also noted that while Dr. Killie initially attributed appellant's right knee injury to a fall at work she later corrected her mistake and stated that she injured herself when pushing a large cart.

Appellant described in detail the February and March 2014 injuries at work. She reiterated that, with the February 2014 incident, her doctor informed her that she just pulled a muscle and she did not lose any time from work. Appellant stated that with the March 18, 2014 injury she felt a sharp pain in her right knee when she pushed a postcon into the dumpster. She continued to experience right knee pain the next day so she informed her employing establishment that she could not work and tried to get an appointment with her doctor. Appellant explained that she had a prescheduled appointment for March 24, 2014 as a follow-up to her February 2014 injury and that was the earliest appointment that her doctor's office advised she

could be seen. She discussed Dr. Killie's medical reports and appellant's representative pointed out that Dr. Killie corrected her mistake regarding the mechanism of injury. Appellant also explained that she did not file the claim until April 24, 2014, because she thought that her doctor or her union would file the claim on her behalf.

By decision dated April 30, 2015, an OWCP hearing representative affirmed the June 13, 2014 denial decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence,³ including that he or she is an "employee" within the meaning of FECA⁴ and that he or she filed his or her claim within the applicable time limitation.⁵ The employee must also establish that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.⁷ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁸ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁹

An employee has the burden of establishing the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.¹⁰ An employee has not met his or her burden of proof establishing

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ See *M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951).

⁵ *R.C.*, 59 ECAB 42 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954).

⁶ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008).

⁷ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁸ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁹ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995) *Joseph H. Surgener*, 42 ECAB 541, 547 (1991).

the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statement in determining whether a *prima facie* case has been established. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹¹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹² 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.¹³

ANALYSIS

Appellant alleged that on March 18, 2014 she sustained a right knee medial meniscus tear when trying to load a wheeled container into a dumpster at work. OWCP denied her claim finding that the incident did not occur as alleged. The Board, however, finds that the evidence submitted is sufficient to establish that the March 18, 2014 incident occurred as alleged by appellant.

OWCP determined that appellant did not establish fact of injury because her medical records began before the March 18, 2014 incident and she also described a February 2014 work injury. The Board notes, however, that on her Form CA-1 and in various narrative statements she stated that on March 18, 2014 she experienced pain in her right knee when she was trying to load a postcon into a dumpster at work. Appellant explained that the postcon got stuck and when she pushed it she felt a sudden pain in her right knee. She continued to assert at her telephonic hearing that she was pushing a postcon container to load into a dumpster when it got stuck.

The Board finds that appellant has not provided inconsistent statements regarding the March 18, 2014 employment incident as to cast serious doubt on her version of the event. Although appellant also described a February 2014 work incident, she has described each separate incident in detail and consistently distinguished between the February 2014 and March 18, 2014 employment incidents. Dr. Killie also described the two separate incidents in the March 3 and May 1, 2014 medical reports. Although she initially attributed appellant's right knee condition to a fall at work, she corrected her statement in a May 1, 2014 report and stated that appellant was pushing a large cart at work. The Board further notes that the mere fact that

¹¹ *D.B.*, 58 ECAB 529 (2007); *Gregory J. Reser*, 57 ECAB 277 (2005).

¹² *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

¹³ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

appellant had a prior injury affecting the same part of the body is not evidence that she did not have a new, separate work injury to the same area.¹⁴

Along with appellant's consistent statements, the surrounding facts, and circumstances and her subsequent course of action further support that the March 18, 2014 incident occurred as alleged. OWCP pointed out that she failed to file a claim for 21 days and never mentioned a work injury before she filed. The fact that appellant did not immediately file a claim, however, does not render the claim factually deficient. She explained that she did not immediately file a claim because she was waiting for additional medical evidence to determine whether she sustained an injury at work and she thought the union was handling her claim. The Board also notes that appellant stopped work and sought medical treatment the next day, but was unable to schedule an appointment until March 24, 2014. In this case, appellant's various descriptions of the March 18, 2014 incident have been consistent that she was pushing a postcon container at work. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹⁵ Thus, under the circumstances of this case, the Board finds that appellant has established the occurrence of the March 18, 2014 employment incident.

The Board finds, however, that the medical evidence is insufficient to establish that her right knee condition was caused or aggravated by the March 18, 2014 employment incident.

Appellant was treated by Dr. Killie. In reports dated March 24 to September 25, 2014, Dr. Killie stated that appellant continued to experience pain in the medial and anterior aspect of her right knee. Upon examination, she observed tenderness to palpation over the medial joint line and medial femoral condyle and significant crepitus. Range of motion was good. Dr. Killie diagnosed right knee pain with meniscus tear after twisting injury and likely resolving osteonecrosis of the knee with degenerative changes. In a May 1, 2014 report, she stated that although she reported previously that appellant's injury was from a fall at work, the injury actually occurred when appellant was pushing a large cart which got stuck. Dr. Killie opined that "it was more likely than not that this was the cause of [appellant's] knee pain." She stated that, although there was some underlying degenerative joint disease, there was also a medial meniscus tear which was "more likely than not from the acute injury." Dr. Killie accurately described the March 18, 2014 employment incident, provided findings on examination, and provided a medical diagnosis. The Board finds, however, that her opinion that appellant's right knee condition was "more likely than not" caused by the employment incident is speculative in nature. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.¹⁶ An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between her claimed condition and her employment.¹⁷ Moreover, on September 25, 2014 Dr. Killie indicated by an affirmative checkmark that appellant's right knee injury was causally related to

¹⁴ See *D.I.*, Docket No. 15-468 (issued July 23, 2015).

¹⁵ *Allen C. Hundley*, 53 ECAB 551 (2002).

¹⁶ *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹⁷ *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

the March 18, 2014 employment incident. However, the Board has held that when a physician's opinion or causal relationship consists only of checking yes to a form question, without more by way of medical rationale, is of little probative value and is insufficient to establish appellant's claim.¹⁸ As Dr. Killie's opinion was only represented by a checkmark, it is of diminished probative value. For these reasons, the Board finds that Dr. Killie's reports are insufficient to establish appellant's claim.

The March 28, 2014 MRI scan report by Dr. Luck is likewise insufficient to establish appellant's claim because he fails to provide any opinion on the cause of her right knee condition.¹⁹ This report is insufficient to establish causal relationship.

On appeal, appellant's representative asserts that he established that the March 18, 2014 employment incident occurred. As noted above, the Board has found that the March 18, 2014 incident occurred as she alleged. The medical evidence, however, is insufficient to establish the second component of fact of injury that appellant sustained a diagnosed medical condition causally related to the accepted incident.

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 appellant did not meet her burden of proof to establish that she sustained a traumatic injury on March 18, 2014.

¹⁸ See *J.T.*, Docket No. 15-0196 (issued March 23, 2015); *Lillian M. Jones*, 34 ECAB 379 (1982).

¹⁹ *A.D.*, 58 ECAB 149 (2006).

ORDER

IT IS HEREBY ORDERED THAT the April 30, 2015 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: October 21, 2015
Washington, DC

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

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

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