



## **FACTUAL HISTORY**

On November 20, 2012 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 9, 2012 his knee began “popping” and “clicking” while walking. He felt a sharp pain when ascending and descending stairs. Appellant stopped work on November 10, 2012. The employing establishment advised that the claimed injury was not reported until six days after it occurred.

The employing establishment’s portion of a partially completed authorization for examination (Form CA-16), listing the date of injury as November 9, 2012, was submitted with the claim.

In a December 3, 2012 report, Dr. Anthony Delfico, a Board-certified orthopedic surgeon, related that appellant complained of right knee pain. He noted that appellant was deaf and required an interpreter. Dr. Delfico also reported that appellant worked as a mail carrier and was on his feet throughout the workday. A physical examination was performed, revealing tenderness to palpation over the medial joint line. No deformity or malalignment was detected. McMurray test was positive. Dr. Delfico indicated that a magnetic resonance imaging (MRI) scan showed a “complex tear of the posterior horn and body of the medial meniscus.” He diagnosed right medial meniscus tear and noted that appellant wanted to have surgery.

On December 7, 2012 OWCP requested that appellant submit additional factual and medical evidence in support of his claim.

In a statement dated January 4, 2013, appellant specified that he waited to notify the employing establishment of his injury until he was advised by his doctor to file a claim. He further reported that he did not suffer from similar symptoms or a similar disability prior to November 9, 2012.

By decision dated January 17, 2013, OWCP denied appellant’s claim finding that the evidence had not established that he actually experienced the incident or employment factor alleged to have caused the injury.

On January 3, 2013 appellant filed a claim for compensation (Form CA-7) for wage loss. The employing establishment advised that appellant had not returned to work.

In a January 25, 2013 statement, appellant again related that he felt a clicking and locking in his knee while delivering mail on November 9, 2012. He reported experiencing an intense “stabbing” pain in his knee when ascending stairs.

A February 5, 2013 report from Dr. Delfico reflected that appellant was evaluated on December 3, 2012 for “stabbing pain” in his right knee. He related that, according to appellant, he was delivering mail on a walking route on November 9, 2012 when he felt a clicking and locking in his knee. When he began to ascend stairs, his knee pain began to increase with what he described as a “stabbing pain.” Dr. Delfico asserted that he could not conclusively opine that appellant’s knee injury was the direct result of the clicking and locking he experienced on November 9, 2012. He noted, however, that appellant had complained of right knee pain since that date.

On February 5, 2013 appellant requested review of the written record, related to OWCP's January 17, 2013 decision before the Branch of Hearings and Review.

In a September 16, 2013 decision, an OWCP hearing representative affirmed the January 17, 2013 decision finding that appellant had failed to submit sufficient evidence to establish that he actually experienced the alleged employment incident.

Appellant, through counsel, filed a request for reconsideration on November 19, 2013. In an October 13, 2013 statement, appellant reported receiving treatment from Debbie Lader, a physician assistant, on November 15, 2012. Ms. Lader instructed appellant to return on November 26, 2012 for an MRI scan. Appellant related that he had not immediately notified the employing establishment of the alleged injury because he believed that his knee would improve.

A November 14, 2013 letter from Ms. Lader confirmed that she had examined appellant on November 15, 2012. Ms. Lader related notifying the employing establishment of appellant's injury on November 15, 2012. She further indicated that appellant claimed his injury occurred while walking and delivering mail. Ms. Lader noted that an MRI scan on November 26, 2012 revealed a meniscus tear.

In a July 28, 2014 decision, OWCP modified the September 16, 2013 decision to find that the factual component of fact of injury had been established. However, it denied appellant's claim finding the medical evidence insufficient to demonstrate that his condition was causally related to the November 9, 2012 incident.

On November 17, 2014 appellant, through counsel, filed a request for reconsideration of the July 28, 2014 decision. In support of his request, appellant submitted a November 14, 2014 report from Dr. Delfico. He stated, "within a reasonable degree of medical certainty, it is likely that the act of walking while at work on November 9, 2012 caused or aggravated a preexisting tear of [appellant's] right knee, thereby establishing a causal relationship." He further noted that appellant denied pain in the right knee prior to November 9, 2012.

In a February 17, 2015 decision, OWCP denied modification of the prior decision, finding that the additional medical evidence was insufficient to establish causal relationship.

### **LEGAL PRECEDENT**

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative and substantial evidence,<sup>3</sup> including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.<sup>4</sup> The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.<sup>5</sup>

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<sup>3</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>4</sup> *R.C.*, 59 ECAB 427 (2008).

<sup>5</sup> *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup>

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

### ANALYSIS

The evidence supports that appellant was walking and delivering mail on November 9, 2012 as alleged. The Board finds that appellant did not submit medical evidence establishing a causal relationship between his injury and the employment incident.

In a February 5, 2013 report, Dr. Delfico reported that he could not conclusively state that appellant's meniscus tear was related to the November 9, 2012 employment incident. However, in a November 14, 2014 report, he found a causal relationship between the incident and appellant's knee condition. Dr. Delfico stated that the act of walking on November 9, 2012 "likely" caused the injury and noted that appellant denied suffering pain prior to that date. His observation that appellant was asymptomatic before the work incident and symptomatic after is insufficient, without supporting rationale, to establish causal relationship.<sup>8</sup> Dr. Delfico also phrased his opinion in vague terms that the act of walking "likely" caused appellant's knee condition.<sup>9</sup> Finally, his reports fail to explain how walking, or ascending and descending stairs, would cause or aggravate the right knee medial meniscus tear.<sup>10</sup> The need for such rationale is particularly important because Dr. Delfico's November 14, 2014 report stated that appellant's meniscus tear was a preexisting condition.<sup>11</sup> In his subsequent December 3, 2012 medical report, Dr. Delfico did not provide an opinion that appellant's condition was work related. Medical

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<sup>6</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>8</sup> *T.M.*, Docket No. 08-975 (issued February 6, 2009).

<sup>9</sup> See *T.H.*, Docket No. 15-311 (issued June 2, 2015) (physician's opinion that employee's injury was "most likely" attributable to work factors was considered speculative and insufficient to establish claim); *Ricky E. Storms*, 52 ECAB 349 (2001) (medical opinions which are speculative or equivocal in character have little probative value).

<sup>10</sup> *D.J.*, Docket No. 14-784 (issued September 9, 2014) (medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof).

<sup>11</sup> See *K.R.*, Docket No. 13-540 (issued May 29, 2013).

evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>12</sup>

The record also contains a report from Ms. Lader, a physician assistant. This report is insufficient to establish appellant's claim because physician assistants are not physicians as defined under FECA.<sup>13</sup>

On appeal, appellant's counsel contends that the November 14, 2014 report establishes causal relationship because Dr. Delfico affirmed that appellant did not have pain in his right knee prior to November 9, 2012. As indicated above, evidence that appellant was asymptomatic before the incident, but symptomatic after, is insufficient, without supporting rationale, to establish causal relationship.<sup>14</sup> Counsel also relies on *Elise M. Anzalone*<sup>15</sup> to maintain that the act of walking is sufficient to cause an injury. The Board has long recognized that it is not necessary to show special exposure or unusual conditions of employment in the factors producing disability. In *Elise M. Anzalone*, the claimant's physician diagnosed calf strain and checked a form box indicating that the injury was caused or aggravated by "walking to the restroom." The Board found the medical evidence sufficient to establish causal relationship given "the noncomplex character of the condition diagnosed." In the present case, the character of appellant's condition, medial meniscus tear, is more complex than a strain. In fact, Dr. Delfico classified appellant's injury as a complex tear of the posterior horn and body of the medial meniscus. He also indicated that the tear was preexisting. Consequently, establishing causal relationship in the circumstances of the present case requires more than an unreasoned or speculative conclusion.<sup>16</sup>

OWCP informed appellant that he needed to submit a comprehensive medical report from a physician explaining how the work incident caused or contributed to his claimed condition. As noted above, Dr. Delfico's opinion is speculative and his reports provide no medical rationale to support his conclusion on causation. Accordingly, the Board finds that OWCP properly denied the claim.

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<sup>12</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>13</sup> The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); see *Lyle E. Dayberry*, 49 ECAB 369 (1998) (the reports of a physician assistant are entitled to no weight as a physician's assistant is not a physician as defined by section 8101(2) of FECA).

<sup>14</sup> *Supra* note 8.

<sup>15</sup> Docket No. 96-64 (issued February 25, 1997) (citing *Anna Strehl (William Strehl)*, 2 ECAB 74 (1948)).

<sup>16</sup> See *Christine J. Yturria*, Docket No. 99-416 (issued May 24, 2000) (finding that the diagnosis of left knee strain caused by walking was a "simple" injury not requiring a physician's medical rationale to be established as employment related); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3 (January 2013) (establishing that a claim may be accepted without a medical report if it is "minor" and can be identified on visual inspection by a lay person).

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 a causal relationship between his diagnosed condition and the November 9, 2012 work event.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 17, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 11, 2015  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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