



a corner of a desk.<sup>2</sup> Appellant did not stop work at that time. On April 12, 2007 Dr. Craig T. Kerins, a Board-certified orthopedic surgeon, performed arthroscopic repairs of right medial and lateral meniscal tears. OWCP accepted right knee medial and lateral meniscal tears on May 9, 2007.

Appellant retired in December 2007. After that time he worked sporadically for the employing establishment as a reemployed annuitant in a monitoring position which, by his report, did not require standing for long periods. Appellant indicated that he only worked there once a year for approximately 30 days.

Appellant had a second authorized arthroscopic repair of a degenerative tearing of the right lateral meniscus on April 20, 2010, done by Dr. Edward M. Crossland, Board-certified in orthopedic surgery and an associate of Dr. Kerins. In a July 29, 2010 report, Dr. Crossland advised that appellant was deployable for field duty with the employing establishment.<sup>3</sup> OWCP paid wage-loss compensation for the period April 20 through July 28, 2010.

On June 23, 2015 appellant filed a recurrence claim (Form CA-2a). He indicated that the recurrence occurred on June 11, 2015 when he stopped work, alleging that right knee pain had been increasing over the last few months, and that on June 11, 2015 he turned and his knee almost gave out twice. Appellant indicated that from February 2, 2008 to the present he was a reemployed annuitant with the Department of Defense as a high voltage electrician, that from April 1 to May 1, 2014 he had worked as a salesman at an automobile parts store, and that from May 5, 2014 to May 1, 2015 he had worked for a temporary agency at John Deere Commercial Products as a maintenance technician performing all repairs and installations.

In an undated disability slip, Dr. Kerins advised that appellant was seen in his office on June 23, 2015 and could return to work on August 5, 2015.

By letter dated July 21, 2015, OWCP informed appellant of the evidence needed to establish his recurrence claim. This included a narrative medical report from his physician describing the objective medical findings that formed the basis of his renewed disability for work.

On July 24, 2015 appellant filed a claim for compensation (Form CA-7) for the period June 11 to July 25, 2015.

In a brief report dated August 5, 2015, Dr. Kerins advised that appellant was seen that day, was scheduled for surgery, and would be out of work for six to eight weeks following the surgery.

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<sup>2</sup> The record indicates that appellant initially injured his right knee in April 2006 when he was deployed with the employing establishment for Hurricane Katrina relief, and that it worsened due to the December 1, 2006 employment injury. The employing establishment did not challenge the claim.

<sup>3</sup> Appellant also submitted a disability slip from Dr. Crossland dated May 17, 2010 indicating that appellant could not work. In a second disability slip dated October 22, 2010, Dr. Kerins advised that appellant could not work beginning November 6, 2009.

In an August 6, 2015 responsive questionnaire, appellant reported that for the past six to eight months his knee would give out, and once severe pain caused him to fall. He explained that knee pain and locking steadily increased. Appellant indicated that from May 2014 to May 2015 his job required walking and use of hands to make repairs.

By decision dated September 1, 2015, OWCP found that the medical evidence of record failed to establish that the claimed condition was a result of his federal employment and denied the recurrence claim.

In a report dated June 24, 2015, received by OWCP on September 3, 2015, Dr. Kerins noted appellant's complaint of a six-month history of significant recurrent right knee pain, associated with intermittent locking, popping, and swelling. He described appellant's past surgical care. Dr. Kerins provided physical examination findings and recommended a right knee MRI scan. A July 23, 2015 MRI scan of the right knee demonstrated early osteoarthritic changes and an oblique tear to the posterior horn and body of the lateral meniscus. On August 5, 2015 Dr. Kerins noted his review of the MRI scan. He reported effusion, collateral compartment pain, and a very positive lateral McMurray's sign on examination of the right knee. Dr. Kerins diagnosed derangement of the posterior horn of the right lateral meniscus and recommended arthroscopic repair.

On September 21, 2015 appellant requested reconsideration. He advised that he had been employed as a maintenance technician, working an average of 10 hours a day six days a week, from May 2014 to April 2015, and that he was still listed with the employing establishment as a reemployed annuitant but that, due to the problems with his right knee, he could not be deployed. Appellant stated that he continued to work wearing a knee brace until an MRI scan demonstrated an actual tear.

In a merit decision dated December 4, 2015, OWCP denied modification. It found the medical evidence of record insufficient, noting that Dr. Kerins did not address how appellant's current knee condition and need for surgery were directly related to the December 1, 2006 employment injury.

On March 17, 2016 appellant again requested reconsideration. He reiterated that his current condition was caused by the employment injury and submitted a February 18, 2016 operative report in which Dr. Kerins described right knee arthroscopic chondroplasty and lateral meniscectomy. The postoperative diagnosis was torn lateral meniscus, right knee, and significant degenerative arthritis. On February 24, 2016 Dr. Kerins referred appellant for physical therapy.

In a merit decision dated March 28, 2016, OWCP denied modification of its prior decisions, finding that the medical evidence of record remained insufficient because it failed to establish causal relationship between appellant's present disability and the December 1, 2006 employment injury.

Appellant again requested reconsideration on April 18, 2016. He submitted an April 14, 2016 report in which Dr. Kerins described a history that appellant originally injured his right leg in 2006 while deployed to help with recovery from Hurricane Katrina and that, after conservative

measures failed, in 2007 he had arthroscopic repair of medial and lateral meniscal tears. Dr. Kerins advised that, in April 2010, appellant had recurrent surgery for a recurrent lateral meniscal tear, and that finally he had a third operative procedure on February 18, 2016 where Dr. Kerins excised a complex lateral meniscal tear. He noted that appellant was found to have significant degenerative arthritis at surgery. Dr. Kerins opined that this was primarily a post-traumatic arthritis associated with damage to the right knee that began with the 2006 employment injury. He reported that appellant's deployment activities included significant walking, sometimes over uneven terrain, and climbing ladders. Dr. Kerins advised that appellant could not currently perform these duties due to right knee damage and was permanently restricted to light duty. He concluded that appellant would be a candidate for total knee replacement at some time in the future.

In a merit decision dated June 23, 2016, OWCP again denied modification. It reviewed Dr. Kerins' April 14, 2016 report and found it insufficient to modify the prior decision because he failed to provide sufficient medical rationale to support that the December 1, 2006 employment injury caused or aggravated appellant's current right knee condition.

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

### **ANALYSIS**

On December 1, 2006 OWCP accepted employment-related medial and lateral meniscal tears of the right knee. On April 12, 2007 Dr. Kerins performed arthroscopic repair of both meniscal tears, and on April 20, 2010 Dr. Crossland repaired a degenerative tear of the lateral meniscus.

Appellant filed a recurrence claim on June 23, 2015. He reported that right knee pain had increased over the past months and that the recurrence of disability occurred on June 11, 2015 when his knee gave out.

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<sup>4</sup> 20 C.F.R. § 10.5(x); R.S., 58 ECAB 362 (2007).

<sup>5</sup> S.S., 59 ECAB 315 (2008).

<sup>6</sup> See *Ronald C. Hand*, 49 ECAB 113 (1997).

Medical evidence of bridging symptoms must demonstrate that the claimed recurrence is causally related to the accepted injury.<sup>7</sup> In this case, appellant reported that, from February 2, 2008 to the present, he was a reemployed annuitant with the Department of Defense as a high voltage electrician, that from April 1 to May 1, 2014 he worked as a salesman at an automobile parts store, and that from May 5, 2014 to May 1, 2015 he worked for a temporary agency at John Deere Commercial Products as a maintenance technician performing all repairs and installations, and that this job required walking and use of hands to make repairs, and he worked an average of 10 hours a day for six days a week.

There are no medical reports of record between Dr. Crossland's July 29, 2010 report advising that appellant could return to work and the brief June 23, 2015 note in which Dr. Kerins advised that appellant was seen that day. Dr. Kerins performed a third arthroscopic repair of appellant's right lateral meniscus on February 18, 2016. Postoperative diagnoses included significant degenerative arthritis. Dr. Kerins did not address the cause of appellant's current knee condition until April 14, 2016 when he reported a history that appellant originally injured his right leg in December 2006 while deployed to help with recovery from Hurricane Katrina<sup>8</sup> and that, after conservative measures failed, in 2007 he had arthroscopic repair of medial and lateral meniscal tears. He described appellant's surgical history, noting that he found significant degenerative arthritis in 2016 surgery. Dr. Kerins opined that this was primarily post-traumatic arthritis associated with damage to the right knee that began with the December 1, 2006 employment injury. While he reported that appellant's deployment activities included significant walking, sometimes over uneven terrain, and climbing ladders, Dr. Kerins did not indicate whether this was in regard to his work duties prior to retirement or those that he did for brief periods each year as a reemployed annuitant. Moreover, he did not reflect an awareness of or comment on the significance of appellant's outside employment.

The Board has long held that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.<sup>9</sup> An individual 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.<sup>10</sup> Appellant did not submit sufficient evidence to show that the claimed recurrence and disability were causally related to the December 1, 2006 employment injury.<sup>11</sup>

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.

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<sup>7</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>8</sup> *Supra* note 2.

<sup>9</sup> *Douglas M. McQuaid*, 52 ECAB 382 (2001).

<sup>10</sup> *Supra* note 6.

<sup>11</sup> *Id.*

**CONCLUSION**

The Board finds that appellant has not established that he sustained a recurrence of disability on June 11, 2015 caused by a December 1, 2006 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 23 and March 28, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 14, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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