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

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| **J.C., Appellant** | ) | |
| | ) | **Docket No. 15-1084** |
| **and** | ) | **Issued: January 5, 2016** |
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| **DEPARTMENT OF HOMELAND SECURITY, JOHN F. KENNEDY INTERNATIONAL AIRPORT, Jamaica, NY, Employer** | ) | |

*Appearances:*
*Thomas S. Harkins, Esq.,* for the appellant
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

### ***JURISDICTION***

On April 15, 2015 appellant, through counsel, filed a timely appeal from a February 19, 2015 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### ***ISSUES***

The issues are: (1) whether appellant has met her burden of proof to establish a recurrence of total disability commencing on June 28, 2013 due to her June 1, 2012 employment injuries; and (2) whether appellant has met her burden of proof to establish an additional left knee injury as a consequence of her accepted employment-related injuries.

[1] 5 U.S.C. § 8101 *et seq.*

On appeal, counsel contends that appellant has submitted sufficient evidence to establish a clear change in the nature and extent of her accepted employment injuries and disability causally related to these injuries.

## ***FACTUAL HISTORY***

OWCP accepted that on June 1, 2012 appellant, then a 58-year-old import specialist, sustained right wrist, right shoulder, and left knee contusions, and a cervical sprain when she slipped in water while walking to the cafeteria and fell hard on the ground. Appellant stopped work on that same day and was on continuation of pay from June 2 to July 16, 2012. She filed a claim for wage-loss compensation beginning July 17, 2012. On August 17, 2012 OWCP denied payment for wage loss pending further documentation.

Appellant worked intermittently and then returned to full-time limited-duty work on October 2, 2012 based on the medical opinion of Dr. Robert J. Lippe, an attending Board-certified orthopedic surgeon.

On August 8, 2013 appellant filed a claim for recurrence of disability commencing June 28, 2013 (Form CA-2a). She alleged that her duties had been changed because the employing establishment had not honored her work restrictions.

Appellant submitted several medical reports dated April 17 to September 25, 2013 from Dr. Lippe. Dr. Lippe provided results on examination and diagnosed bilateral wrist, left shoulder, and left knee contusions, osteoarthritis of the knee, a cervical sprain, and preexisting left knee osteoarthritis. He released appellant to light-duty work with restrictions on October 1, 2012 but prescribed physical therapy. In the April 17, 2013 attending physician's report (Form CA-20), Dr. Lippe provided a history that appellant had sustained a work-related fall and noted her complaint of pain in the spine, neck, pelvis, and bilateral wrists, shoulders, legs, knees, pelvis, hands, and arms. He advised that she had been totally disabled from June 1 to October 1, 2012. Dr. Lippe related that appellant could continue performing full-time activities as tolerated and light-duty work with no field work. He further related that she must wear appropriate footwear to avoid further injury.

In notes dated July 12 to 26, 2013, physical therapists addressed appellant's treatment.

By letter dated July 26, 2013, OWCP referred appellant to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second opinion.

In his August 13, 2013 report, Dr. Sultan noted the history of the June 1, 2012 work injury and appellant's treatment. He noted her complaints of cramps in her right hand, tightness and a pulling sensation in her left knee, and occasional left shoulder throbbing. On cervical spine examination, Dr. Sultan reported no active paracervical muscle spasm or trigger points on palpation over the right and left trapezius musculature. Appellant had full range of motion. Sensory testing of both upper extremities was intact. Grip strength was strong on both sides and pinch mechanism was firm bilaterally. Biceps, triceps, and radial reflexes were symmetrically dull.

On examination of both shoulders, Dr. Sultan found no localized swelling, deformity, or discoloration. There were no complaints on palpation over either acromioclavicular (AC) joint or the long head of the biceps tendons. There was also no deltoid muscle atrophy on either side. Range of motion was full. Bilateral impingement, Hawkins, and drop arm tests were negative.

Right hand and wrist examination revealed no localized swelling, deformity, or discoloration with no complaints on palpation. There was no intrinsic atrophy of the right hand and no tropic changes involving the skin or nails. Appellant had normal range of motion of the right and left wrists. Sensory testing of both hands was intact.

The thoracolumbar spine had a normal spinal column and range of motion. The pelvis was not tilted and the lordotic curvature was maintained. There was no active parathoracic or paralumbar muscle spasm. Sacroiliac joints were nontender to palpation. Heel and toe standing was unimpaired and a Trendelenburg test was negative on both sides. In the supine position, a straight leg raising test was negative bilaterally. Sensory testing of both lower extremities was intact. Big toe extension was strong bilaterally. A Patrick test was negative bilaterally. Knee jerk and ankle reflexes were symmetrically present. A left knee examination found no localized swelling, deformity, or discoloration. Collateral and cruciate ligaments were intact. A patellofemoral compression test was negative and there was no abnormal patellofemoral crepitus with motion testing. There were no complaints on palpation over either medial or lateral joint line. Appellant had normal range of motion of the both knees with limitation of flexion of the left knee due to her large size. She claimed that her left knee bothered her at the endpoint of flexion, but Dr. Sultan did not detect any reactionary muscle spasm or resistance to range of motion testing. Spring and McMurray tests were negative. Appellant ambulated without external support and her walking pattern was steady without visible signs of antalgia. Dr. Sultan reviewed July 30, 2012 left knee magnetic resonance imaging (MRI) scan films which showed early tri-compartmental osteoarthritic changes and slight thinning of the patellar articular surface. There was also a tiny osteochondral defect involving the lateral femoral condyle. Dr. Sultan advised that these were preexisting developmental changes unrelated to appellant's June 1, 2012 work injury.

In response to OWCP questions, Dr. Sultan related that his objective examination revealed that the accepted conditions were no longer active and had resolved although he could not state with certainty when the conditions resolved. He related that the medical evidence did not indicate that she had any additional injuries due to work factors. Dr. Sultan advised that his examination did not confirm any current disability due to the work-related conditions, residuals, or claimed employment factors. He found no current disability from other nonwork-related preexisting or subsequent conditions. Dr. Sultan noted that appellant was clinically stable and could work as an import specialist without restrictions. There were no objective findings to support an aggravation of any prior existing condition as a result of the work-related incident. In addition, there were no objective findings of any current disability from work as a result of any work-related aggravation. Dr. Sultan concluded that no special medical treatment was recommended aside from home exercises to maintain muscle tone and joint mobility, and there were no specific problems hindering recovery and no need for further treatment.

By letter dated October 4, 2013, OWCP advised appellant of the deficiencies of her claim and requested that she submit additional factual and medical evidence. It afforded her 30 days to submit the requested evidence.

In a December 9, 2013 decision, OWCP denied appellant's recurrence of disability claim, finding that the medical evidence was insufficient to establish disability due to a material change or worsening of her accepted June 1, 2012 work-related injuries.

By letter dated November 28, 2014, appellant, through counsel, requested reconsideration. Counsel contended that accompanying medical evidence established an additional condition and a recurrence of disability commencing June 28, 2013 causally related to the accepted June 1, 2012 employment incident warranting compensation for wage loss, including time to attend physical therapy.

In disability certificates dated February 26 and June 12, 2014, Dr. Alpesh D. Shah, a Board-certified orthopedic surgeon, reported that appellant had been treated for her bilateral wrist, left shoulder, and knee contusions, osteoarthritis of the knee, and cervical sprain. He advised that she could continue light-duty/reduced work status, but she continued to have pain and her prognosis remained guarded. Appellant was restricted from keyboarding, prolonged standing and sitting, heavy lifting, and driving.

On December 4, 2014 Dr. Shah reported appellant's history and findings on examination of her left knee and left shoulder. He diagnosed a superior glenoid labrum lesion (SLAP), bicipital tendinitis, rotator cuff tendinitis, AC joint arthritis, and osteoarthritis of the knee. Dr. Shah noted that appellant's injury was a sprain and strain. He advised that the incident she described was the competent medical cause of her injury. Dr. Shah noted that appellant's complaints were consistent with her injury and her history of injury was consistent with objective findings. Her prognosis was fair and her history did not reveal preexisting conditions that could affect her prognosis. Dr. Shah concluded that appellant could return to light-duty work. In Form CA-20 reports dated June 24, September 8, and December 16, 2014, he provided a history of the June 1, 2012 work injuries and diagnostic and examination findings. Dr. Shah indicated with an affirmative mark that her SLAP, bicipital tendinitis, rotator cuff tear, AC joint arthritis, and osteoarthritis of the knee were caused or aggravated by the June 1, 2012 work injuries. He opined that appellant was partially disabled from the date of injury to the present. Dr. Shah advised that as of October 1, 2012 she may continue performing light-duty work, two days, with activities as tolerated, but no field work.

In disability certificates dated July 12 to September 25, 2013 and a March 12, 2014 report, Dr. Lippe reiterated his prior diagnoses of wrist and knee contusions, left knee osteoarthritis, and cervical sprain. He reported that appellant continued to have pain and difficulty with driving, standing and sitting for prolonged periods, keyboarding, and heavy lifting. Dr. Lippe advised that these limitations resulted in her light-duty/reduced status. Appellant had a guarded prognosis for her knee as the fall seemed to exacerbate underlying arthritis which might need further treatment. She had a fair prognosis for her cervical spine as she had underlying degenerative disc disease and was prone to flare-ups of neck pain and spasms. The right wrist prognosis was good. Dr. Lippe advised that she had temporary partial

impairment. On October 22, 2013 he opined that appellant was unable to work three-day shifts due to deterioration in her knee.

In disability certificates and a report dated April 7 to December 17, 2014, Dr. Bennett H. Brown and Dr. Alfred F. Faust, Board-certified orthopedic surgeons, listed June 1, 2012 as the date of injury, examined appellant, and diagnosed a tear and sprain of the right wrist, a scapholunate ligament injury with no instability, degenerative thumb carpometacarpal (CMC) joint arthritis, cervical radiculopathy, cervicalgia, wrist sprain, left shoulder rotator cuff tendinitis, AC joint arthritis, SLAP, and left knee osteoarthritis. They advised that appellant had temporary partial impairment. Appellant's prognosis for recovery was poor. Drs. Brown and Faust opined that appellant could continue to perform light-duty work, two days a week as tolerated with restrictions which included no field work. Dr. Brown recommended that appellant wear appropriate foot wear to avoid injury. He also recommended right wrist arthroscopy with possible SLAP repair.

In an August 31, 2014 cervical MRI scan report, Dr. Edmond A. Knopp, a Board-certified radiologist, found mild degenerative spondylitic changes at several levels. Physical therapy notes addressed the treatment cervical stenosis.

In a February 19, 2015 decision, OWCP denied modification of the December 9, 2013 decision. It found that the medical evidence submitted was insufficient to outweigh Dr. Sultan's opinion that appellant no longer had residuals or disability causally related to her accepted June 1, 2012 work injury or left knee osteoarthritis as a consequence of her accepted injuries.

## ***LEGAL PRECEDENT -- ISSUE 1***

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 resulting from a previous injury or illness without an intervening cause or a new exposure to the work environment that caused the illness. It can also mean an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[2]

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish, by the weight of the reliable, probative, and substantial evidence, a recurrence of total disability and an inability to perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.[3] To establish a change

[2] *J.F.*, 58 ECAB 124 (2006). A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties, or other downsizing. 20 C.F.R. § 10.5(x). *See also Richard A. Neidert*, 57 ECAB 474 (2006).

[3] *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Terry R. Hedman*, 38 ECAB 222 (1986).

in the nature and extent of the injury-related condition, there must be a probative medical opinion, based on a complete and accurate factual and medical history as well as supported by sound medical reasoning, that the disabling condition is causally related to employment factors.[4] In the absence of rationale, the medical evidence is of diminished probative value.[5] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, it must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[6]

## ***ANALYSIS -- ISSUE 1***

The Board finds that appellant has failed to establish a recurrence of total disability commencing on June 28, 2013 causally related to the June 1, 2012 employment injuries.

OWCP accepted that appellant sustained right wrist, right shoulder, and left knee contusions, and a cervical sprain on June 1, 2012 while in the performance of duty. Appellant stopped work on the date of injury and thereafter worked intermittently. She received continuation of pay until July 16, 2012 but thereafter her claims for wage-loss compensation were denied due to lack of medical evidence. On October 2, 2012 appellant returned to full-time, modified limited-duty work. She claimed a recurrence of disability commencing on June 28, 2013 due to her accepted injuries.

OWCP obtained a second opinion from Dr. Sultan, a Board-certified orthopedic surgeon, who opined on August 13, 2013 that appellant had no residuals of her accepted work injuries and was capable of returning to her import specialist position with no restrictions. Dr. Sultan reviewed appellant's history and noted normal findings for the cervical spine, bilateral shoulders, hands, wrists, and knees, thoracolumbar, and pelvis. He reviewed diagnostic test results which showed early tri-compartmental osteoarthritic changes and slight thinning of the patellar articular surface, and a tiny osteochondral defect involving the lateral femoral condyle of the left knee. Dr. Sultan advised that these were preexisting developmental changes unrelated to appellant's accepted employment injuries. He explained that the accepted June 1, 2012 employment injuries had resolved because there were no objective findings of any current disability or aggravation causally related to these injuries.

The Board finds that Dr. Sultan's report represents the weight of the medical evidence on whether appellant was disabled commencing June 28, 2013 due to the accepted injuries. Dr. Sultan's opinion is based on a proper factual and medical history as he reviewed the statements of accepted facts and appellant's prior medical treatment. He also related his comprehensive examination findings in support of his opinion that appellant no longer had any residuals or disability causally related to the accepted right wrist, right shoulder, left knee, and cervical conditions.

[4] *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

[5] *Id.*; *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[6] *Ricky S. Storms*, 52 ECAB 349 (2001).

The medical evidence submitted by appellant is insufficient to outweigh Dr. Sultan's second opinion report because the evidence does not contain a rationalized medical opinion that establishes a change in the nature and extent of the injury-related conditions.[7]

Dr. Lippe's April 17, 2013 Form CA-20 report noted appellant's work-related fall, diagnosed injuries and contusions consistent with her complaints, and found her totally disabled from June 1 to October 1, 2012. This report predates appellant's recurrence claim and he did not provide any medical rationale explaining how her accepted contusions had worsened in nearly one year.[8] Dr. Lippe opined in an October 22, 2013 disability certificate that appellant was unable to work three-day shifts due to deterioration in her knee, but did not explain or offer any medical rationale as to how her disability was causally related to the accepted June 1, 2012 employment injuries.[9] In his remaining reports, he did not opine that appellant was totally disabled. In fact, Dr. Lippe found that she could perform full-time light-duty work as tolerated with restrictions. For the stated reasons, his reports are insufficient to establish appellant's claim.

Similarly, the disability certificates and reports dated February 26 to December 7, 2014 from Drs. Shah, Brown, and Faust are insufficient to establish a recurrence of disability as claimed. They did opine that appellant was totally disabled for work on June 28, 2013 due to the accepted employment injuries. Drs. Shah, Brown, and Faust found that she was capable of working two days a week with restrictions which included no field work. The Board finds that the disability certificates and reports of Drs. Shah, Brown, and Faust are insufficient to establish appellant's claim.

Dr. Knopp's August 31, 2014 diagnostic test results addressed appellant's cervical spine condition, but did not address whether she was totally disabled as of June 28, 2013 due to the accepted employment injuries. The Board has held that medical 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.[10]

Appellant failed to submit rationalized medical evidence establishing that her disability on June 28, 2013 resulted from residuals of her accepted employment-related right wrist, right shoulder, left knee, and cervical conditions.

On appeal, appellant's counsel contends that appellant has submitted sufficient evidence to establish a clear change in the nature and extent of her accepted employment injuries and disability causally related to these injuries. For the reasons stated, the Board finds that appellant did not submit sufficiently rationalized medical evidence to establish that she sustained a

[7] When no such rationale is present, the medical evidence is of diminished probative value. *J.B.*, Docket No. 14-1474 (issued March 13, 2015).

[8] *Id.*

[9] *Id.*

[10] *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

recurrence of disability commencing on June 28, 2013 causally related to her accepted June 1, 2012 employment injuries.

## ***LEGAL PRECEDENT -- ISSUE 2***

With respect to consequential injuries, it is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.[11] The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[12]

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship. Rationalized medical evidence is an opinion of reasonable medical certainty supported by sound medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.[13]

## ***ANALYSIS -- ISSUE 2***

OWCP accepted that appellant sustained right wrist, right shoulder, and left knee contusions, and cervical sprain on June 1, 2012 while in the performance of duty. The Board finds that she has not submitted sufficient medical evidence to establish an additional left knee condition as a consequence of her accepted employment injuries.

Dr. Shah's December 4, 2014 report found that appellant's SLAP, bicipital tendinitis, rotator cuff tendinitis, ACL joint arthritis, and osteoarthritis of the knee were caused by the accepted employment injuries. He offered no medical rationale explaining how the accepted work injuries caused the diagnosed conditions.[14] In June 24, September 8, and December 16, 2014 Form CA-20 reports, Dr. Shah indicated by checking a box marked "yes" that the above-noted diagnosed conditions were caused or aggravated by the accepted injuries. The Board has held that an opinion consisting of a physician's checkmark is of diminished probative value without any explanation or rationale for the conclusion reached.[15] While Dr. Shah referenced the history of injury and diagnostic and physical examination findings as the basis for his conclusion, he did not clearly explain how the mechanism of injury on June 1, 2012 caused or

[11] *Albert F. Ranieri*, 55 ECAB 598 (2004).

[12] *See* A. Larson, *The Law of Workers' Compensation* § 10.01 (November 2000).

[13] *Charles W. Downey*, 54 ECAB 421 (2003).

[14] *J.B.*, *supra* note 7.

[15] *D.D.*, 57 ECAB 734 (2006); *Sedi L. Graham*, 57 ECAB 494 (2006).

aggravated appellant's diagnosed conditions. The Board finds that Dr. Shah's reports are insufficient to establish appellant's claim.

Dr. Lippe's reports dated April 17, 2013 to March 12, 2014 diagnosed bilateral wrist, left shoulder, and left knee contusions, osteoarthritis of the knee, cervical sprain, and preexisting left knee osteoarthritis, but offered no opinion on causal relationship of the diagnosed conditions.[16] The Board finds that Dr. Lippe's reports are insufficient to establish appellant's claim.

Similarly, the reports of Drs. Brown and Faust are insufficient to establish causal relationship. They reported appellant's history, examination findings, and diagnoses that included left knee osteoarthritis. However, neither Drs. Brown nor Faust provided an opinion addressing how a diagnosed left knee condition was caused by the accepted work injuries.[17] The Board finds that their reports are insufficient to establish appellant's claim.

Dr. Knopp's August 31, 2014 diagnostic test report also does not address causal relationship. He diagnosed mild degenerative changes at several levels of the cervical spine, but did not state whether the diagnosed condition was causally related to the June 1, 2012 work injuries.[18]

Multiple reports from appellant's physical therapists addressed the treatment of her cervical condition. However, a physical therapist is not considered a physician as defined under FECA.[19] Thus, records from appellant's physical therapists are insufficient to establish her claim.

The Board finds that the medical evidence of record is insufficient to establish that appellant sustained an additional left knee condition as a consequence of her accepted employment injuries. Appellant did not meet her burden of proof.

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 has failed to establish a recurrence of total disability commencing on June 28, 2013 due to her June 1, 2012 employment injuries. The Board further finds that she has failed to meet her burden of proof to establish an additional left knee injury as a consequence of her accepted employment-related injuries.

[16] *See* cases cited, *supra* note 10.

[17] *Id.*

[18] *Id*.

[19] *A.C.*, Docket No. 08-1453 (issued November 18, 2008). Under FECA, a 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 also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the February 19, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board