

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

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**C.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Princeton, NJ, Employer**

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**Docket No. 17-0371  
Issued: April 26, 2017**

*Appearances:*  
*Thomas R. Uliase, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 8, 2016 appellant, through counsel, filed a timely appeal from an August 16, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish that her claim should be expanded to include a tear of the medial meniscus of the right knee as a result of her June 1, 2015 employment injury.

## FACTUAL HISTORY

On June 2, 2015 appellant, then a 52-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 1, 2015 she sustained a pull or tear in her right knee climbing up “high cement steps” delivering mail to a residence. She stopped work on June 3, 2015. OWCP accepted the claim for a right knee sprain.<sup>3</sup>

Appellant initially received treatment for her injury on June 2, 2015 from Dr. Jasmeet Singh Bhogal, Board-certified in family practice. Dr. Bhogal obtained a history of her experiencing “excruciating knee pain after stepping on a step and feeling a pull in her knee.” He diagnosed a sprain of the knee and leg and provided work restrictions.

In a report dated June 29, 2015, Dr. Brian J. Sennett, a Board-certified orthopedic surgeon, related that around four weeks earlier appellant was going up “an oversized step and felt something rip in the anterior aspect of the knee in the region of the patella tendon.” He diagnosed a right knee strain of the patella tendon with patella tendinitis and a possible tear of the medial meniscus. Dr. Sennett referred appellant for a magnetic resonance imaging (MRI) scan study.<sup>4</sup> The MRI scan, obtained on July 29, 2015, revealed a “displaced radial tear of the posterior horn medial meniscus with involvement of the tibial root attachment,” degenerative arthrosis of the medial and patellofemoral compartment, and moderate joint effusion.

Counsel, on October 13, 2015, requested that OWCP expand acceptance of the claim to include a tear of the posterior horn of the right medial meniscus.

By decision dated October 21, 2015, OWCP found that appellant had not established that her claim should be expanded to include a right medial meniscus tear due to her June 1, 2015 work injury. It determined that she had not submitted reasoned medical evidence showing a causal relationship between her June 1, 2015 work injury and her meniscal tear.

On October 26, 2015 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

Dr. Sennett, in a November 29, 2015 report, discussed appellant’s history of climbing up steps on June 1, 2015 and feeling “something ‘rip’ in the anterior aspect of the knee.” He

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<sup>3</sup> On July 24, 2015 OWCP denied appellant’s claim as the medical evidence was insufficient to establish causal relationship. On August 5, 2015 appellant requested an oral hearing. Following a preliminary review, in a decision dated September 30, 2015, an OWCP hearing representative vacated the July 24, 2015 decision and accepted the claim for right knee strain.

<sup>4</sup> In a progress report dated July 13, 2015, Dr. Sennett provided examination findings of bilateral tenderness of the medial joint line.

discussed his initial findings and the results of diagnostic studies. Dr. Sennett related that appellant had a follow-up examination August 3, 2015. He opined, "It was noted that [appellant] had a root tear avulsion of her medial meniscus of her right knee as well as arthritis of the medial hemi-compartment of the right knee. The arthritis involving her right knee was not as bad as her left knee, as the left knee had 'bone on bone' arthritic changes." Dr. Sennett diagnosed a torn medial meniscus of the right knee and bilateral knee osteoarthritis. He related:

"With respect to causality, it is not possible to state that [appellant] tore her right medial meniscus on June 1, 2015 ascending the stairs while working. She stated in the office that her knee had been bothering her while using the pedals, while driving, and the pain worsened on June 1, 2015 while ascending the stairs. It can be stated within a reasonable degree of medical certainty that [appellant] aggravated her right knee as a result of ascending the stairs on June 1, 2015."

Dr. Sennett advised that appellant was unable to drive her vehicle from June 1 to October 19, 2015.

At the hearing, held on February 3, 2016, appellant related that beginning November 2014 the gas pedal in her truck was difficult to press and that her knee began hurting. It took until February 2015 for the pedal to be replaced. On June 1, 2015 appellant experienced a ripping sensation and severe pain in her knee climbing a high step. She described her continued difficulty driving with her knee.

By decision dated March 7, 2016, OWCP's hearing representative affirmed the October 21, 2015 decision. He found that Dr. Sennett did not provide sufficient rationale for his finding that climbing stairs aggravated appellant's right knee. The hearing representative noted that the only issue was a traumatic event on June 1, 2015 rather than any injury resulting from using pedals beginning in 2014.

Dr. Sennett, in a report dated March 6, 2016, discussed appellant's history of sharp pain and "increased symptoms related to [appellant] medial meniscus tear of [the] right knee" on June 1, 2015 going up a step. He related, "As a result, it is my opinion within a reasonable degree of medical certainty that [appellant] ascension of the oversized step of June 1, 2015 contributed, in some way, to the aggravation of the diagnosed right medial meniscus tear."

Appellant, through counsel, on May 19, 2016 requested reconsideration.

By decision dated August 16, 2016, OWCP denied modification of the March 7, 2016 decision.<sup>5</sup> It found that Dr. Sennett did not explain why climbing the step on June 1, 2015 aggravated a meniscal tear.

On appeal counsel contends that Dr. Sennett's reports are sufficient to either establish the claim or to require further development of the evidence.

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<sup>5</sup> OWCP indicated that the hearing representative's decision was dated March 11, 2016 rather than March 7, 2016.

## LEGAL PRECEDENT

Appellant bears the burden of proof to establish that a condition not accepted or approved by OWCP is causally related to an employment injury.<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 claimant,<sup>8</sup> must be one of reasonable medical certainty,<sup>9</sup> and must explain the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>10</sup>

## ANALYSIS

OWCP accepted that appellant sustained a right knee sprain on June 1, 2015 in the performance of duty. On October 13, 2015 counsel requested that OWCP expand acceptance of her claim to include a tear of the right posterior horn of the medial meniscus. The issue is whether appellant submitted sufficient medical evidence to show that her medial meniscal tear was a result of her June 1, 2015 work injury.

The Board finds that the medical evidence is insufficient to establish that appellant's claim should be expanded to include a right meniscus tear. In a November 29, 2015 report, Dr. Sennett reviewed the history of her feeling something ripping in the anterior right knee after climbing steps on June 1, 2015. He discussed test results and noted that appellant had a tear of the medial meniscus of the right knee and bilateral knee arthritis worse on the left. Dr. Sennett advised that it was impossible to definitely determine that the meniscal tear occurred on June 1, 2015 walking up steps, noting that she also related that she had knee pain using vehicle pedals driving. He opined that going up stairs on June 1, 2015 aggravated appellant's right knee condition. Dr. Sennett did not, however, specify how the work injury of June 1, 2015 caused a tear or fully explain how the described work injury caused or aggravated a right knee condition. Without a firm diagnosis supported by medical rationale, the report is of little probative value.<sup>11</sup> Dr. Sennett, on March 6, 2016, found that appellant had increased right knee pain and symptoms due to a medial meniscal tear of the right knee climbing a step on June 1, 2015. He opined that climbing the step contributed "in some way" to an aggravation of the right medial meniscus tear. Dr. Sennett's finding that climbing the large steps on June 1, 2015 "in some way" aggravated a meniscal tear is speculative and unexplained, and thus insufficient to meet appellant's burden of

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<sup>6</sup> See *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>7</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>8</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>9</sup> *Supra* note 7.

<sup>10</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

<sup>11</sup> See *Samuel Senkow*, 50 ECAB 370 (1999) (finding that, because a physician's opinion of Legionnaires disease was not definite and was unsupported by medical rationale, it was insufficient to establish causal relationship).

proof.<sup>12</sup> His June 29, 2015 report is also of limited probative value as it did not specifically address whether her employment caused or aggravated a diagnosed medical condition.<sup>13</sup>

On appeal appellant, through counsel, contends that the reports from Dr. Sennett are sufficient to meet her burden of proof or to require further development. OWCP, however, did not accept her claim for a right meniscal tear. Where appellant claims that a condition not accepted or approved by OWCP was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.<sup>14</sup> Dr. Sennett did not provide sufficient rationale for his opinion that the work injury aggravated a tear of the right medial meniscus. Medical conclusions unsupported by rationale are of little probative value.<sup>15</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 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that her claim should be expanded to include a tear of the medial meniscus of the right knee as a result of her June 1, 2015 employment injury.

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<sup>12</sup> See *D.E.*, 58 ECAB 448 (2007); *T.F.*, 58 ECAB 128 (2006).

<sup>13</sup> See *K.W.*, 59 ECAB 271 (2007) (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).

<sup>14</sup> See *supra* note 6.

<sup>15</sup> *Willa M. Frazier*, 55 ECAB 379 (2004); *Jimmy H. Duckett*, 52 ECAB 332 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 16, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 26, 2017  
Washington, DC

Christopher J. Godfrey, 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