

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

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**D.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Summerville, SC, Employer**

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**Docket No. 16-1661  
Issued: February 10, 2017**

*Appearances:*

*Alan J. Shapiro, 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  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On August 17, 2016 appellant, through counsel, filed a timely appeal from July 1 and 25, 2016 merit decisions 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 these cases.<sup>3</sup>

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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.*

<sup>3</sup> The July 2, 2016 decision is in reference to a June 18, 2014 claim for a May 8, 2014 injury, adjudicated by OWCP under File No. xxxxxx360. The July 25, 2016 decision is in reference to an August 6, 2014 claim for a June 18, 2014 injury, adjudicated by OWCP under File No. xxxxxx120.

## **ISSUES**

The issues are: (1) whether appellant met her burden of proof to establish an injury causally related to a May 8, 2014 employment incident; and (2) whether appellant met her burden of proof to establish an injury causally related to a June 18, 2014 employment incident.

On appeal counsel asserts that the July 1 and 25, 2016 decisions are contrary to fact and law.

## **FACTUAL HISTORY**

On June 18, 2014 appellant, then a 55-year-old rural letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her right knee and right shoulder on May 8, 2014 when she jammed on brakes of her postal vehicle to stop suddenly while delivering mail. A South Carolina Department of Motor Vehicles report indicates that she was involved in a collision on May 8, 2014 and states that she did not contribute to the collision. The report is unsigned. OWCP adjudicated this claim under File No. xxxxxx360.

In support of File No. xxxxxx360, appellant submitted a June 18, 2014 treatment note in which Dr. Nancy Lembo, an osteopath Board-certified in physical medicine and rehabilitation, noted appellant's complaint of sharp right knee pain caused by a motor vehicle accident when she slammed on her brakes. She also noted that her knee pain had been aggravated by a subsequent fall at work that day when her knee buckled. Dr. Lembo noted moderate effusion, medial joint line tenderness, and pain with flexion on examination of the right knee. She diagnosed right knee pain and effusion.

Under File No. xxxxxx360, by letter dated June 23, 2014, OWCP informed appellant of the evidence needed to support her claim. Dr. Lembo completed duty status reports (Form CA-17) on June 18 and 25, 2014 in which she advised that appellant could not work due to her right shoulder and right knee pain. In a July 14, 2014 treatment note, she noted appellant's complaint of right shoulder and right knee pain. Dr. Lembo indicated that appellant used crutches which increased right shoulder pain. Examination of the right knee demonstrated mild effusion and medial joint line tenderness with laxity of the medial collateral ligament (MCL) and pain with flexion. Right shoulder examination demonstrated pain over the biceps tendon. On a duty status report dated July 14, 2014, Dr. Lembo diagnosed right knee pain, joint effusion, MCL sprain, and right shoulder biceps tendinitis. She advised that appellant could not work.

The employing establishment controverted the claim adjudicated under File No. xxxxxx360. In correspondence dated June 10 and 25, 2016, it noted that appellant did not report hitting her knee or any injury to her knee or shoulder until six weeks after the motor vehicle accident. The employing establishment also noted that she continued to work full duty until June 18, 2014 when her physician placed her off work.

By decision dated July 29, 2014, OWCP denied the File No. xxxxxx360 claim, finding that, although appellant established that an incident occurred as alleged, the medical evidence of record was insufficient to establish that the employment incident had caused an injury or medical

condition. Appellant, through counsel, timely requested a hearing with a representative of OWCP's Branch of Hearings and Review from the July 29, 2014 decision.

On August 6, 2014 appellant filed a second traumatic injury claim (Form CA-1), alleging that on June 18, 2014 she fell backward at the employing establishment, and injured her right shoulder and right knee. In an attached statement, she indicated that, as she was casing mail, she stepped back and fell, hitting her right shoulder and right knee, and that a coworker helped her get up. Appellant indicated that another coworker heard her fall. This claim was adjudicated by OWCP under File No. xxxxxx120.

The employing establishment challenged the August 6, 2014 claim. In correspondence dated August 14, 2014, health and resource management specialist with the employing establishment referenced the July 29, 2014 denial of appellant's claim in File No. xxxxxx360. The specialist indicated that on June 18, 2014, although there were other carriers near appellant sorting mail, no one saw her fall as they just saw her sitting on the floor.

Under File No. xxxxxx120, by letter dated August 20, 2014, OWCP informed appellant of the evidence needed to support the claim. In a decision dated September 22, 2014, under File No. xxxxxx120, it denied the claim, as she failed to submit sufficient evidence to support that the injury and/or event occurred as alleged. On October 10, 2014 appellant, through counsel, requested a hearing with a representative of OWCP's Branch of Hearings and Review.

Appellant submitted additional medical evidence from Dr. Lembo. Under File No. xxxxxx120, she submitted duplicates of the June 18, 2014 treatment note and duty status report, the July 14, 2014 treatment note, and an August 11, 2014 duty status report advising that she could not work due to a right knee medial meniscus tear and right shoulder pain. In a June 25, 2014 treatment note, Dr. Lembo noted that appellant's right knee continued to be painful and that her right shoulder was also hurting. She diagnosed right knee pain, joint effusion, and MCL sprain, and right shoulder biceps tendinitis. An August 8, 2014 magnetic resonance imaging (MRI) scan of the right knee showed mild-to-moderate osteoarthritis, moderate chondromalacia in the medial compartment, and a tear of the posterior horn of the medial meniscus. In treatment notes dated August 12 and September 9, 2014, Dr. Lembo noted that appellant had MRI scans of the right knee and right shoulder. She described examination findings and additionally diagnosed right knee medial meniscus tear.

On October 1, 2014 Dr. Lembo submitted a "certification of health care provider" form for approval of leave under the Family and Medical Leave Act (FMLA). She indicated that appellant could only perform sedentary work and was unable to drive a mail truck, based on MRI scan knee findings of a meniscal injury, and a right shoulder impairment that prevented lifting or repetitive use. Dr. Lembo advised that surgery was contemplated.

A hearing regarding File No. xxxxxx360 (May 8, 2014 injury claim) was held on March 24, 2015. Counsel discussed previous claims that had been accepted for left shoulder and knee and low back injuries. Appellant testified that she had recently moved from South Carolina to Virginia. She related that, following the May 8, 2014 motor vehicle accident, an employing establishment supervisor and police came to the accident scene. Appellant indicated that she

went to see a “Dr. Brown” who referred her to Dr. Lembo. Counsel indicated that he would try to obtain reports from Dr. Brown. The record was left open for 30 days.

Copious medical evidence was submitted following the March 24, 2015 hearing which predated either 2014 injury. Also submitted was an operative report dated November 13, 2015, noting that Dr. John M. Graham, Board-certified in orthopedic surgery and orthopedic sports medicine, performed arthroscopic repair of a partial anterior cruciate ligament tear.

By decision dated May 6, 2015, issued under File No. xxxxxx360, an OWCP hearing representative affirmed the July 29, 2014 decision. She found that the medical evidence of record was insufficient to establish that diagnosed conditions were caused by the accepted incident of May 8, 2014.

A hearing regarding File No. xxxxxx120 (June 18, 2014 injury) was held on May 6, 2015. Appellant testified that on June 18, 2014 she stumbled backward as she was casing mail and fell, jolting her arm and wrenching her knee. She testified that two coworkers helped her up and that she reported the incident to her supervisor. Appellant stated that she sat for a while and then went to see Dr. Lembo. She discussed the May 8, 2014 motor vehicle accident and stated that she had no previous right knee problems. Appellant indicated that she had moved to Virginia and in January 2015 underwent surgery on the right knee. The hearing representative advised her of the evidence necessary to support her claim, and the record was held open for 30 days.

Following the May 6, 2015 hearing, on June 10, 2015, a health and resource management specialist with the employing establishment submitted comments regarding the hearing. He advised that coworkers were asked to comment regarding the claimed fall on June 18, 2014, but nobody had witnessed the fall. In a June 3, 2015 statement, a coworker, advised that he did not recall the date, but remembered seeing appellant holding her knee, so he had helped her to a stool.

By decision dated July 24, 2015, issued under File No. xxxxxx120, an OWCP hearing representative affirmed the September 22, 2014 decision as modified. She found the evidence of record sufficient to establish that the claimed June 18, 2014 incident occurred as alleged, but that the medical evidence was insufficient to establish that the diagnosed conditions were caused by the accepted incident.

On January 8, 2016 appellant, through counsel, requested reconsideration of the May 6, 2015 decision, issued under File No. xxxxxx360 (May 8, 2014 claimed injury) and submitted additional evidence. Dr. Michael A. Kavanagh, a Board-certified orthopedic surgeon, advised that he had been treating her since December 29, 2014 for injuries to her right knee and right shoulder sustained in a May 8, 2014 motor vehicle accident. In an initial December 29, 2014 note, he advised that appellant struck another vehicle on May 8, 2014 at which time she wrenched her right knee and right shoulder. Physical examination of the right knee demonstrated no effusion with good extension and flexion, and tenderness at the medial joint line and peripatellar region. Drawer and Lachman’s tests were negative. Examination of the right shoulder demonstrated tenderness of the lateral deltoid and biceps sheath with positive speed test and impingement sign. Dr. Kavanagh noted his review of an August 8, 2014 right knee MRI

scan that showed a medial meniscus tear and mild-to-moderate arthritis, and that a right shoulder MRI scan showed damage to the rotator cuff and labrum. He diagnosed internal derangement, meniscal, early osteoarthritis, and chondromalacia of the right knee, and rotator cuff labral/biceps dysfunction of the right shoulder. Arthroscopic surgery for the right knee was scheduled for January 14, 2015.

In treatment notes beginning January 16, 2015, Dr. Kavanagh described appellant's follow-up care. He also described her complaint of radiating neck and right shoulder pain with limited shoulder range of motion. On May 11, 2015 Dr. Kavanagh advised that an upper extremity electrodiagnostic study was scheduled. On June 9, 16 and 23, 2015 he noted injecting appellant's right knee. On June 25, 2015 Dr. Kavanagh advised that a June 19, 2015 MRI scan of the right shoulder demonstrated a rotator cuff tear, and arthroscopic surgery was scheduled for July 15, 2015. He subsequently described follow up regarding the right shoulder. On October 1, 2015 Dr. Kavanagh advised that appellant's shoulder was improving, and that she had right knee effusion. On November 9, 2015 he advised that she had significant pain and dysfunction of the right shoulder and pain and swelling of the right knee, which impacted her ability to walk.

In a merit decision dated February 18, 2016, issued under File No. xxxxxx360 (May 8, 2014 injury), OWCP denied modification of the prior decision because the record did not contain a medical opinion that sufficiently explained how or why the current diagnoses were due to the May 8, 2014 employment incident.

By letter dated March 25, 2016, received by OWCP on March 28, 2016, counsel informed OWCP claims examiner that he was not properly notified of the February 18, 2016 decision. On April 5, 2016 OWCP reissued the February 18, 2016 decision with proper notice to counsel.

On April 21, 2016 appellant, through counsel, requested reconsideration of the April 5, 2016 decision regarding File No. xxxxxx360 and the July 21, 2015 decision regarding File No. xxxxxx120. In support of both requests, he submitted an unsigned April 4, 2016 treatment note in which Dr. Kavanagh related:

“[Appellant] comes in for follow up of the right shoulder and right knee. They both continue to give her trouble. These injuries all are a direct result of the [motor vehicle accident] [appellant] sustained while working. The accident was on [May 8, 2014]. [Appellant] struck another vehicle. She injured her right shoulder and injured her right knee. [Appellant] hit the knee and it was most likely on the dashboard, but was definitely struck by something inside the car. This is what caused the direct problems with the right knee. [Appellant] hit her right shoulder and wrenched it. This is what is giving her trouble with the shoulder. It began on [May 8, 2014]. These are all a direct result of the [workers' compensation] injury.”

In a July 1, 2016 decision, issued under File No. xxxxxx360 (May 8, 2014 injury), OWCP denied modification of its prior decisions. It noted that, in his April 4, 2016 report, Dr. Kavanagh did not provide a full history of the motor vehicle accident of May 8, 2014 or

provide a sufficient level of medical reasoning as to how her right knee and right shoulder injuries resulted from the accident.

In a July 25, 2016 decision, issued under File No. xxxxxx120 (June 18, 2014 injury), OWCP denied modification of its prior decisions. It noted that Dr. Kavanagh did not refer to the June 18, 2014 incident at all. Rather, Dr. Kavanagh only discussed the claimed May 8, 2014 injury.

### **LEGAL PRECEDENT -- ISSUES 1 & 2**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves a traumatic injury or an occupational disease, an employee must satisfy this burden of proof.<sup>4</sup>

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 or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>5</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>6</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.<sup>7</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>8</sup>

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<sup>4</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>5</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>6</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>7</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>8</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

## ANALYSIS -- ISSUES 1 & 2

It is undisputed that the May 8 and June 18, 2014 employment incidents have been proven to have occurred as alleged. The Board finds, however, that the medical evidence of record is insufficient to establish that either of these incidents resulted in an employment injury.

Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.<sup>9</sup> Appellant has failed to submit medical evidence in support of her claim.

The August 8, 2014 MRI scan of the right knee showed mild-to-moderate osteoarthritis, moderate chondromalacia in the medial compartment, and a tear of posterior horn of the medial meniscus. However, the report did not provide any opinion as to the cause of any diagnosed conditions. The Board has long 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.<sup>10</sup>

The first physician's report regarding the accepted employment incidents is Dr. Lembo's June 18, 2014 treatment note. In this note she reports that appellant reported a history of right knee pain initially caused by a motor vehicle accident when she slammed on her mail vehicle's brakes and an aggravation caused by a fall at work later that same day. She advised that appellant could not work. Although appellant testified at the March 24, 2015 hearing (under File No. xxxxxx360) that she saw a "Dr. Brown" following the motor vehicle accident, the record contains no reports from Dr. Brown. Dr. Lembo also diagnosed shoulder pain beginning in July 2014 and continued to submit reports through October 1, 2014. At no time, however, did she specifically discuss a cause of appellant's diagnosed condition. While Dr. Lembo noted an aggravation of any injury caused by two incidents, such generalized do not establish causal relationship because they repeat appellant's allegations and are unsupported by adequate medical rationale explaining how the incidents actually caused or aggravated the diagnosed conditions.<sup>11</sup> She failed to provide any support that appellant's injury was caused or aggravated by the two accepted employment incidents.

Dr. Kavanagh began treating appellant on December 29, 2014 and performed arthroscopic surgery on appellant's right knee and right shoulder on January 14 and July 15, 2015 respectively. He did not mention the accepted June 18, 2014 employment incident in any of his reports. Rather, Dr. Kavanagh merely described his medical and surgical treatment of appellant's right knee and right shoulder. On April 4, 2016 he advised that the injuries to her right shoulder and right knee were a direct result of the May 8, 2014 motor vehicle accident when she struck another vehicle. Dr. Kavanagh opined that appellant most likely hit her right

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<sup>9</sup> *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

<sup>10</sup> *Willie M. Miller*, 53 ECAB 697 (2002). The Board also notes that the record supports that appellant underwent MRI scans of the right shoulder in 2014 and 2015. Reports of these studies, however, are not found in the case record.

<sup>11</sup> *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

knee on the dashboard “but was definitely struck by something inside the car,” and that she also hit her right shoulder, wrenching it. He concluded that her knee and shoulder problems began on May 8, 2014 and were the result of the accepted employment incidents.

The Board finds that Dr. Kavanagh’s opinion is not sufficiently rationalizes to establish appellant’s claim.

The Board has long held that medical opinions based upon an incomplete history or which are speculative or equivocal in nature have little probative value.<sup>12</sup> The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to a claimant’s federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>13</sup> To support causal relationship, the opinion of the physician must be based on a complete factual and medical background of the claimant, 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.<sup>14</sup>

The Board finds that the reports of Dr. Kavanagh are speculative as to the specific mechanism of injury, noting only that appellant had likely hit her right knee on the dashboard. Moreover, Dr. Kavanagh medical reports are entitled to little probative value as he fails to provide more than a mere conclusory statement on the issue of causation. A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident or work factors were sufficient to result in the diagnosed medical condition is insufficient to meet a claimant’s burden of proof to establish a claim.<sup>15</sup>

It was appellant’s burden to establish that a diagnosed condition was causally related to either the May 8 or June 18, 2014 incident. Appellant submitted insufficient evidence to establish an injury causally related to these accepted employment incidents.

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 did not meet her burden of proof to establish an injury causally related to a May 8, 2014 or on June 18, 2014.

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<sup>12</sup> *Frank Luis Rembisz*, 52 ECAB 147 (2000).

<sup>13</sup> *A.D.*, 58 ECAB 149 (2006).

<sup>14</sup> *Supra* note 7.

<sup>15</sup> *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 25 and 1, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 10, 2017  
Washington, DC

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

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

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