

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

L.F., Appellant

and

**U.S. POSTAL SERVICE, MARINA STATION,
San Francisco, CA, Employer**

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**Docket No. 18-0327
Issued: August 17, 2018**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 4, 2017 appellant filed a timely appeal from a September 20, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the claim.

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of disability commencing February 11, 2015 causally related to an accepted December 5, 2008 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 8, 2008 appellant, then a 55-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on December 5, 2008, he injured his left knee while dragging relay sacks while in the performance of duty. He stopped work on December 5, 2008.²

On December 8, 2008 the employing establishment issued an Authorization for Examination and/or Treatment (Form CA-16) to the Multi-Specialty Medical Group. Medical evidence received included a December 8, 2008 report with an illegible signature indicating that appellant had left knee pain complaints. In an unsigned December 8, 2008 duty status report (Form CA-17) a diagnosis of “sprain” caused by the December 5, 2008 employment incident was noted. This report also related that appellant was able to return to full-duty work on December 9, 2008.

The record contains multiple California workers’ compensation form reports from Dr. Robert Ferretti, a Board-certified orthopedic surgeon. In a January 30, 2009 report, Dr. Ferretti indicated that appellant had bilateral knee pain. He stated that appellant developed pain in his left knee on December 5, 2008 while pulling sacks of mail. Dr. Ferretti noted that appellant’s right knee was slowly worsening. In a March 24, 2010 report, he diagnosed bilateral knee strain/sprain and osteoarthritis, and recommended modified duty. In a February 2, 2011 report, Dr. Ferretti noted that appellant had chronic bilateral knee pain.

A January 30, 2009 x-ray report was interpreted by Dr. Christophe Yoo, a Board-certified radiologist, as showing moderate bilateral tricompartmental osteoarthritis in both knees with small effusion.

On July 14, 2014 Dr. William Robert Campbell, an osteopath Board-certified in orthopedic surgery, performed a right knee total joint arthroplasty.

On March 17, 2015 appellant filed a notice of recurrence of the claimed December 5, 2008 injury to his left knee, effective February 11, 2015. He noted that he was limited in performing his duties because of his left knee pain. Appellant related that, following his initial injury, his knee pain had been bearable but occasionally the stiffness and pain would occur and then go away. He then related that, on February 11, 2015 he was at work and bending to pick up a tub of mail when he experienced pain in his left knee. Appellant noted that since then his left knee would hurt whenever he ascended or descended stairs. He contended that his current condition was related to his original injury and noted that it was the same knee.

By development letter dated March 19, 2015, OWCP informed appellant that he must file a new claim for the injury of February 11, 2015. It noted that when appellant’s claim was received in 2008 it appeared to be a minor injury that resulted in minimal or no lost time from work. Based on these criteria, and because the employing establishment did not controvert his claim or challenge the case, payment of a limited amount of medical expenses was administratively

² OWCP assigned the present claim OWCP File No. xxxxxx111. Appellant has a previous claim, assigned OWCP File No. xxxxxx955, which OWCP accepted for right knee sprain resulting from delivering mail on January 14, 2005.

approved. OWCP indicated that based on the evidence submitted, it appeared that appellant was alleging a new injury.

On March 25, 2015 appellant filed a traumatic injury claim (Form CA-1) for a new injury to his left knee. OWCP denied that claim, assigned OWCP File No. xxxxxx263, on July 29, 2015 because appellant had not established causal relationship between the employment incident of February 11, 2015 and an injury to his left knee. Appellant subsequently requested reconsideration. On February 23, 2016 OWCP denied modification of its July 29, 2015 decision.

In a March 4, 2015 report, Dr. Ferretti requested authorization for a left total knee replacement. He diagnosed advanced degenerative arthritis of the left knee. Dr. Ferretti also indicated that appellant was status post right total knee replacement. He stated that appellant was doing well with regard to his right knee replacement and was able to return to modified-duty work on November 14, 2014 with restrictions of squatting and no lifting greater than five pounds. Dr. Ferretti noted that appellant was working. He referred appellant to Dr. Campbell, who performed the right knee surgery, for evaluation, and returned appellant to modified work status with the same restrictions.

On June 15, 2017 appellant filed a recurrence claim (Form CA-2a), alleging a recurrence of his claimed December 5, 2008 injury on February 11, 2015. He noted that since his return to work his left knee had been bearable, but stiffness and pain would occur. Appellant noted that he was bending on February 11, 2015 to pick up a tub of mail and felt pain in his left knee.

In a July 13, 2017 development letter, OWCP summarized the history of appellant's claim and explained that additional medical evidence was necessary to support his claim. It afforded him 30 days to submit the necessary evidence.

In a response received by OWCP on August 2, 2017, appellant stated that after his right knee surgery, he informed his doctor that his left knee was hurting, and that his doctor found that it was aggravated by his right knee. He indicated that he was recovering from his July 14, 2014 right knee surgery, and that his doctor released him to return to modified-duty work on November 14 or 15, 2014. Appellant stated that when he lifted a tub or tray of mail, he was putting weight on his left knee because the right knee surgery had not healed.

Appellant also submitted multiple reports by Dr. Campbell dated from June 1, 2016 through September 7, 2017. In a June 1, 2017 report, Dr. Campbell noted that appellant had tried and failed all reasonable conservative treatment measures, including therapy and injections, but that his symptoms were worsening. He noted that appellant's magnetic resonance imaging (MRI) scan showed significantly advanced degenerative joint disease in the medial and patella femoral compartments. Dr. Campbell stated that appellant's complaints, clinical presentation and MRI scan/arthroscopic findings are all in harmony. He recommended a left total knee arthroplasty and physical therapy follow up. In a July 7, 2016 x-ray report, Dr. Campbell, found no acute osseous abnormality. In the left knee, he found tricompartmental arthrosis, small joint effusion, and possible intra-articular body. In the right knee, Dr. Campbell noted that appellant was status post total knee arthroplasty without hardware complication. In a July 20, 2017 report, he stated that appellant's complaints, clinical presentation, and MRI scan/arthroscopic findings are all in harmony. Dr. Campbell noted that he was submitting an authorization on appellant's behalf

regarding a left knee total arthroplasty, and was also requesting postoperative therapy visits. In a September 7, 2017 report, he noted that he was awaiting response from OWCP.

By decision dated September 20, 2017, OWCP denied appellant's claim for recurrence of disability. It explained that while his claimed December 5, 2008 injury had been administratively accepted, appellant had not established a diagnosed left knee condition as a result of the accepted incident. OWCP thereafter found that appellant had not established a recurrence of disability as he had not established a material change or worsening of "accepted work[-]related conditions."

LEGAL PRECEDENT

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.³ Rationalized medical opinion evidence is generally required to establish causal relationship. 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.⁴

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵

When an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing that the recurrence is causally related to the original injury.⁶ This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the condition is causally related to the employment injury.⁷ The physician's opinion must be based on a complete and accurate factual and medical history and supported by sound medical reasoning.⁸

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *T.H.*, 59 ECAB 388 (2008).

⁵ *Theresa L Andrews*, 55 ECAB 719, 722 (2004); *see also C.S.*, Docket No. 17-1345 (issued May 24, 2018).

⁶ 20 C.F.R. § 10.104(b); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 and 2.1500.6 (June 2013).

⁷ *See S.S.*, 59 ECAB 315, 318-19 (2008).

⁸ *Id.* at 319.

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability commencing February 11, 2015 as he has not established that the accepted December 5, 2008 employment incident caused an injury.

Appellant alleged that on February 11, 2015 he was picking up a tub of mail when his left knee became painful. He stated that he believed he sustained a recurrence of his claimed December 5, 2008 injury because the same knee was involved. OWCP noted that appellant's December 5, 2008 injury claim had been administratively accepted, but had not been formally accepted because the medical evidence of record did not establish a diagnosed left knee condition causally related to the employment incident. It denied his recurrence claim finding that as appellant had not established a diagnosed left knee condition causally related to the accepted December 5, 2008 employment incident, he had also not established a recurrence of an accepted condition on February 11, 2015.

The initial medical evidence of record included December 8, 2008 reports which noted left knee pain and sprain. However these reports were unsigned or bore an illegible signature. As reports bearing no signature or an illegible signature cannot be identified as having been prepared by a physician and they do not constitute competent medical opinion evidence.⁹

Appellant submitted multiple reports from Dr. Ferretti dating from 2009. Dr. Ferretti diagnosed bilateral knee strain and degenerative arthritis. He did not address causal relationship. As Dr. Ferretti did not provide a rationalized medical opinion which explained how the diagnosed bilateral knee strain and degenerative arthritic knee conditions were causally related to the accepted December 5, 2008 employment incident, his reports are of limited probative value.¹⁰

Appellant also submitted a January 30, 2009 x-ray report from Dr. Yoo. However this diagnostic report is of diminished probative value. Diagnostic test reports are not probative to the issue of causal relationship as they do not offer any opinion regarding the cause of an employee's condition.¹¹

The Board finds that the medical evidence of record is insufficient to establish that appellant sustained a diagnosed left knee condition on December 5, 2008 causally related to his accepted employment incident. While appellant submitted additional medical evidence pertaining to medical treatment of his left knee condition after 2015 that evidence also does not establish that appellant initially sustained a diagnosed left knee condition on December 5, 2008.

In a March 4, 2015 report, Dr. Ferretti diagnosed advanced degenerative arthritis of the left knee and requested authorization for a total left knee replacement; however, he offered no opinion

⁹ A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in 5 U.S.C. § 8101(2); *Merton J. Sills*, 39 ECAB 572 (1988).

¹⁰ *Supra* note 4.

¹¹ *J.O.*, Docket No. 18-0057 (issued May 29, 2018).

causally relating this diagnosis to appellant's December 5, 2008 employment incident. Similarly Dr. Campbell reported in multiple reports from June 1, 2016 through September 7, 2017 that appellant had advanced degenerative joint disease in the medial and patella femoral compartments of his left knee. However, he offered no medical opinion regarding the cause of these conditions. As neither physician's opinions addressed the cause of appellant's diagnosed conditions, these reports are insufficient to establish causal relationship.¹²

As previously noted, it is axiomatic that appellant has not established a recurrence of an accepted injury, if no initial injury has been accepted.¹³ As appellant has not established that he sustained a diagnosed left knee condition causally related to his accepted December 5, 2008 employment incident, he has not met his burden of proof to establish an injury causally related to the accepted December 5, 2008 employment incident.

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 not met his burden of proof to establish a recurrence of disability commencing February 11, 2015 causally related to an accepted December 5, 2008 employment incident.

¹² See *B.A.*, Docket No. 17-1130 (issued November 24, 2017); *S.S.*, 59 ECAB 315 (2008); *J.M.*, 58 ECAB 303 (2007); *Donald W. Long*, 41 ECAB 142 (1989).

¹³ *Supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 20, 2017 is affirmed.

Issued: August 17, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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