

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

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<b>B.C., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-0221</b>
	)	<b>Issued: July 10, 2020</b>
<b>U.S. POSTAL SERVICE, MEMORIAL</b>	)	
<b>STATION POST OFFICE, Decatur, IL,</b>	)	
<b>Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On November 7, 2019 appellant filed a timely appeal from an October 11, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the October 11, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed right knee condition causally related to the accepted factors of her federal employment.

## FACTUAL HISTORY

On August 16, 2019 appellant, then a 54-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she experienced right knee pain due to factors of her federal employment, including walking on uneven ground and twisting her knee while getting in and out of a vehicle. She indicated that her pain was initially dull, but escalated as she continued her walking duties. Appellant noted that she first became aware of her condition on August 13, 2019 and first realized that it was caused or aggravated by her federal employment on August 14, 2019.

In an August 16, 2019 visit summary, Jason Blanchetti, a family nurse practitioner, noted that appellant indicated that on August 13, 2019 her right knee started to hurt while she was on her regular route. He diagnosed right knee pain and provided restrictions. In a duty status report (Form CA-17) of even date, Mr. Blanchetti indicated that on August 13, 2019 appellant's right knee started hurting and she found it painful to walk. His clinical findings included right knee tenderness and a painful range of motion. Mr. Blanchetti diagnosed right knee tendinitis and indicated that appellant was able to return to work with restrictions.

In an August 22, 2019 development letter, OWCP informed appellant that additional evidence was required to establish her claim. It advised her of the type of factual and medical evidence necessary and attached a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence.

Appellant subsequently submitted a narrative report from the August 16, 2019 visit in which Mr. Blanchetti indicated that appellant complained of right knee pain due to repetitive movement. Appellant explained that on August 13, 2019 she experienced right knee pain on her normal route. She reported prior knee pain due to an unrelated ankle injury. A physical examination of appellant's right knee revealed pain and crepitus upon flexion and extension and pain upon palpation of the lateral and anterior knee. Mr. Blanchetti diagnosed right knee pain and recommended that she return to work with restrictions.

An August 23, 2019 report by Mr. Blanchetti, indicated that appellant complained of intermittent right knee pain. He repeated appellant's history of injury and noted physical examination findings. Mr. Blanchetti continued to diagnose right knee pain and recommended that appellant return to work with restrictions.

OWCP also received a September 5, 2019 report by Dr. Inderjote Kathuria, Board-certified in internal medicine, who noted that appellant presented with intermittent right knee pain and stiffness. Appellant indicated that on August 13, 2019 she experienced knee pain while on her normal delivery route at work. Physical examination of her right knee revealed mild tenderness in the posterior and medial aspect of the knee and pain upon range of motion. Dr. Kathuria diagnosed right knee pain and opined that the cause of appellant's problem was related to her work

activities. He recommended that she return to work with the restrictions of no walking for over four hours; no lifting, pushing, and pulling over 35 pounds; limited twisting and turning of the right knee; and limited kneeling and squatting until September 19, 2019. A visit summary of this examination was also provided.

In a September 5, 2019 Form CA-17 report, Dr. Kathuria repeated appellant's history of injury, noted clinical findings of right knee pain, and diagnosed right knee strain. He additionally indicated that she could return to work with restrictions.

In a September 24, 2019 report, Dr. Mary Jackson, Board-certified in occupational medicine, noted that appellant complained of worsening right knee pain. Appellant indicated that her pain was especially bad when walking and entering and exiting her employing establishment vehicle. Dr. Jackson repeated the history of injury and conducted a physical examination of appellant's right knee which revealed swelling, a limited range of motion, pain upon palpation over the medial knee joint line, and pain upon range of motion. She diagnosed right knee pain and recommended that appellant continue working with the same restrictions. A visit summary of even date was also provided.

A September 24, 2019 Form CA-17 report by Dr. Jackson repeated appellant's history of injury and noted clinical findings of mild swelling in the right knee and loss of balance when walking. She diagnosed a right knee sprain and possible meniscus injury and instructed that appellant continue to work with restrictions.

On September 24, 2019 Dr. Jackson ordered physical therapy and a right knee magnetic resonance imaging scan.

An October 8, 2019 report by Dr. Jackson indicated that appellant continued to complain of worsening right knee pain. Appellant reported that her symptoms included clicking, intermittent swelling, and pain in the back of her right knee. Dr. Jackson repeated appellant's history of injury, noting that she indicated that appellant's right knee pain was from repetitive movement and it had started to hurt while on her regular route. She conducted a physical examination of appellant's right knee, diagnosed right knee pain and a sprain of an unspecified collateral ligament of the right knee, and continued to recommend a return to work with restrictions. A visit summary of even date was also provided.

By decision dated October 11, 2019, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted factors of her federal employment. It found that the only diagnosis contained in the record was of "pain" and it explained that pain is a symptom, not a medical diagnosis. OWCP therefore denied the claim finding that the requirements had not been met to establish an injury as defined by FECA.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>3</sup> 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 of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>6</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</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 claimant.<sup>8</sup>

## ANALYSIS

The Board finds that this case is not in posture for decision.

In support of her claim, appellant submitted several medical reports, including a September 5, 2019 Form CA-17 report from Dr. Kathuria, a September 24, 2019 Form CA-17 report by Dr. Jackson, and an October 8, 2019 narrative report by Dr. Jackson; all providing a diagnosis of right knee strain. In an October 8, 2019 narrative report, Dr. Jackson indicated that she conducted a physical examination of appellant's right knee and diagnosed a sprain of an unspecified collateral ligament of the right knee. The Board finds that these reports establish a medical diagnosis of a sprain or strain of appellant's right knee or the collateral ligament of the right knee in association with the accepted factors of her federal employment.

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *Id.*

<sup>6</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020).

<sup>7</sup> *L.P.*, Docket No. 19-1812 (issued April 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>8</sup> *C.B.*, Docket No. 20-0250 (issued April 28, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

In an August 16, 2019 Form CA-17 report, Mr. Blanchetti, a nurse practitioner, diagnosed right knee tendinitis. However, nurse practitioners are not considered physicians as defined under FECA and their reports are not considered to be probative medical evidence.<sup>9</sup>

As the medical evidence of record establishes a diagnosed condition, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship. Following such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

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<sup>9</sup> Section 8101(2) of FECA provides that 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 David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *S.L.*, Docket No. 19-0607 (issued January 28, 2020) (nurse practitioners are not considered physicians under FECA).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 11, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: July 10, 2020  
Washington, DC

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

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

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