

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

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**K.P., Appellant**

**and**

**U.S. POSTAL SERVICE, ALEXANDRIA MAIN  
POST OFFICE, Alexandria, LA, Employer**

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**Docket No. 19-1811  
Issued: May 12, 2020**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 23, 2019 appellant filed a timely appeal from an August 5, 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 appellant submitted additional evidence on appeal. 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 additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish a recurrence of total disability commencing May 25, 2019 causally related to the accepted July 18, 2017 employment injury.

## **FACTUAL HISTORY**

On July 18, 2017 appellant, then a 23-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a left knee injury getting out of her delivery vehicle while in the performance of duty. She did not stop work.

On August 29, 2017 OWCP accepted appellant's claim for contusion of the left knee.

On March 21, 2018 appellant filed a claim for compensation (Form CA-7) and requested leave without pay (LWOP) for disability from work for the period March 3 through 16, 2018.

In a March 22, 2018 report, Dr. Robert Smith, a specialist in family medicine, referred appellant for an orthopedic evaluation. He noted that she was still unable to work and diagnosed left knee medial meniscus tear, medial collateral ligament (MCL) tear, chondromalacia, and synovitis.

In an April 2, 2018 development letter, OWCP indicated that it appeared that appellant was claiming disability due to a material change or worsening of her accepted work-related conditions. It noted that she had returned to work in a full-time capacity on September 18, 2017 and worked until March 3, 2018, when she began working reduced hours. OWCP advised appellant that the evidence submitted was insufficient to establish a recurrence of disability during the claimed time period. It provided her with the definition of a recurrence and requested additional medical evidence. OWCP afforded appellant 30 days to provide the requested evidence.

On April 6, 2018 appellant filed a claim for compensation (Form CA-7) and requested LWOP for disability from work for the period March 17 to 30, 2018.

In an April 12, 2018 report, Dr. Smith indicated that appellant was still unable to work. He diagnosed left knee pain and a medial meniscus tear. Dr. Smith prescribed anti-inflammatory relief medication and noted that appellant was being evaluated for medication management.

In April 12, 2018 medical authorization records, physical therapy treatment was requested.

On April 17, 2018 appellant filed a claim for compensation (Form CA-7) and requested LWOP for disability from work for the period March 31 through April 13, 2018.

In an April 23, 2018 report, Dr. Smith recommended surgery for appellant's left knee conditions. He opined that she sustained an injury to her left knee while working which was worsened by her continued work activities. Dr. Smith indicated that since her initial visit appellant had suffered a medial meniscus tear and chondromalacia of the left knee.

On May 3, 2018 appellant filed a claim for compensation (Form CA-7) and requested LWOP for disability from work for the period April 14 to 27, 2018.

Appellant submitted physical therapy treatment notes and records dated September 21, 2017 through April 23, 2018.

On May 15, 2018 OWCP expanded the acceptance of appellant's claim to include the conditions of a tear of the medial meniscus and left knee chondromalacia patellae. It paid her wage-loss compensation for disability from March 3 through April 28, 2018 on the supplemental rolls, and commencing April 29, 2018 on the periodic rolls.

In an April 9, 2018 report, Dr. John David Googe, a Board-certified orthopedic surgeon, reported that appellant was presenting with ongoing left knee pain that stemmed from a June 2017 incident. He reviewed x-rays and an MRI scan of appellant's left knee and diagnosed left anterior knee pain. In an accompanying, unsigned injury status report, Dr. Googe noted that appellant was totally incapacitated.

In a May 9, 2018 report, a physician assistant examined appellant and diagnosed left knee pain. He noted that she had reached maximum medical improvement (MMI) and should be considered for a functional capacity evaluation (FCE).

On May 16, 2018 appellant filed a claim for compensation (Form CA-7) and requested LWOP for disability from work for the period April 28 to May 11, 2018.

Appellant submitted physical therapy treatment notes and records dated April 23 through May 21, 2018.

In a May 23, 2018 report, Dr. Smith related that appellant was still having left knee pain and that physical therapy treatment had not helped. He diagnosed left knee pain and severe pain in the superior patellar area.

In May 24, 2018 medical authorization records, a physical performance test and a disability examination were requested.

In a May 29, 2018 report, Dr. Smith reported that appellant was experiencing ongoing left knee pain. He noted that he could not offer any additional diagnostics or therapy as all other measures had failed.

In a May 29, 2018 duty status report (Form CA-17) with an illegible signature, appellant was diagnosed with a medial meniscus tear, an MCL tear, and chondromalacia. She was noted as being unable to perform her regular work duties.

On May 31, 2018 appellant filed a claim for compensation (Form CA-7) and requested LWOP for the period May 12 through 25, 2018.

In a June 22, 2018 report, a physician assistant examined appellant and diagnosed left knee pain. He noted that she was not a surgical candidate and that she was going to continue with conservative treatment.

In a June 29, 2018 report, Dr. Smith related that appellant continued to have chronic left knee pain with some improvement. He examined her and diagnosed left knee pain, a medial meniscus tear, and inflammation.

In a June 29, 2018 duty status report (Form CA-17) with an illegible signature, appellant was diagnosed with a medial meniscus tear, an MCL tear, and chondromalacia. She was noted as being unable to perform her regular work duties.

In a June 29, 2018 medical authorization record, an MRI scan of appellant's left lower extremities was requested.

A July 5, 2018 MRI scan of appellant's left knee revealed no significant abnormalities. The medial meniscus, lateral meniscus, marrow signal, visualized soft tissues, and articular cartilage were normal.

In a July 9, 2018 report, Dr. Smith reviewed the MRI scan of appellant's left knee. He noted that the MRI scan was normal and that she could return to work.

In a July 9, 2018 duty status report (Form CA-17) with an illegible signature, appellant was diagnosed with a medial meniscus tear, a MCL tear, and chondromalacia. She was advised to resume work with restrictions.

On July 9, 2018 Dr. Smith referred appellant for an FCE.

In a July 23, 2018 report, Dr. Smith indicated that appellant continued to have left knee pain. He examined her and diagnosed left knee pain and anserine bursitis. Dr. Smith recommended a steroid injection for appellant's left knee pain.

In a July 23, 2018 duty status report (Form CA-17) with an illegible signature, appellant was diagnosed with a medial meniscus tear, a MCL tear, and chondromalacia. She was advised to resume work with restrictions.

In an August 1, 2018 report, Dr. Smith noted that appellant had mild improvement since her last visit. He indicated that he released her for light-duty work, but she had yet to be assigned a job corresponding with the restrictions.

In an August 1, 2018 duty status report (Form CA-17) with an illegible signature, appellant was diagnosed with a medial meniscus tear, an MCL tear, and chondromalacia. She was advised to resume work with restrictions.

In an August 22, 2018 report, Dr. Smith reported that appellant was experiencing intermittent left knee pain and that she was starting a new sedentary position at her work.

In an August 22, 2018 duty status report (Form CA-17) with an illegible signature, appellant was diagnosed with a medial meniscus tear, an MCL tear, and chondromalacia. She was advised to resume work with restrictions.

On August 22, 2018 appellant accepted an offer of modified assignment to work a limited-duty position casing mail.

In a September 5, 2018 medical authorization record, a physical performance test was requested.

In a September 12, 2018 report, Dr. Smith noted that the physical demands of appellant's new work position were increasing her left knee pain. He indicated that she was released to only sedentary work with no more than 40 hours per week.

In a September 12, 2018 duty status report (Form CA-17) with an illegible signature, appellant was diagnosed with a medial meniscus tear, an MCL tear, and chondromalacia. She was advised to resume work with restrictions.

In a September 17, 2018 medical authorization record, a disability examination was requested.

In an October 4, 2018 report, Dr. Smith noted that appellant still had left knee pain. He indicated that her pain occurred mostly with activity. Dr. Smith opined that appellant was still limited to sedentary work at no more than 40 hours per week.

In an October 4, 2018 duty status report (Form CA-17) with an illegible signature, appellant was diagnosed with a medial meniscus tear, an MCL tear, and chondromalacia. She was advised to resume work with restrictions.

A November 12, 2018 FCE demonstrated that appellant could safely perform occasional lifting below the waist of 20 pounds, occasional lifting of above 25 pounds, occasional carrying of 30 pounds, and occasional pushing and pulling of 25 pounds. Appellant also demonstrated the ability to safely perform occasional squatting, kneeling, stooping, and climbing. The evaluation revealed that appellant could perform full-time work at the light to medium physical demand level. Appellant did not show for the second day of the FCE. The FCE could not be completed and her impairment rating was cancelled.

In January 31, 2019 medical authorization records, a physical performance test and a disability examination were requested.

On February 7, 2019 appellant rejected an offer of modified assignment to work a limited-duty position casing and delivering mail.

Between September 6, 2018 and February 25, 2019, appellant filed claims for compensation (Form CA-7) and requested LWOP for disability from work for a range of dates between August 18, 2018 and February 15, 2019.

By decision dated March 7, 2019, OWCP indicated that it would terminate appellant's wage-loss compensation because she refused an offer of suitable work, pursuant to 5 U.S.C. § 8106(c)(2). It found that the November 12, 2018 FCE showed that she was capable of performing the duties of the offered modified position. OWCP gave appellant 30 days to accept the modified position before terminating her right to compensation.

A March 12, 2019 FCE demonstrated that appellant could safely perform occasional below the waist lifting of 20 pounds, occasional waist to shoulder lifting of above 30 pounds, occasional above shoulder lifting of 25 pounds, occasional carrying of 30 pounds, and occasional pushing and pulling of 30 pounds. Appellant also demonstrated the ability to safely perform occasional climbing, kneeling, and crouching.

On March 18, 2019 appellant accepted the offer of modified assignment to work a limited-duty position casing and delivering mail.

In a March 27, 2019 impairment evaluation report, Dr. Clinton McAlister, a Board-certified orthopedic surgeon, reviewed the March 12, 2019 FCE and the medical record. Utilizing the diagnosis-based impairment (DBI) rating method of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment (A.M.A., Guides)*,<sup>3</sup> he determined that appellant had two percent left lower extremity impairment rating as a result of the July 18, 2017 work-related injury. Dr. McAlister noted that the date of MMI was July 8, 2018, which was the date Dr. Smith recommended for the FCE.

In an April 22, 2019 report, a physician assistant related that appellant was still having pain and weakness with everyday life activities. He examined her and diagnosed left knee pain. The physician assistant noted that appellant was not a candidate for surgery and that he was going to continue with conservative treatment.

On May 1, 2019 OWCP referred the case record and a statement of accepted facts (SOAF) to Dr. Arthur Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), for a schedule award impairment rating.

In a May 5, 2019 report, the DMA established a diagnosis of left knee contusion. Utilizing the DBI method of the A.M.A., *Guides*, he concurred with Dr. McAlister and determined two percent left lower extremity impairment rating. However, the DMA did not agree with Dr. McAlister's date of MMI. He felt that the most accurate date of MMI was March 27, 2019, the date appellant was seen by Dr. McAlister for evaluation.

In a June 11, 2019 report, Dr. Googe reported that appellant had ongoing left knee pain. He diagnosed left knee pain and recommended a diagnostic knee scope. In an accompanying work excuse note, he noted that appellant was totally incapacitated.

In a June 18, 2019 medical authorization record, a left knee arthroscopy was requested.

Between March 8 and June 7, 2019, appellant filed claims for compensation (Form CA-7) and requested LWOP for disability from work for a range of dates between February 16 and May 24, 2019.

On June 21, 2019 appellant filed a claim for compensation (Form CA-7) and requested LWOP for disability from work for the period May 25 through June 7, 2019.

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<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

In a June 28, 2019 development letter, OWCP indicated that it appeared that appellant was claiming disability due to a material change or worsening of her accepted work-related conditions. It noted that she had returned to work in a limited-duty capacity on February 7, 2019 and worked until June 5, 2019, when she stopped work completely. OWCP advised appellant that the evidence submitted was insufficient to establish total disability during the claimed time period. It requested additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded appellant 30 days to provide the requested evidence.

On July 3, 2019 appellant responded to OWCP's development questionnaire. She noted that the recurrence of disability occurred when she went back to full-duty work. Appellant indicated that she always went home with knee pain. She stated that she was injured two years ago when hitting her left knee on a mail truck and had experienced the same left knee pain since that time. Appellant reported that she was in a motor vehicle accident in September 2018.

In a July 3, 2019 report, Dr. Googe reviewed x-rays of appellant's left knee. He found that the x-rays were normal and diagnosed left knee pain. Dr. Googe noted that objectively appellant's physical examination was normal and that there were no examination, x-ray, or MRI scan findings that appellant needed surgery.

Between July 2 and August 1, 2019, appellant filed claims for compensation (Form CA-7) and requested LWOP for disability from work for a range of dates between June 8 and July 19, 2019.

By decision dated August 5, 2019, OWCP denied appellant's claim finding that she had not submitted sufficient rationalized medical evidence to establish a recurrence of total disability commencing on May 25, 2019 causally related to her accepted July 18, 2017 employment injury.

### **LEGAL PRECEDENT**

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 compensable injury or illness and without an intervening injury or new exposure in the work environment.<sup>4</sup> This term also means an inability to work when a light-duty assignment, made specifically to accommodate an employee's physical limitations due to work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.<sup>5</sup>

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 to show that he or she cannot perform such limited-duty work. As part of

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<sup>4</sup> 20 C.F.R. § 10.5(x); *T.J.*, Docket No. 18-0831 (issued March 23, 2020).

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

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.<sup>6</sup> This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.<sup>7</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability commencing May 25, 2019 causally related to the accepted July 18, 2017 employment injury.

First, the Board notes that appellant did not allege, and the evidence does not establish, a change in the nature and extent of appellant's light-duty work requirements. Additionally, there is no indication in the record that the employing establishment withdrew a light-duty work assignment. The remaining issue is whether the medical evidence demonstrated a worsening of appellant's accepted left knee conditions such that she could not perform limited-duty work.

In a June 11, 2019 work excuse note, Dr. Googe indicated that appellant was totally incapacitated at that time. However, in an accompanying report, he noted that she had normal x-ray and MRI scan findings. Dr. Googe opined that gross examination of appellant's left knee showed no obvious abnormalities. In a July 3, 2019 report, Dr. Googe noted that objectively appellant's physical examination was normal and that there were no examination, x-ray, or MRI scan findings that appellant needed surgery. He reported that appellant's "x-rays look[ed] just like they did last March" and that they were "completely normal."

The Board finds that these reports are of limited probative value as Dr. Googe did not provide medical rationale to support a recurrence of total disability.<sup>9</sup> Dr. Googe did not explain how appellant's conditions had worsened such that she was unable to perform her modified-duty assignment. He did not provide any objective evidence to support appellant's inability to work and did not explain how appellant's inability to work was causally related to the accepted July 18, 2017 employment incident. In fact, Dr. Googe noted that appellant's diagnostic and examination findings were normal and that her x-rays looked the same as they did in March when she was working her modified, limited-duty position. As such, the Board finds that these reports by Dr. Googe are insufficient to establish appellant's claim.<sup>10</sup>

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<sup>6</sup> *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>7</sup> *J.M.*, Docket No. 19-1517 (issued January 29, 2020); *Ronald A. Eldridge*, 53 ECAB 218 (2001); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

<sup>8</sup> *Id.*

<sup>9</sup> *S.D.*, *supra* note 6; *F.P.*, Docket No. 19-1489 (issued March 18, 2020).

<sup>10</sup> *Id.*



The remaining medical evidence predates the claimed time period of total disability, commencing May 25, 2019. Accordingly, it is insufficient to establish appellant's claim as it does not address a change in the nature and extent of appellant's left knee conditions, or a change in the nature and extent of her light-duty job requirements after May 25, 2019.

As appellant has not submitted rationalized medical evidence establishing a recurrence of total disability for the period commencing May 25, 2019 causally related to the accepted July 18, 2017 employment injury, she has not met 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 not met her burden of proof to establish a recurrence of total disability commencing May 25, 2019 causally related to the accepted July 18, 2017 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 5, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 12, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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