

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

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<b>Y.D., Appellant</b> )		
)		
<b>and</b> )		<b>Docket No. 21-0842</b>
)		<b>Issued: February 23, 2022</b>
<b>U.S. POSTAL SERVICE, CATHEDRAL</b> )		
<b>STATION POST OFFICE, New York, NY,</b> )		
<b>Employer</b> )		
_____ )		

*Appearances:* *Case Submitted on the Record*  
*Russell Uliase, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On May 14, 2021 appellant, through counsel, filed a timely appeal from a November 16, 2020 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.<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 Board notes that, following the November 16, 2020 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 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 disability commencing February 24, 2020 causally related to her August 3, 2011 employment injury.

## FACTUAL HISTORY

On August 8, 2011 appellant, then a 51-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on August 3, 2011 she sustained right knee and ankle injuries when she tripped and fell on an entryway rug as she was delivering mail while in the performance of duty. She stopped work on the date of injury. Appellant returned to work in a light-duty position on November 21, 2011. By decision dated February 22, 2012, OWCP accepted that she sustained unspecified internal derangement of the right knee. Appellant continued to work in a light-duty position with physical restrictions. OWCP paid her wage-loss compensation on the supplemental rolls commencing September 19, 2011.

OWCP subsequently received a September 12, 2011 magnetic resonance imaging (MRI) scan of the right knee that demonstrated a focal full-thickness chondral defect with chondral fissuring and subchondral edema, degeneration of the posterior horn and the medial meniscus, and slight prepatellar bursal inflammation.

Dr. Nidia R. Carrero, an anesthesiologist, followed appellant from May 9 through December 12, 2012. She diagnosed internal derangement of both knees, right greater than left, and a full-thickness chondral defect in the right knee with mild effusion demonstrated by x-ray. Dr. Charles Pearlman, an orthopedic surgeon, submitted a December 24, 2012 report diagnosing traumatic injury and internal derangement of both knees, and an “aggravating and exacerbating injury” to the right knee.

Appellant subsequently sought treatment from Dr. Frank Watkins, a Board-certified orthopedic surgeon. In a May 13, 2013 report, Dr. Watkins provided appellant’s history of injury and treatment. He noted that she had undergone a right knee arthroscopy in 1996. Dr. Watkins diagnosed patellofemoral syndrome of the right knee and a consequential left knee injury.

In a September 6, 2016 report, Dr. Edmond Cleeman, a Board-certified orthopedic surgeon, diagnosed unilateral primary osteoarthritis of the right knee, greatest at the patellofemoral articulation.<sup>4</sup>

In a report dated June 5, 2018, Dr. Cleeman noted that appellant’s right knee symptoms had become more severe during the previous two weeks, worsened by walking, bending, twisting, and climbing stairs.

Dr. Michael J. Katz, a Board-certified orthopedic surgeon, provided a series of reports dated November 18, 2018 through January 5, 2020. He noted a history of the original August 3,

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<sup>4</sup> On April 23, 2017 appellant filed a notice of recurrence (Form CA-2a) alleging that on September 6, 2016 she suffered a recurrence of her August 3, 2011 injury while on light-duty work. By decision dated July 19, 2017, OWCP denied her claim for a recurrence of disability, finding that the medical evidence of record was insufficient to establish a worsening of the accepted injury as of September 6, 2016.

2011 employment injury and subsequent treatment. On examination, Dr. Katz found a positive McMurray's test, positive patellar apprehension test, and limited range of motion. He diagnosed derangement of the right knee with degenerative changes.<sup>5</sup> Dr. Katz prescribed physical therapy and a patellar brace. He also administered a series of injections to the right knee.

On October 6, 2019 Dr. Katz prescribed a series of five intra-articular injections to the right knee.

On April 7, 2020 appellant filed a Form CA-2a alleging that on February 20, 2020 she suffered a recurrence of her August 3, 2011 injury while on light-duty work. She stopped work on February 25, 2020.

In support of her claim, appellant submitted a March 8, 2020 report by Dr. Katz, relating that appellant had been unable to work since February 24, 2020 due to knee pain. On examination, he observed a positive McMurray's test and patellar apprehension test in the right knee. Dr. Katz recommended an MRI scan of the right knee to determine the exact diagnosis that had caused her symptoms. He held appellant off work due to sequelae of the August 3, 2011 employment injury.

In a May 7, 2020 development letter, OWCP requested that appellant submit additional evidence in support of her recurrence claim, including medical documentation supporting that she was disabled from work commencing February 24, 2020 due to the accepted August 3, 2011 employment injury. It afforded her 30 days to respond.

In response, appellant submitted a March 18, 2020 MRI scan of the right knee, which demonstrated moderate-to-severe chondromalacia, mild-to-moderate medial compartment osteoarthritis, a small effusion, low-grade sprain *versus* early degeneration of the anterior cruciate ligament (ACL) without a tear, and no evidence of a meniscal tear.

In a May 14, 2020 statement, the employing establishment controverted the recurrence claim, contending that appellant had been placed off work because of an investigation into alleged criminal acts committed while in the performance of duty.

In a May 22, 2020 development letter, OWCP requested that the employing establishment clarify whether it had withdrawn her light-duty work position.

In a June 10, 2020 statement, an employing establishment manager noted that he was unfamiliar with appellant's light-duty work status as he had begun work at the employing establishment in January 2020.

In a June 2, 2020 report, Dr. Katz summarized appellant's history of injury and treatment. He also noted a prior right knee arthroscopy in 1996. Dr. Katz opined that appellant had sustained a recurrence of disability caused by a worsening of the accepted right knee condition, as her work duties since 2016 caused wear and tear to the right knee. He explained that her right knee osteoarthritis, chondromalacia, and maltracking of the right patella had progressed since the initial

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<sup>5</sup> February 28, 2019 right knee x-rays demonstrated mild tricompartmental osteoarthrosis primarily involving the patellofemoral compartment, and a small joint effusion.

injury. This slow deterioration was demonstrated by MRI scan results and findings on examination. Dr. Katz also provided literature on knee conditions.

Appellant provided a May 6, 2020 statement explaining that she stopped work on February 20, 2020 and used leave through February 24, 2020 as she was unable to stand for prolonged periods as required by her duties as a letter carrier.

By decision dated June 26, 2020, OWCP denied appellant's recurrence of disability claim, finding that the medical evidence of record was insufficient to establish a spontaneous worsening of the accepted right knee injury on February 20, 2020 as alleged.

On July 7, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted additional evidence, including reports dated May 5 through July 15, 2020, wherein Dr. Katz noted that appellant continued to have right knee pain and that the whole right lower extremity was becoming painful. Dr. Katz opined that since the August 3, 2011 injury, and particularly since the summer of 2016 when she resumed work as a letter carrier, she had put a lot of wear and tear on her right knee. Appellant's right knee had deteriorated "due to the work that she has been doing," rendering her totally disabled from work. Dr. Katz recommended additional injections.

On July 15, 2020 the employing establishment terminated appellant effective June 20, 2020 for conduct unbecoming of an employing establishment employee.

In an August 18, 2020 report, Dr. Katz opined that the progressed chondromalacia, osteoarthritis, patellar maltracking, and degenerated ACL were due to the slow progression over time related to her work as a letter carrier after the August 3, 2011 employment injury.

During the hearing, held October 1, 2020, counsel contended that appellant was not required to prove that the claimed recurrence was due solely to work factors.

By decision dated November 16, 2020, OWCP's hearing representative affirmed the June 26, 2020 decision.

### **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>6</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

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<sup>6</sup> 20 C.F.R. § 10.5(x); A.V., Docket No. 20-0486 (issued June 20, 2021); J.D., Docket No. 18-1533 (issued February 27, 2019).

of total disability and to show that he or she cannot perform such limited-duty work.<sup>7</sup> As part of 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>8</sup>

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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 claimed disability and the accepted employment injury.<sup>9</sup> The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing February 20, 2020 causally related to her August 3, 2011 employment injury.

OWCP received reports from Dr. Carrero dated from May 9 through December 12, 2012, a December 24, 2012 report from Dr. Pearlman, a May 13, 2013 report from Dr. Watkins and September 6, 2016 and June 5, 2018 reports by Dr. Cleeman. As these reports predate the period of recurrence at issue, they are of no probative value regarding appellant's disability claim and are insufficient to meet appellant's burden of proof.<sup>11</sup>

Appellant provided reports from Dr. Katz dated March 8 through August 18, 2020, attributing the origin of progressive degenerative findings in the right knee to work factors beginning in the summer of 2016, superimposed on the effects of the August 3, 2011 employment injury. With regard to the February 20, 2020 work stoppage, he noted in a March 8, 2020 report that appellant was disabled from work due to sequelae of the August 3, 2011 employment injury. In reports dated from May 5 through July 15, 2020, Dr. Katz opined that additional work factors commencing in the summer of 2016 contributed to the degeneration of appellant's right knee, with osteoarthritis, chondromalacia, and maltracking of the right patella. He reiterated in his August 18, 2020 report that work factors after the August 3, 2011 employment injury exacerbated the slow progression of chondromalacia, osteoarthritis, patellar maltracking, and ACL degeneration.

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<sup>7</sup> See *D.W.*, Docket No. 19-1584 (issued July 9, 2020); *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry Hedman*, 38 ECAB 222 (1986).

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

<sup>9</sup> *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

<sup>10</sup> *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>11</sup> *C.S.*, Docket No. 20-1621 (issued June 28, 2021); see *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); see also *William A. Archer*, *supra* note 6 (the Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of claimed disability).

Dr. Katz thus attributed appellant's condition to new work exposures commencing in 2016, rather than a spontaneous worsening of the accepted right knee condition without intervention from additional work factors.<sup>12</sup> The Board, therefore, finds that Dr. Katz' reports are insufficient to establish appellant's recurrence claim.

Appellant also submitted imaging and diagnostic studies that addressed her right knee and lower extremity. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injuries resulted in appellant's period of disability on specific dates.<sup>13</sup>

As the medical evidence of record is insufficient to establish a recurrence of disability commencing February 20, 2020, the Board finds that appellant 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 disability commencing February 20, 2020 causally related to her August 3, 2011 employment injury.

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<sup>12</sup> *D.H.*, Docket No. 21-0102 (issued July 28, 2021).

<sup>13</sup> *D.K.*, Docket No. 21-0082 (issued October 26, 2021); *O.C.*, Docket No. 20-0514 (issued October 8, 2020); *R.J.*, Docket No. 19-0179 (issued May 26, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 16, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board