

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

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<b>W.F., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-0187</b>
	)	<b>Issued: June 15, 2022</b>
<b>U.S. POSTAL SERVICE, DUNWOODY POST OFFICE, Atlanta, GA, Employer</b>	)	
_____	)	

*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  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 16, 2021 appellant filed a timely appeal from an October 28, 2021 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 28, 2021 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 December 5, 2020 causally related to her accepted August 6, 2016 employment injury.

## FACTUAL HISTORY

On August 8, 2016 appellant, then a 51-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 6, 2016 she hit her right leg/knee on a gear shift when exiting her mail truck while in the performance of duty. OWCP accepted the claim for right knee contusion and tear of medial meniscus, right knee under the current OWCP File No. xxxxxx655. Appellant stopped work on December 30, 2016. On April 19, 2017 she underwent an OWCP-approved right knee arthroscopy with chondroplasty medial femoral condyle. OWCP paid appellant wage-loss compensation on the supplemental rolls as of January 2, 2017 and on the periodic rolls as of April 2, 2017. Appellant returned to full-duty work on July 1, 2017.<sup>3</sup>

On July 24, 2021 appellant filed a notice of recurrence (Form CA-2a) alleging that her accepted knee conditions have worsened since she returned to work as a result of work duties which include climbing steps, lifting heavy packages, walking, standing, and getting in and out of the mail truck. The employing establishment indicated that she stopped work after the claimed recurrence on December 5, 2020.

In a December 7, 2020 medical report, Dr. Jesse E. Seidman, an attending Board-certified orthopedic surgeon, provided an assessment of pain in right knee and pain in left knee. For the right knee examination, he reported significant guarding to even light touch anywhere over the right knee with no physical findings of swelling, warmth, erythema, or crepitus. Dr. Seidman further noted that appellant's right knee was grossly stable in all planes despite guarding, with no crepitus, benign calf and neurovascular intact distally, and with a measured range of motion of 5 to 110 degrees. He held her off work and requested a magnetic resonance imaging (MRI) scan study be scheduled. In a progress report dated April 19, 2021, Dr. Seidman related that appellant was seen again for bilateral knee pain. He related that on physical examination of the bilateral knees she had no asymmetrical warmth to palpation, no edema or swelling, and normal sensation and motor function. Dr. Seidman again assessed bilateral knee pain and recommended that appellant undergo an MRI scan.

On July 13, 2021 appellant underwent MRI scans of the knees.

In a July 19, 2021 report, Dr. Seidman noted that appellant's July 13, 2021 MRI scans demonstrated a right medial meniscus (recurrent) tear and a left lateral meniscus tear. The x-rays taken that day showed mild arthritic change, but weightbearing x-rays demonstrated reasonably well-preserved joint spaces. Dr. Seidman noted that appellant had not done well with conservative

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<sup>3</sup> Under OWCP File No. xxxxxx311, OWCP accepted an October 6, 2017 traumatic injury for strain of unspecified muscle and tendon at ankle and foot level, left foot, left knee sprain, and tear of lateral meniscus, left knee. Appellant stopped work on October 6, 2017 and returned to work with restrictions on January 22, 2018. OWCP paid her wage-loss compensation on the periodic rolls for this injury from March 31, 2019 until December 5, 2020.

management and, based on the MRI scan studies, he opined that she could undergo arthroscopic debridement with partial right medial and partial left lateral meniscectomies. Appellant indicated that she wanted to proceed with the right knee procedure. Copies of the July 13, 2021 MRI scans were received into record along with Dr. Seidman's request for surgical authorization of the right knee.

Appellant also submitted a July 24, 2021 statement in which she described how her knee pain had progressed.

In an August 12, 2021 developmental letter, OWCP advised appellant that the evidence received was insufficient to establish her claim for recurrence of disability because the medical evidence did not describe any duties that she could not perform as of the date of her claimed recurrence based upon objective findings. It provided her with the definition of a recurrence of disability and requested that she submit additional factual and medical evidence that she was disabled from employment. OWCP also provided a questionnaire for appellant's completion and specifically requested that she submit a physician's opinion explaining how the claimed disability was due to the August 6, 2016 employment injury. It afforded her 30 days to provide the necessary evidence.

In an August 16, 2021 report, Dr. Seidman provided an assessment of tear of medial meniscus of right knee and right knee pain. He indicated that there had been no change in appellant's condition. Dr. Seidman also indicated that treatment recommendations were unchanged.

In a September 13, 2021 progress report, Dr. Seidman provided assessments of right knee pain, other chronic pain, tear of medial meniscus of right knee, and unilateral primary osteoarthritis, right knee. He noted on right knee examination appellant had difficulty getting out of her chair and had to be assisted onto the examination table. Once supine appellant would not allow full extension of her knee and held it at about 30 degrees of flexion, but allowed flexion to 100 degrees. No warmth erythema or effusion was noted and right knee was grossly stable with benign calf and distally, neurovascular intact. Dr. Seidman reported significant guarding on examination with some palpable medial osteophytes and, compared to other examinations, appellant was globally tender and would not tolerate Apley's or McMurray's maneuvers. He provided a cane to assist her in walking and referred her to pain management.<sup>4</sup>

By decision dated October 28, 2021, OWCP denied appellant's claim for recurrence of disability commencing December 5, 2020. It found that the medical evidence of record was insufficient to establish that she was disabled from work due to a material change or worsening of her accepted August 6, 2016 employment injury.

### **LEGAL PRECEDENT**

OWCP's implementing regulations define a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition,

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<sup>4</sup> On October 20, 2021 Dr. Seidman performed a right knee arthroscopy with partial medial meniscectomy.

which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment.<sup>5</sup>

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes 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>6</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>7</sup>

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing December 5, 2020 causally related to her accepted August 6, 2016 employment injury.

In support of her claim, appellant submitted a series of medical reports and work status notes from Dr. Seidman. In December 7, 2020 and April 19, 2021 reports, Dr. Seidman provided an assessment of right knee and left knee pain. He noted examination findings and held appellant off work commencing December 7, 2020. However, Dr. Seidman did not attribute her disability to the accepted August 6, 2016 employment injury.<sup>9</sup> Instead, he appeared to attribute appellant's inability to work to increased pain. As the Board has held, medical evidence which does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value.<sup>10</sup> For this reason, these reports are insufficient to establish appellant's recurrence claim.

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<sup>5</sup> 20 C.F.R. § 10.5(x).

<sup>6</sup> *N.L.*, Docket No. 21-1131 (issued March 2, 2022); *see J.S.*, Docket No. 19-1035 (issued January 24, 2020).

<sup>7</sup> *Id.*

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *D.T.*, Docket No. 19-1064 (issued February 20, 2020).

<sup>9</sup> *T.S.*, Docket Nos. 20-1177 and 20-1296 (issued May 28, 2021); *F.S.*, Docket No. 18-0098 (issued August 13, 2018); *P.W.*, Docket No. 17-0514 (issued June 9, 2017).

<sup>10</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

In a July 19, 2021 report, Dr. Seidman reviewed appellant's July 13, 2021 MRI scan of the right knee and related that it demonstrated a right medial meniscus (recurrent) tear. He noted that she had not done well with conservative management and, based on the MRI scan study, he opined that she should undergo arthroscopic debridement with partial right medial meniscectomy. However, Dr. Seidman did not offer an opinion regarding the causal relationship between appellant's claimed recurrence of disability and the accepted employment injury. As such, this report is of no probative value.<sup>11</sup>

Because appellant has not submitted rationalized medical evidence to establish a recurrence of disability commencing December 5, 2020 causally related to her accepted August 6, 2016 employment injury, the Board finds that 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 disability commencing December 5, 2020 causally related to her accepted August 6, 2016 employment injury.

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<sup>11</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 28, 2021 decision of the Office Workers' Compensation Programs is affirmed.

Issued: June 15, 2022  
Washington, DC

Patricia H. Fitzgerald, 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