



employing establishment controverted the claim and contended that appellant was not injured in the performance of duty as she was standing in front of a convenience store at 7:10 a.m. with a bandage on the back of her knees and was already limping prior to her tour of duty.<sup>2</sup>

In a development letter dated July 28, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On August 6, 2020 OWCP received a statement from appellant. Appellant explained that she had been limping for many years because of past injuries. She further explained that she did not have bandages on her knee, but that she might have had a piece of tape on the back of her left knee to cover her varicose veins, as she had taped her knees for many years whenever she wore her postal shorts without stockings.

OWCP received a nurse's report dated August 7, 2020, relating that appellant was walking to her supervisor's desk when she pulled a muscle in her left knee, the next day it was very painful, she could not get an appointment with her primary care physician for a few days, and the primary care physician had ordered a magnetic resonance imaging (MRI) scan. The report also noted that she had an old injury and believed that she hurt her knee in 2006 when she fractured her ankle.

In a July 21, 2020 report, Dr. William Lackey, Board-certified in orthopedic surgery, related that, on July 10, 2020 appellant was walking to her supervisor's desk when she felt a sudden pull in her left knee, there was a mild episode of instability, and she had persistent pain and symptomatology. He noted that his examination of her left knee revealed a moderate effusion, tenderness to palpation along the medial joint line with a positive McMurray sign, crepitus in patellofemoral joint with decreased range of motion in both flexion and extension secondary to pain. Dr. Lackey also found slight quad atrophy on the left compared to the contralateral side, a 1+ Lachman's and negative posterior drawer with good stability to varus and valgus stress and the extremity was neurovascularly intact. He diagnosed a left knee probable post-traumatic meniscal tear.

In duty status reports (Form CA-17) dated July 21 and August 12, 2020, Dr. Lackey noted that appellant pulled a muscle in her left knee while walking on the work floor and diagnosed pain in the left knee. He indicated that she was totally disabled from work.

In July 28 and 31, 2020 reports, Dr. Lackey opined that appellant was totally disabled from work.

An August 3, 2020 MRI scan of the left knee read by Dr. Leo Menashe, Board-certified in diagnostic radiology, revealed tricompartmental degenerative cartilage disease, severe of the medial compartment, moderate-to-severe of the patellofemoral compartment, and mild of the lateral compartment, medial meniscal obliquely oriented horizontal tear through the body to posterior horn with additional posterior horn tear causing attenuation, free edge fraying, and

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<sup>2</sup> The record reflects that appellant has a prior claim for a traumatic injury on February 4, 2013 accepted for a back contusion, under OWCP File No. xxxxxx626. OWCP has not administratively combined this claim with the current claim.

peripheral extrusion of the body, intact lateral meniscus, chronic intermediate to high grade partial anterior cruciate ligament (ACL) tear, and small joint effusion with small Baker's cyst.

In an August 10, 2020 statement, the employing establishment controverted the claim. Appellant's supervisor provided a statement relating that she saw appellant in front of convenience on July 10, 2020 at 7:10 am, and appellant limped with two bandages on the back of her knees as she walked towards the station. The supervisor noted that at 7:30 a.m. appellant walked towards supervisor's desk to get her badge and she was still limping. When she asked appellant if she was alright, appellant responded that she had pain in her hips and a pulled muscle, but that appellant would be able to complete her route. The supervisor also noted that appellant completed her route and that she was surprised that appellant returned on July 17, 2020 with her shop steward and filed a claim.

In an August 12, 2020 report, Dr. Lackey noted appellant presented status post work-related accident on July 10, 2020 at which time she was walking to her supervisor's desk when appellant felt a sudden pain in her left knee. He indicated that she presented with persistent pain and symptomatology in the left knee, her symptoms were exacerbated by attempts at standing, ambulation, stair climbing, standing from a seated position and weight bearing in a flexed position, and were affecting her activities of daily living, quality of life, and ability to perform her work. Dr. Lackey noted that the August 3, 2020 MRI scan revealed a high grade partial ACL tear, oblique horizontal tear posterior horn of the medial meniscus with free edge tearing and degenerative changes. He noted that the MRI scan results were consistent with the subjective and objective findings on examination and biomechanically consistent with the mechanism of injury at the time of the incident. Dr. Lackey diagnosed a left knee-high grade partial ACL tear, oblique horizontal tear posterior horn of the medial meniscus with free edge tearing, and degenerative changes. He recommended surgical arthroscopy of the left knee.

Appellant continued to submit statements explaining the events of July 10, 2020. In an August 17, 2020 statement, she related that her injury occurred while walking to her supervisor's desk area and that she notified her supervisor. Appellant described the immediate effects of her injury as sudden pain and felt like a muscle pulling in her left knee. She explained that she initially thought she would be alright, but after completing her assignment and staying home because of her pain, she called her supervisor and then her shop steward, after not reaching her supervisor, relating that she could not get an appointment with her physician until July 21, 2020. Appellant denied having a similar or previous injury and explained that, in 2006, she fell and landed on her left knee and fractured her right ankle.

By decision dated September 4, 2020, OWCP denied appellant's claim finding that she failed to establish causal relationship between the diagnosed left knee condition and the accepted June 10, 2020 employment incident.

On May 28, 2021 appellant requested reconsideration. She noted that she had worked as a part-time server at a restaurant for over 20 years and a postal carrier for over 22 years. Appellant confirmed that she had arthritis, but never had a tear or any injury to her knees.

In an August 12, 2020 Form CA-17, Dr. Lackey indicated that appellant could return to work with restrictions. He diagnosed pain in the left knee and marked a response of “Yes,” indicating that it was due to injury.

In an August 18, 2020 report, Dr. Lackey noted that appellant was advised to return to work on August 24, 2020 at limited-duty status with restrictions of no heavy lifting, carrying, or pushing more than 10 pounds, and no leaning, no squatting or stair climbing. He also advised that she could not work more than six hours a day.

In August 25, 2020 report, Dr. Lackey opined that appellant was totally disabled and unable to return to work due to left knee swelling, pain, and discomfort when walking and standing.

In a September 9, 2020 report, Dr. Lackey assessed a left knee high-grade partial ACL tear, oblique horizontal tear of the posterior horn of the medial meniscus with free edge tearing, and degenerative changes. He recommended arthroscopy of the left knee. Dr. Lackey reiterated that the radiographic findings were biomechanically consistent with the mechanism of injury at the time of the incident.

In a September 9, 2020 report, Dr. Lackey indicated that appellant was able to return to work at light-limited duty of no more than six hours per day with restrictions of no lifting more than 15 pounds and no squatting. He also advised that she had difficulty walking and that “[i]f possible a seated position would be more appropriate for [appellant].” Dr. Lackey also submitted a Form CA-17 dated September 9, 2020, indicating that appellant could return to work on September 10, 2020.

In a September 16, 2020 report, Dr. Lackey noted that his prior opinions referred to an August 3, 2020 MRI scan and that the findings were consistent with his diagnosis on July 21, 2020 and with the mechanism of injury. He related that at the time of the incident appellant was walking to her supervisor’s desk and had an episode of instability within the knee causing her immediate onset of pain and symptoms that failed to improve or resolve with conservative measures. Dr. Lackey noted that episodes of instability typically were associated with anatomic changes in ligamentous structures and in this case she suffered from a high grade partial ACL tear. He explained that episodes of instability produced shear stresses on the intra articular structures, such as the menisci, and shear stress was the most common modality of failure of a meniscus resulting in a tear. Dr. Lackey opined that appellant’s episode of instability during ambulation resulted in an injury to her ACL, transmitting shear stresses to her meniscus and resulting in a tear of the meniscus, both of a horizontal nature, and a free edge tear. He noted that the degenerative changes in the knee revealed by the MRI scan were of an articular origin and were age and gender appropriate for a 57-year-old female. Dr. Lackey explained that it would be unusual for an MRI scan of a 57-year-old not have some evidence of degenerative changes, as routine wear and tear would produce some average degree of change of the articular surface consistent with what was found with appellant. He opined that those degenerative changes were insufficient to explain the other findings and insufficient to explain the intensity of the symptoms that she was experiencing, and those symptoms chronologically correlated at their onset with episode of instability in the work-related incident. Dr. Lackey noted that appellant was initially seen in his office, a diagnosis was made, the MRI scan was consistent with the diagnosis and with her complaints, symptomatology, and the biomechanical mechanism of injury in the work-related incident on

July 10, 2020 as described by her. He recommended arthroscopic intervention on the left knee to manage both the ACL and meniscal pathology and requested authorization for left knee surgical arthroscopy.

In an October 6, 2020 report, Dr. Lackey assessed a left knee high-grade partial ACL tear, oblique horizontal tear of the posterior horn of the medial meniscus with free edge tearing, and degenerative changes. He recommended arthroscopy of the left knee. Dr. Lackey reiterated that the radiographic findings were biomechanically consistent with the mechanism of injury at the time of the incident. He also noted that appellant was attempting to return to work at full duty for six hours per day. In an October 6, 2020 Form CA-17, Dr. Lackey noted that she was advised to return to light duty on September 10, 2020 requested that she be provided a seated position, if possible, and that she could work no more than six hours per day. He completed a CA-17 form advising light-duty restrictions.

Dr. Lackey saw appellant on November 17, 2020 and noted that she was advised to work light duty.

By decision dated July 7, 2021, OWCP denied modification of the September 4, 2020 decision.

### **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 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,<sup>4</sup> 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>5</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>6</sup>

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. The first component is that 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. The second component is

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

<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>7</sup>

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employment incident.<sup>9</sup>

### ANALYSIS

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

Appellant submitted several medical reports from her treating physician, Dr. Lackey. In a July 21, 2020 report, Dr. Lackey diagnosed a left knee probable post-traumatic meniscal tear.

In a September 16, 2020 report, Dr. Lackey explained that, at the time of the accepted July 10, 2020 employment incident, appellant was walking to her supervisor's desk and had an episode of instability within the knee. He noted that episodes of instability typically were associated with anatomic changes in ligamentous structures and that episodes of instability produced shear stresses on the intra articular structures, such as the menisci, and that shear stress was the most common modality of failure of a meniscus resulting in tear. Dr. Lackey opined that appellant's episode of instability during the work incident resulted in an injury to her ACL, transmitting shear stresses to her meniscus and resulting in a tear of the meniscus, both of a horizontal nature and a free edge tear. He noted that the degenerative changes revealed in the MRI scan were age and gender appropriate; however, he opined that the degenerative changes were insufficient to explain the intensity of her symptoms and that those symptoms chronologically correlated with the episode of instability during the work incident. Dr. Lackey further opined that appellant's complaints, symptomatology, and diagnostic findings were "consistent with the biomechanical mechanism of injury that occurred in the work-related incident on July 10, 2020."

In another report dated October 6, 2020, Dr. Lackey diagnosed a left knee high-grade partial ACL tear, oblique horizontal tear posterior horn of the medial meniscus with free edge tearing, and degenerative changes. He reiterated his opinion that appellant's left knee condition was "biomechanically consistent with the mechanism of injury at the time of the incident."

The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence

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<sup>7</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.<sup>10</sup>

Dr. Lackey provided a pathophysiological explanation as to how the incident of July 10, 2020 caused appellant's left knee conditions. Although his reports are insufficient to meet her burden of proof to establish his claim, they raise an uncontroverted inference between his diagnosed left knee conditions and the accepted employment incident. Accordingly, Dr. Lackey's medical opinion is sufficiently rationalized to require further development of appellant's claim.<sup>11</sup>

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>12</sup> OWCP has an obligation to see that justice is done.<sup>13</sup>

On remand, OWCP shall refer appellant to a specialist in the appropriate field of medicine, along with a case record, and a statement of accepted facts, for a physical evaluation and provide a rationalized medical opinion as to whether she had a left knee condition either caused or aggravated by the accepted July 10, 2020 employment incident. If the physician opines that her left knee condition(s) is/are not causally related to the accepted employment incident, he or she must explain with rationale how or why their opinion differs from that of Dr. Lackey. After this and such other 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>10</sup> *B.C.*, Docket No. 20-0498 (issued August 27, 2020); *L.P.*, Docket No. 18-1252 (issued June 4, 2020); *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983).

<sup>11</sup> *J.P.*, Docket No. 19-1206 (issued February 11, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *C.W.*, Docket No. 17-1293 (issued February 12, 2018); *see also John J. Carlone, supra note 7; Horace Langhorne*, 29 ECAB 820 (1978).

<sup>12</sup> *See M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978).

<sup>13</sup> *See C.M.*, Docket No. 17-1977 (issued January 29, 2019); *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 7, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 4, 2023  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board