

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

C.C., Appellant)	
)	
and)	Docket No. 25-0388
)	Issued: April 16, 2025
U.S. POSTAL SERVICE, SAINT JOHNS)	
PLACE POST OFFICE, Brooklyn, NY, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 13, 2025 appellant, through counsel, filed a timely appeal from a March 3, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the March 3, 2025 decision, OWCP received additional evidence. 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 April 5, 2024, causally related to her accepted July 27, 2015 employment injury.

FACTUAL HISTORY

On August 17, 2015 appellant, then a 45-year-old truck driver, filed a traumatic injury claim (Form CA-1) alleging that on July 27, 2015 she injured her right knee when she stepped from her truck and heard her knee pop while in the performance of duty. She stopped work on August 3, 2015. OWCP accepted the claim for internal derangement and medial meniscus tear of the right knee. It paid appellant wage-loss compensation on the supplemental rolls from September 16, 2015 through January 9, 2016, and on the periodic rolls from January 10 through August 7, 2016.

Appellant returned to full-time, modified-duty work on August 8, 2016.

On May 3, 2019 appellant accepted a full-time, limited-duty position in the postmaster's office as a modified city carrier with regular work hours of 7:00 a.m. to 3:30 p.m. The duties of the position included answering telephones, responding to the enterprise consumer care system, and office duties. The physical requirements of the position included no lifting, carrying, pushing, or pulling greater than 20 pounds.

In a February 9, 2024 medical report, Dr. Bursztyn noted that appellant was working light duty and related ongoing complaints of pain in the right knee. He reviewed x-rays dated August 12, 2022 and noted mild medial compartment arthrosis with increased joint space narrowing compared to prior x-rays from 2015. Dr. Bursztyn diagnosed status post right knee arthroscopy with underlying knee arthrosis and progressive medial meniscus tear, and consequential left knee pain/symptomatic chondromalacia. He indicated that she would be a candidate in the future for total knee replacement. Dr. Bursztyn opined that appellant "exhibit[ed] a partial temporary disability from her line of work (50%) in regard to her right knee."

In a follow-up report dated May 10, 2024, Dr. Bursztyn noted that appellant had stopped work and related an increase in her knee pain after twisting her right knee while standing up at work on April 5, 2024. He performed a physical examination of the right knee, which revealed reduced range of motion (ROM) with flexion; tenderness to palpation of the medial joint line; exquisite tenderness to palpation of the anterior peripatellar region; and no effusion or ligamentous instability. On examination of the left knee, Dr. Bursztyn noted reduced flexion and tenderness to palpation in the lateral joint line and lateral patellofemoral articulation. He diagnosed status post right knee arthroscopy with exacerbation of underlying knee arthrosis and consequential left knee pain/symptomatic chondromalacia. Dr. Bursztyn opined that appellant "exhibit[ed] a high-grade partial disability (75%) in [regard] to her right knee."

OWCP subsequently received an April 29, 2024 notice of recurrence (Form CA-2a) for medical treatment and time lost from work commencing April 5, 2024 due to the July 27, 2015 employment injury.

OWCP thereafter received an April 5, 2024 report by Maegan Aquino, a physical therapist, who indicated that appellant related an “exacerbation of symptoms.” Ms. Aquino provided therapeutic treatment to appellant’s back, right hip, pelvis, and knees.

In a follow-up report dated June 4, 2024, Dr. Bursztyn noted appellant’s complaints and examination findings and diagnosed status post right knee arthroscopy with exacerbation of underlying knee arthrosis, and consequential left knee pain/symptomatic chondromalacia. He prescribed a medication and referred her to a knee arthroplasty specialist. In a separate work slip of even date, Dr. Bursztyn indicated that appellant was unable to work, effective May 10, 2024, due to right knee pain and consequential left knee pain.

In a medical report dated June 24, 2024, Dr. Thomas Youm, a Board-certified orthopedic surgeon, noted that appellant related complaints of right knee buckling and stiffness, which she attributed to the accepted July 27, 2015 employment injury. He noted that she indicated that her pain did not improve following the 2016 arthroscopic surgery by Dr. Bursztyn and that her December 2, 2016 right knee MRI scan showed extrusion of the medial meniscus. On physical examination, Dr. Youm observed swelling, tenderness of the patellofemoral joint, medial joint line, and with flexion, reduced ROM with flexion and extension, and positive McMurray and Apley’s tests. He obtained x-rays that day, which revealed tricompartmental degenerative joint disease (DJD). Dr. Youm diagnosed internal derangement of the right knee and tricompartmental DJD. He indicated that he would request authorization for a total knee replacement when appellant “feels ready,” and that she was 100 percent totally disabled from work.

On July 28, 2024 OWCP received the reverse side of appellant’s April 29, 2024 Form CA-2a, which had been signed by J.M., appellant’s postmaster, on June 25, 2024. J.M. indicated that she last worked on April 5, 2024, and that she left early that day. He further noted that appellant had been working as a modified city carrier since May 3, 2019, and that she began calling out when she was instructed to report to work at 8:00 a.m.

On July 30, 2024 appellant began filing claims for compensation (Form CA-7) for disability from work, commencing July 13, 2024.

In a recurrence claim development letter dated August 6, 2024, OWCP provided a definition of recurrence of disability and informed appellant of the deficiencies of her claim. It notified her of the additional evidence required and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor regarding the accuracy of appellant’s allegations. It afforded both parties 30 days to respond.

In an August 6, 2024 statement, appellant indicated that when her start time was changed on April 3, 2024, she requested a schedule change, “which was approved and signed by a union representative.” In an August 9, 2024 statement, she indicated that her physician recommended a knee replacement. In an August 14, 2024 statement, appellant noted that she also had difficulty using her hands and wrists.

In a follow-up medical report dated September 4, 2024, Dr. Bursztyn noted that the prescribed medication did not help appellant’s pain and indicated that she was “not working and

does exhibit a high-grade partial disability.” In a separate note of even date, he opined that she was totally disabled from work as of September 4, 2024 due to her right and left knee symptoms.

By decision dated September 10, 2024, OWCP denied appellant’s recurrence claim, including her claim for disability from work, effective July 13, 2024. It found that the medical evidence of record was insufficient to establish that she was disabled from work during the claimed period due to a worsening of her July 27, 2015 employment injury.

On September 18, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

In September 18 and November 20, 2024 follow-up reports, Dr. Youm noted appellant’s subjective complaints and documented his physical examination findings. He diagnosed right knee pain. Dr. Youm indicated that he had requested authorization for a right total knee replacement. He opined that appellant was totally disabled from work.

A hearing was conducted on December 18, 2024. The hearing representative held the record open for 30 days for the submission of additional evidence, including a rationalized narrative medical report from her treating physician.

In a January 8, 2025 report, Ashley Persaud, a physician assistant, noted that appellant related worsening pain in her right knee.

In a narrative report dated January 8, 2025, Dr. Bursztyn noted that he instructed appellant to follow-up with his office on an as-needed basis. He reiterated that “she is presently not working and does exhibit a temporary high grade partial disability (75%) regarding her right knee.”

In a work status note dated February 5, 2025, Dr. Youm recommended that appellant remain off work until April 7, 2025 for further evaluation of her right knee pain.

By decision dated March 3, 2025, OWCP’s hearing representative affirmed the September 10, 2024 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁶ Whether a particular injury causes an

⁴ *Supra* note 1.

⁵ *See D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *G.S.*, Docket No. 23-0056 (issued July 3, 2023); *M.C.*, Docket No. 18-0919 (issued October 18, 2018); *William A. Archer*, 55 ECAB 674 (2004); *see also Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁷

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.⁸

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 an 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.⁹

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, based on 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.¹⁰ Where no such rationale is present, the medical evidence is of diminished probative value.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing April 5, 2024, causally related to her accepted July 27, 2015 employment injury.

In support of her claim, appellant submitted medical reports dated February 9, 2024 through January 8, 2025, wherein Dr. Bursztyn diagnosed status post right knee arthroscopy with exacerbation of underlying knee arthrosis and consequential left knee pain/symptomatic chondromalacia. Beginning May 10, 2024, he noted that she was off work and exhibited "a temporary high grade partial disability (75%) regarding her right knee." However, Dr. Bursztyn did not offer a well-rationalized medical opinion to establish that appellant had recurrent disability from work commencing April 5, 2024, causally related to the accepted July 27, 2015 employment

⁷ See *G.S., id.*; *K.C.*, Docket No. 17-1612 (issued October 16, 2018).

⁸ 20 C.F.R. § 10.5(x); see *W.H.*, Docket No. 21-0139 (issued October 26, 2021); *A.E.*, Docket No. 20-0259 (issued April 28, 2021); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *P.R.*, Docket No. 22-1392 (issued June 12, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁰ *M.S.*, Docket No. 22-1386 (issued May 18, 2023); *L.O.*, Docket No. 19-0953 (issued October 7, 2019); *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

¹¹ *M.G.*, Docket No. 19-0610 (issued September 23, 2019); *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

injury. He did not explain with rationale why appellant was disabled from performing her modified position as of April 5, 2024. The Board has held that reports which lack rationale are of limited probative value on the issue of causal relationship.¹² Therefore, Dr. Bursztyn's reports are insufficient to establish appellant's recurrence of disability claim.

Dr. Youm, in his reports dated June 24, 2024 through February 5, 2025, diagnosed right knee DJD and pain, and indicated that appellant was totally disabled from work. He, however, did not offer a well-rationalized medical opinion to establish that appellant had recurrent disability from work commencing April 5, 2024, causally related to the accepted July 27, 2015 employment injury. Therefore, Dr. Bursztyn's reports are insufficient to establish appellant's recurrence of disability claim.¹³

OWCP also received a January 8, 2025 note from a physician assistant and physical therapy records. Physician assistants and physical therapists, however, are not considered physicians as defined under FECA, and their medical findings and opinions are insufficient to establish entitlement to compensation benefits.¹⁴

The remainder of the evidence of record consisted of diagnostic study reports. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship.¹⁵

As the medical evidence of record is insufficient to establish a recurrence of disability commencing April 5, 2024, causally related to the July 27, 2015 employment injury, the Board finds that appellant has not met her burden of proof.¹⁶

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.

¹² See *B.O.*, Docket No. 25-0049 (issued January 10, 2025); *S.C.*, Docket No. 21-0580 (issued February 24, 2023); *K.T.*, Docket No. 17-1717 (issued March 27, 2018). See also *C.P.*, Docket No. 09-1535 (issued April 1, 2020).

¹³ See *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

¹⁴ Section 8101(2) of FECA provides that a 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); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *N.C.*, Docket No. 21-0934 (issued February 7, 2022) (as physical therapists are not considered physicians as defined under FECA, their medical findings and opinions are insufficient to establish entitlement to compensation benefits); *M.J.*, Docket No. 19-1287 (issued January 13, 2020) (physician assistants are not considered physicians as defined under FECA); *P.H.*, Docket No. 19-0119 (issued July 5, 2019) (physician assistants are not physicians under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA).

¹⁵ *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹⁶ See *B.H.*, Docket No. 23-0497 (issued December 29, 2023).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing April 5, 2024, causally related to her accepted July 27, 2015 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2025
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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