

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

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**R.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Oklahoma City, OK, Employer**

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**Docket No. 06-1291  
Issued: November 14, 2006**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 30, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 1, 2006 merit decision denying his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.<sup>1</sup>

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of total disability on or after January 9, 2004 due to the accepted employment injuries involving his right knee.

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<sup>1</sup> The record also contains an April 13, 2006 Office decision denying appellant's claim for schedule award compensation, but he has not appealed this decision to the Board and the matter is not currently before the Board.

## **FACTUAL HISTORY**

On November 27, 2002 appellant, then a 38-year-old carrier technician, filed an occupational disease claim alleging that he sustained injury to his right knee due to standing and walking while carrying heavy mail bags at work. He stopped work on December 10, 2002.<sup>2</sup> The findings of September 8, 2003 magnetic resonance imaging (MRI) scan testing of appellant's right knee showed Grade III chondromalacia of the trochlear groove, patella and anteromedial aspect of the tibial plateau, small joint effusion, intrameniscal degeneration of the posterior horn of the lateral meniscus and signal alteration in the anterior joint space.

The Office accepted that appellant sustained an aggravation of his right knee chondromalacia and a right knee strain/sprain and paid appropriate compensation for periods of disability. After a period of total disability, he returned to work for the employing establishment in a limited-duty position on a part-time basis.

Appellant stopped work on January 9, 2004 and claimed that he sustained a recurrence of total disability beginning that date due to the employment injuries involving his right knee.<sup>3</sup>

In support of his recurrence of disability claim, appellant submitted a December 25, 2005 report in which Dr. Peter M. Garcia, Jr., an attending Board-certified orthopedic surgeon, stated that he had long-standing right knee problems and had undergone right knee surgery in 2004.<sup>4</sup> On examination, appellant exhibited full range of motion of the lower extremities with some crepitus and tenderness around the right patellofemoral joint. Dr. Garcia diagnosed patellofemoral syndrome and degenerative joint disease of the right knee and recommended conservative treatment.

In a report dated January 16, 2006, Dr. Garcia indicated that appellant's right knee condition was improved with minimal swelling and good range of motion. In reports dated February 27, March 9 and 27, 2006, he noted that appellant continued to report pain, popping and locking in his right knee, but that his right knee condition was essentially unchanged. Dr. Garcia indicated that March 2006 diagnostic testing showed lateral and medial meniscus tears in the right knee<sup>5</sup> and on April 29, 2006 he performed partial lateral meniscectomies with

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<sup>2</sup> It appears that appellant also filed a claim (File No. 162072210), for an employment-related emotional condition.

<sup>3</sup> Appellant suggested that the employing establishment withdrew his limited-duty work, but it appears that such work remained available to him at another work location. He retired from the employing establishment in November 2004.

<sup>4</sup> The record contains documents indicating that appellant underwent a meniscectomy of the right knee in mid 2004. The Office has not accepted that this surgery was necessitated by an employment-related condition.

<sup>5</sup> The findings of March 3, 2006 MRI scan testing of appellant's right knee showed a medial collateral ligament strain, lateral and medial meniscus tears, moderate joint effusion and denuding of the cartilage overlying the lateral aspect of the patellofemoral joint.

chondroplasty and debridement. In a report dated April 10, 2006, he indicated that appellant was doing well after his surgery.

The record also contains several reports dated between January and July 2004, in which Dr. Michael E. Kiehn, an attending Board-certified orthopedic surgeon, and Dr. Lee Vander Lugt, an attending osteopath, discussed their treatment of appellant's right knee condition. In a report dated January 16, 2004, Dr. Kiehn stated that appellant could perform limited-duty work as long as he limited twisting, bending, kneeling, climbing or standing and did not stand for more than six hours per day. He diagnosed patellofemoral chondromalacia or meniscus tear of the right knee but did not provide any discussion of the extent of appellant's employment-related disability.<sup>6</sup>

By decision dated May 1, 2006, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability on or after January 9, 2004 due to the accepted employment injuries involving his right knee.<sup>7</sup>

### **LEGAL PRECEDENT**

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. 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 light-duty job requirements.<sup>8</sup>

### **ANALYSIS**

The Office accepted that appellant sustained an employment-related aggravation of his right knee chondromalacia and a right knee strain/sprain and he returned to limited-duty work for the employing establishment. He stopped work on January 9, 2004 and claimed that he sustained a recurrence of total disability beginning that date due to the employment injuries involving his right knee.

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability on or after January 9, 2004 due to the accepted employment injuries involving his right knee.

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<sup>6</sup> Appellant submitted several medical reports concerning his emotional condition, including a January 28, 2004 of Dr. Amar N. Bhandary, an attending Board-certified psychiatrist. He also submitted a work restrictions form completed by an attending physician in February 2003.

<sup>7</sup> Appellant submitted additional evidence after the Office's May 1, 2006 decision, but the Board cannot consider such evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

<sup>8</sup> *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

In support of his recurrence of disability claim, appellant submitted reports from Dr. Garcia, an attending Board-certified orthopedic surgeon, which were dated beginning in December 2005. Dr. Garcia reported his findings on examination and described conservative treatment of appellant's right knee condition. He initially diagnosed patellofemoral syndrome and degenerative joint disease of the right knee. Beginning in early March 2006, Dr. Garcia indicated that diagnostic testing showed lateral and medial meniscus tears in appellant's right knee and on April 29, 2006 he performed partial lateral meniscectomies with chondroplasty and debridement.

These reports, however, are of limited probative value on the relevant issue in that they do not contain an opinion on causal relationship.<sup>9</sup> Dr. Garcia provided no explanation of how appellant's right knee condition on or after January 9, 2004 was related to the accepted employment injuries involving his right knee. He did not provide any indication that appellant's meniscus tears were employment related or that employment factors continued to aggravate his chondromalacia. Dr. Garcia did not provide an opinion that appellant had an employment-related right knee condition that had worsened to the extent that he was no longer able to perform his limited-duty work on or after January 9, 2004.

The record also contains several reports, dated between January and July 2004, in which Dr. Kiehn, an attending Board-certified orthopedic surgeon, and Dr. Vander Lugt, an attending osteopath, discussed their treatment of appellant's right knee condition. They diagnosed patellofemoral chondromalacia or meniscus tear of the right knee and recommended work restrictions, but they did not provide any statement that appellant's employment-related right knee condition caused total disability on or after January 9, 2004. Appellant submitted several medical reports concerning his emotional condition, but he has filed a separate claim regarding his emotional condition and this matter is not currently before the Board. He also submitted a work restriction form completed by an attending physician in February 2003, but this evidence would have no relevance to his medical condition on or after January 9, 2004.

For these reasons, appellant did not show that he sustained a recurrence of total disability on or after January 9, 2004 due to a change in the nature and extent of his injury-related condition. He suggested that he became totally disabled on January 9, 2004 due to a change in the nature and extent of his light-duty job requirements, but appellant did not provide sufficient evidence to support this assertion.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability on or after January 9, 2004 due to the accepted employment injuries involving his right knee.

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<sup>9</sup> See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' May 1, 2006 decision is affirmed.

Issued: November 14, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board