

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

J.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Phoenix, AZ, Employer**

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**Docket No. 08-85
Issued: July 7, 2008**

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 10, 2007 appellant filed a timely appeal from a July 20, 2007 Office of Workers' Compensation Programs' merit decision. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she sustained a left knee condition in the performance of duty.

FACTUAL HISTORY

Appellant, a 41-year-old letter carrier, filed a Form CA-2 claim for benefits on February 15, 2005, alleging that she developed a left knee condition causally related to employment factors.

On March 10, 2005 the Office advised appellant that it required factual and medical evidence to determine whether she was eligible for compensation benefits. It asked appellant to submit factual evidence supporting her assertion that she actually experienced the employment

incident in the performance of duty and at the time, place and in the manner alleged. The Office also asked appellant to submit a report from her treating physician containing a diagnosis of her condition and an opinion as to whether his claimed condition was causally related to her federal employment. It requested that appellant submit this evidence within 30 days.

In a February 17, 2005 report, Dr. Raymond P. Roffi, Board-certified in orthopedic surgery and appellant's treating physician, stated:

“[Appellant] is a 41-year[-]old [patient] who has had left knee problems for about [six] weeks. She does not recall any specific injury. [Appellant] was initially seen and treated with anti-inflammatory medication without significant relief. She had aspiration of her knee due to persistent marked effusions and she has had two aspirations as well as cortisone injections without significant relief. [Appellant's] aspirations essentially showed just a mild inflammation. No other significant findings were noted. [Appellant] had a magnetic resonance imaging [MRI] scan, which revealed significant articular cartilage defect of the patella. [She] had persistent pain and effusions of the knee.”

Dr. Roffi noted tenderness and effusion in the patellofemoral and medial joint lines in the left knee, with a range of motion of 0 to 115 degrees. He diagnosed symptomatic articular cartilage defects of the left knee and scheduled appellant for left knee surgery. In a February 17, 2005 surgical report, Dr. Roffi indicated that appellant underwent an arthroscopy and chondroplasty of the patella of the left knee and excision of plica in the left knee, which repaired an articular cartilage defect of the left patella and plica syndrome of the left knee.

Appellant also submitted treatment notes dated January 7 through April 22, 2005 from Dr. Roffi; a March 11, 2005 disability slip from Dr. Roffi; a March 11, 2005 disability slip from Dr. Roffi keeping appellant off work from March 11 to 29, 2005 due to her recovery from knee surgery; and a March 31, 2005 return to work medical status report from Dr. Roffi.

By decision dated May 18, 2005, the Office denied the claim, finding that appellant failed to establish fact of injury. It found that appellant failed to submit evidence that any of her specific work duties caused the claimed medical condition. The Office further found that appellant failed to submit medical evidence sufficient to establish that her claimed condition was related to factors of employment.

By letter dated April 27, 2006, appellant's attorney requested reconsideration.

By decision dated July 21, 2006, the Office denied modification of the May 18, 2005 decision.

By letter dated October 4, 2006, appellant's attorney requested reconsideration. In a December 26, 2005 report, Dr. Jeffrey S. Levine, Board-certified in orthopedic surgery, stated:

“[Appellant] is a pleasant 41-year[-]old [patient] who has sustained repetitive injuries to the left patellofemoral articulation of the knee as a consequence of repetitive activities at work. According to the patient, as a consequence of her employment by [the employing establishment], she is required to jump in and out of a delivery truck, on a repetitive basis, after which she has developed recurrent left knee patellofemoral pain. [Appellant] has undergone an arthroscopic debridement at which time chondral lesions were noted of the patella articular surface.

“The etiology for [appellant's] current left knee symptoms, that is to say arthritic change of the patellofemoral joint, is epidemiologically causally related to repetitive jumping activities, as described by the patient. It is therefore my opinion that there exists a causal relationship, to a high degree of medical probability, between [appellant's] development of unilateral left patellofemoral arthritis and activities as a postal worker.

“It is likely that [appellant] will require additional treatment in the future. As the natural history of a patellofemoral arthritis is that of a gradual progression, it is highly probable, from a medical standpoint, that she will require additional surgery, in the form of either an arthroscopic debridement or joint replacement, if in fact her knee symptoms worsen. [Appellant] will also require periodic orthopedic consultations, the chronic use of anti-inflammatory medications and other pharmacological agents used to treat pain and inflammation and up to [10] annual physical therapy sessions per annum.”

By letter dated February 23, 2007, the Office advised the employing establishment and appellant that there was insufficient factual information in the record pertaining to her work activities. It asked appellant to provide a more detailed statement outlining the nature and frequency of her work activities to include:

“(a) A work history at the employing establishment; *i.e.*, how long she was employed there;

“(b) A description of how often she performed the “hop and stop” route, as a percentage of all route activity;

“(c) A listing of the frequency of how often she exited or entered her vehicle over a work shift during the “hop and stop” route, particularly in the early January 2007 shifts and to explain why she considered these routes (‘repetitive’);

“(d) A description of the mechanics of using each leg during these activities, *e.g.*, how far down it was from her vehicle to the ground, whether she stepped or jumped down or up from the vehicle. The Office noted [that] the employing establishment had indicated that letter carriers enter and exit the vehicle leading with the right leg, which would suggest that the right leg bore more of the

pressure than the left leg. The Office asked appellant to state whether her work activities required particular use of her left leg and to indicate whether she had any prior injury or condition in her left leg;

“(e) A description of activities performed on other types of routes.”

In a statement dated March 23, 2007, appellant provided a description of her work activities. She stated that for two months in 2004 she worked a route which consisted of 50 percent hop and stops. Appellant stated that because she was a part-time carrier she would always have extra work on other routes after performing her duties, which most of the time also entailed hop and stops. She advanced to another, permanent position, which comprised five different routes, all of which involved hop and stops. Appellant stated that the total percentage of hop and stop all of her routes was about 75 percent. She stated:

“The frequency of exiting and entering the work vehicle depending on how many deliveries are on a route. If there are 400 deliveries of hop and stop you are getting in and out that many times. Some of the hop and stop routes have two mailboxes together and some have single ones. They are all different. The frequency is constant, you are getting in and out all the time. I consider these activities repetitive because you are doing it over more than one shift. Your route might have hop and stop on it and then you go and work on another route for two hours with hop and stop on it and you constantly do this six days a week for ten hours a day. That is repetitive motion.

“The step of the vehicle is approximately 14 inches high from the ground. When I leave the truck I step out of the vehicle and entering I also step into the truck.... When I exit a postal vehicle I put my right leg down on to the step and I bring my left leg around the seat again and sit down....

“Other job performances are NBU routes, which you are standing at a box delivering mail. Business routes, which you have to deliver separately to each business or to a box. Stop and hop routes, which you have to get in and out of the truck several times (which is repetitive, when you do something over and over a period of time) and deliver to a mail box in front of you or on the house which then you must walk all the way up to the house. Then there is walking routes, which you walk the whole block and deliver to each house separately at the front door.”

In a report dated May 13, 2005, Dr. Areena Swarap, Board-certified in internal medicine, stated on physical examination that appellant had some slight swelling in the left knee with medial joint line tenderness. He noted evidence of recent arthroscopy, with puncture marks on the medial aspect of the left knee. Dr. Swarap also noted some slight tenderness in the medial joint line area. He advised that appellant was able to flex and extend the knee well.

In a May 25, 2005 report, Dr. Swarap stated:

“[Appellant] is a 41-year[-]old woman with monoarthritis involving the left knee.... Overall, her knee is doing better and is gradually improving. The swelling has

decreased. [Appellant] does not notice pain, but sometimes notices stiffness.... [She] has not gone back to work so far, but is interested in getting a release. Synovial fluid count was inflammatory in nature with prolonged sitting.”

Dr. Swarap reiterated that appellant’s condition was improving. He stated that there was a possibility of a flare-up of her condition, with renewed swelling. In the event of such a flare-up, Dr. Swarap advised that he might reaspirate the knee joint or consider medicinal therapy. He released appellant to return to light duty and noted that he would monitor her condition.

In a July 13, 2005 report, Dr. Swarap stated:

“[Appellant] is a 41-year[-]old woman with pain and swelling involving her left knee who is here for follow up. Overall the pain in her left knee is better. It does swell occasionally but without much pain. It is stiff with prolonged sitting. [Appellant] stopped taking Lodine as the pain has not been as intense. [She] is back to working full duty. [Appellant] denies any joint pains or swelling.”

Dr. Swarap advised that appellant remained stable with continuing gradual improvement. He noted that she had synovial fluid but otherwise her laboratory studies were normal. Dr. Swarap stated that appellant had no other joint involvement.

By decision dated July 20, 2007, the Office found that appellant had submitted sufficient factual evidence pertaining to her work duties to establish fact of injury; however, the Office found that she failed to submit sufficient medical evidence to establish that her claimed condition was causally related to factors of her employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² 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.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 diagnosed condition and the specific employment factors identified by the claimant.⁴

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed right shoulder condition and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁵

ANALYSIS

In the instant case, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her left knee condition to factors of her employment. For this reason, she has not discharged her burden of proof to establish her claim that this condition was sustained in the performance of duty.

Appellant submitted reports from Drs. Roffi, Levine and Swarap, which related findings of left knee pain and swelling and noted that she had arthroscopic surgery performed on February 17, 2005 to ameliorate her condition. However, none of the physicians of record provided a probative, rationalized medical opinion that the claimed condition or disability was causally related to employment factors. Dr. Roffi stated in his February 17, 2005 report that appellant had experienced left knee problems for about six weeks, although she could not recall any specific injury. After initially treating her conservatively, he had appellant undergo an MRI scan which showed significant articular cartilage defect of the patella, which caused persistent pain and effusions of the left knee. Dr. Roffi performed an arthroscopy and chondroplasty of the patella of the left knee and excision of plica in the left knee on February 17, 2005 to repair her articular cartilage defect of the left patella and plica syndrome of the left knee. However, he did not relate appellant's left knee condition or surgery to any of the work duties described by appellant.

Dr. Levine stated in his December 2005 report, that appellant sustained repetitive injuries to the patellofemoral articulation of the left knee as a consequence of repetitive activities at work. He noted that appellant stated that she was required to jump in and out of a delivery truck on a repetitive basis, after which she developed recurrent left knee patellofemoral pain and

⁴ *Id.*

⁵ See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

underwent ameliorative surgery. Dr. Levine advised that the etiology for appellant's current left knee symptoms, the arthritic change of the patellofemoral joint, was causally related to these repetitive jumping activities, as described by appellant. He therefore opined that there was a causal relationship, to a high degree of medical probability, between the development of appellant's unilateral left patellofemoral arthritis and her activities as a postal worker.

Dr. Levine's opinion on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.⁶ He did not describe the development of appellant's condition in any detail or sufficiently explain how her work duties, as she described them, would have been competent to cause the claimed left knee condition. Dr. Levine's opinion is of limited probative value because it is generalized in nature and equivocal in that he only noted summarily that appellant's left knee condition was causally related to her work duties as a letter carrier.

Dr. Swarap submitted reports dated May and July 2005, in which he noted that appellant had monoarthritis with slight swelling and tenderness in the left knee at the medial joint line. He related that the pain and swelling in her left knee was gradually improving, though the knee became stiff with prolonged sitting. Dr. Swarap advised that appellant had synovial fluid in the left knee, aggravated by prolonged sitting, but stated that otherwise her laboratory studies were normal, with no other joint involvement. He stated that appellant was able to flex and extend the knee well.

Dr. Swarap released appellant back to full duty, though he cautioned that there was a possibility of a flare-up of her condition, with renewed swelling. He did not indicate whether any of her left knee symptoms were causally related to factors of her employment.

The opinions of the physicians of record are of limited probative value as they do not contain sufficient medical rationale explaining how or why appellant's claimed left knee condition was currently affected by or related to factors of employment.⁷ The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁸ Appellant did not submit a medical opinion which sufficiently described appellant's job duties or explained the medical process through which such duties would have been competent to cause the claimed condition. Accordingly, she failed to submit sufficient medical evidence to establish that her claimed left knee condition was causally related to her employment.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁹ Causal relationship must be established by

⁶ *William C. Thomas*, 45 ECAB 591 (1994).

⁷ *Id.*

⁸ *See Anna C. Leanza*, 48 ECAB 115 (1996).

⁹ *Id.*

rationalized medical opinion evidence and appellant failed to submit such evidence. The Office advised appellant of the evidence required to establish her claim. However, appellant failed to submit such evidence. Accordingly, the Office properly denied appellants' claim for compensation based on a left knee condition.¹⁰

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establish that her claimed left knee condition was sustained in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 7, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ Appellant's attorney contends in his appeal to the Board that the Office violated Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602(8) (June 2002, January 2004). Counsel in essence contends that the employing establishment submitted documents to the Office without providing sufficient notice to appellant, prior to the Office's July 20, 2007 decision. The Board rejects this contention. All of the relevant documents submitted by the employing establishment and appellant were made part of the instant record well before the July 20, 2007 decision, in which the Office fully and thoroughly reviewed all the evidence of record and the arguments pertaining to appellant's claim.