

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

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| <b>L.M., Appellant</b>   | ) |                                 |
|  | ) |                                 |
| <b>and</b>   | ) | <b>Docket No. 13-1402</b>       |
|  | ) | <b>Issued: February 7, 2014</b> |
| <b>U.S. POSTAL SERVICE, POST OFFICE,<br/>Hauppauge, NY, Employer</b> | ) |                                 |
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*Appearances:*  
Paul Kalker, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On May 28, 2013 appellant, through counsel, filed a timely appeal from the May 7, 2013 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.

**ISSUE**

The issue is whether appellant met her burden of proof to establish an injury in the performance of duty on September 10, 2011.

**FACTUAL HISTORY**

On September 10, 2011 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim alleging that on that date, while in the performance of duty, she was crossing

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

Merrick Boulevard and “felt a pain in my left knee when I stepped upon the curb.” She stopped work on September 10, 2011.

In a letter dated September 16, 2011, Elizabeth Chan, a human resource management specialist with the employing establishment, controverted the claim. She indicated that appellant noted that the incident happened at approximately 12:00 p.m. However, appellant waited until “15:96 to report the incident. At 15.94, [she] was noted filling out the accident report.” Photographs of the curb accompanied appellant’s letter.

OWCP received a September 12, 2011 attending physician’s report, from a provider with an illegible signature to whom appellant was referred by the employing establishment. The description of injury indicated that appellant was crossing the street and felt a pain in her left knee when she stepped up onto the curb. The medical provider diagnosed internal derangement and indicated that appellant had a prior history of surgery to the left knee. The provider checked a box “yes” to indicate that the condition was caused or aggravated by work activity.

In a September 16, 2011 report, Dr. Michael C. Schwartz, a Board-certified orthopedic surgeon, noted that six days earlier appellant stepped off a curb at work and felt a pulling sensation. He advised that she had swelling and stiffness, fairly severe pain and, if she attempted to walk on it, she could not straighten her leg. Dr. Schwartz noted that appellant had a prior left knee surgery approximately 15 to 18 years earlier. However, appellant indicated that she had no recent history of left knee problems. Dr. Schwartz examined appellant and noted findings which included that she lacked 15 degrees of terminal extension and flexed to 85 degrees with pain. He also noted tenderness along the medial joint line and mild-to-moderate effusion. Dr. Schwartz diagnosed acute left knee pain, stiffness and locking. He advised that, as appellant was pregnant, he would hold off on a magnetic resonance imaging (MRI) scan. OWCP also received a nurses’ note.

By letter dated October 4, 2011, OWCP advised appellant that additional factual and medical evidence was needed. It explained that a physician’s opinion was crucial to her claim and allotted appellant 30 days within which to submit the requested information.

In an October 11, 2011 response, appellant explained that she did not report her injury right away, as she tried to complete her route. She noted that she immediately felt pain and tried to rest in her truck. Appellant denied any injuries prior to the incident and advised that she was not having any pain in her knee prior to the point that she felt the pull. She also provided further medical evidence in the form of an October 14, 2011 left knee MRI scan from Dr. Kathleen Finzel, a Board-certified diagnostic radiologist, which revealed intact menisci, moderate chondral wear in the medial and lateral patellar facets and lateral trochlea.

In an October 18, 2011 report, Dr. Schwartz noted that appellant complained of exquisite pain in her left knee, after she stepped off a curb and felt a pulling sensation in her left knee. He advised that, since then, she had considerable pain and had not worked. Dr. Schwartz examined appellant’s left knee and determined that there was no evidence of any swelling or erythema. He indicated that the patella tracked well in the trochlear groove. Dr. Schwartz advised: appellant lacked 10 to 15 degrees of terminal extension; flexed to 85 degrees with pain; had 5/5 motor strength with knee flexion and extension; no atrophy; intact sensation about the knee and no varus or valgus instability. Furthermore, the Lachman’s test was negative with a negative

posterior drawer. There was tenderness along the medial joint line, lateral joint line and medial and lateral retinaculum with mild to moderate effusion present. Dr. Schwartz indicated that the MRI scan revealed evidence of chondromalacia noted in medial and lateral facets of the patella, as well as within the trochlea, but no meniscal tear. He diagnosed left knee chondromalacia patella, status post left knee sprain. In a disability certificate also dated October 18, 2011, Dr. Schwartz diagnosed left knee sprain with chondromalacia of the patella and prescribed physical therapy. On November 1, 2011 OWCP received a copy of his September 16, 2011 limited-duty report, in which he advised that appellant could not resume a limited-duty position. In reports dated November 2, 2011, Dr. Schwartz repeated the history of injury and his examination results. He diagnosed left knee chondromalacia of the patella, status post knee sprain. Dr. Schwartz opined that "I do feel that the pain in her knee is a result of her work-related injury on September 10, 2011."

In a November 17, 2011 decision, OWCP denied the claim finding that the medical evidence was insufficient to establish that the work incident caused an injury.

Appellant requested reconsideration and submitted additional evidence. In a November 22, 2011 report, Dr. Schwartz explained that appellant continued to experience "exquisite" pain in her left knee and reiterated that appellant was "injured at work." He advised that prior to the incident her left knee was feeling fine. Dr. Schwartz explained that appellant had prior arthroscopic surgery about 15 years earlier and recovered fully with no pain prior to the injury on September 10, 2011. He explained his findings in relation to the MRI scan results and the specific work incident of stepping up on a curb. Dr. Schwartz advised that appellant stepped on a curb and as a result experienced a sharp pain in her knee. He opined that she sprained her knee when she stepped on the curb. Dr. Schwartz indicated that the sprained knee already had some chondromalacia within it based upon the MRI scan. He indicated that this led to an acute exacerbation of a preexisting condition, notably the chondromalacia of the patella and persistent pain. Dr. Schwartz diagnosed left knee pain, status post sprain and recommended therapy. In a December 16, 2011 disability certificate, he advised that appellant was unable to lift, carry, push, pull, climb, stand or walk for long periods. Dr. Schwartz advised that appellant was unable to return to work until further notice. He also completed disability certificates dated November 22 and December 21, 2011, a limited-duty assignment form and indicated that appellant could not perform any duties. Dr. Schwartz continued to treat appellant and submit reports.

A December 22, 2011 MRI scan read by Dr. Finzel, revealed intact menisci and very minimal chondromalacia present.

In a February 6, 2012 report, Dr. Schwartz recommended left knee arthroscopy, removal of loose bodies, chondroplasty and possible partial meniscectomy. OWCP received copies of previously received reports.

By decision dated March 8, 2012, OWCP denied modification of its prior decision.

In a February 22, 2013 report, Dr. Schwartz noted that, on September 10, 2011, appellant suffered a work-related injury while delivering mail. He advised that she stepped on a curb and felt a sharp pain in her left knee. Dr. Schwartz indicated that he first saw appellant on September 16, 2011 with complaints of severe pain in her left knee. He stated that appellant was unable to ambulate and unable to straighten her knee. Appellant denied any recent problems

with her left knee. Dr. Schwartz noted that appellant worked as a letter carrier and had not been back to work since the injury. He explained that an October 18, 2011 MRI scan was performed which revealed chondromalacia of the patella. Dr. Schwartz noted that he continued treating appellant on a regular basis as she continued to have persistent pain. He explained that in April 2012, appellant suffered from loose bodies with a possible chondral flap and recommended arthroscopic surgery, which was performed on May 7, 2012. Dr. Schwartz explained that appellant tolerated the procedure and was diligent in attending physical therapy after the surgery. Appellant continued with complaints of persistent left knee pain which interfered with her ability to use stairs and ambulate. Dr. Schwartz noted that appellant returned on January 23, 2013 and related that she was “improving somewhat” but she continued to have pain in her knee with stiffness and swelling. He indicated that appellant continued with therapy on a regular basis. Dr. Schwartz opined that appellant suffered a work-related injury on September 10, 2011 while delivering mail when she stepped on a curb and felt a sharp pain in her left knee. He opined that, as a result of this injury, she developed loose fragments of cartilage within her knee and as a result, developed synovitis, which necessitated a left knee arthroscopy on May 17, 2012. Dr. Schwartz indicated that she continued to recover from the injury. He opined that her left knee chondromalacia, synovitis and her current left knee pain were causally related to her work-related injury on September 10, 2011. Dr. Schwartz advised that, due to the injury sustained and her current symptoms, she was unable to work as a mail carrier. He indicated that appellant was temporarily totally disabled and continued with physical therapy. OWCP also received copies of previously received reports.

In a letter dated February 27, 2013, appellant’s representative requested reconsideration. He argued that appellant had established the factual component of her claim and that the medical evidence supported causal relationship.

By decision dated May 7, 2013, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA<sup>2</sup> and that an injury was sustained in the performance of duty.<sup>3</sup> These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, 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.<sup>5</sup> Second, the

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<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>3</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>4</sup> *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.<sup>7</sup>

### ANALYSIS

Appellant alleged that on September 10, 2011 she was crossing the street while working and “felt a pain in my left knee when I stepped upon the curb.” There is no dispute that appellant was crossing the street and felt a pain in her left knee when she stepped upon the curb. OWCP found that the first component of fact of injury, the claimed incident, occurred as alleged.

The Board also notes that the medical reports from Dr. Schwartz support that appellant stepped on a curb and sustained a sprain to her left knee. In his October 18, 2011 report, Dr. Schwartz examined appellant, provided findings, which included range of motion and the MRI scan findings which revealed evidence of chondromalacia in the medial and lateral facets of the patella, as well as within the trochlea and no meniscal tear. He diagnosed left knee chondromalacia patella, status post left knee sprain. In his November 2, 2011 report, Dr. Schwartz repeated the history of injury and his examination results and diagnosed left knee chondromalacia of the patella, status post knee sprain. He explained his opinion and indicated that the pain in her knee was a result of her work-related injury on September 10, 2011.” In his November 22, 2011 report, Dr. Schwartz explained that appellant continued to experience “exquisite” pain in her left knee and reiterated that appellant was “injured at work.” He explained his findings in relation to the MRI scan results and the specific work incident of stepping up on a curb. Dr. Schwartz indicated that appellant stepped on a curb and as a result experienced a sharp pain in her knee, which he advised was a sprain of the knee from stepping on the curb and noted that the sprained knee already had some chondromalacia within it based upon the MRI scan. The Board finds that appellant has established that she sustained a left knee sprain on September 10, 2011 in the performance of duty.

However, regarding an aggravation of the preexisting knee condition, the Board finds that Dr. Schwartz’ reports are not sufficiently rationalized, as they do not clearly explain the mechanism of injury of how the September 10, 2011 employment incident caused an aggravation of her preexisting knee condition. While he indicated that this led to an acute exacerbation of a preexisting condition, notably the chondromalacia of the patella and persistent pain, he did not explain how it exacerbated the preexisting condition. Additionally, Dr. Schwartz determined that appellant had left knee pain, status post sprain and did not offer any other diagnosis.

The Board finds that, while the medical reports are not sufficient to meet appellant’s burden of proof to establish her claim with regard to an aggravation of her preexisting knee

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<sup>6</sup> *Id.*

<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

condition, they raise a substantial inference between appellant's claimed condition and the employment injury of September 10, 2011, and are sufficient to require OWCP to further develop the medical evidence and the case record.<sup>8</sup> Furthermore, there is no opposing medical evidence in the record.

Therefore, the case must be remanded to OWCP for further development of the medical evidence, including composition of a statement of accepted facts and referral to an appropriate medical specialist for a rationalized opinion as to whether the September 10, 2011 work injury caused or aggravated her preexisting knee injury. OWCP should further determine the extent of any disability due to the established September 10, 2011 left knee sprain. Following this and such other development as it deems necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that appellant established that she sustained a left knee sprain at work on September 10, 2011. The case is not in posture for decision with regard to whether the September 10, 2011 injury aggravated any preexisting left knee condition.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 7, 2013 decision of the Office of Workers' Compensation Programs is modified and remanded for further action consistent with this decision.

Issued: February 7, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>8</sup> *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, *supra* note 5.