

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

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<b>T.R., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 24-0666</b>
	)	<b>Issued: August 29, 2024</b>
<b>U.S. POSTAL SERVICE, PLEASANT RIDGE</b>	)	
<b>ANNEX POST OFFICE, Greensboro, NC,</b>	)	
<b>Employer</b>	)	
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*Appearances:* *Case Submitted on the Record*  
*Alan J. Shapiro, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On June 6, 2024 appellant, through counsel, filed a timely appeal from a May 14, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</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 has met his burden of proof to establish an injury in the performance of duty on September 8, 2023, as alleged.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On September 17, 2023 appellant, then a 59-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 8, 2023, he sustained an injury to the left knee when walking up and down flights of steps delivering mail and packages, for a period of six hours while in the performance of duty. He further explained that his knee started to hurt, but he continued to deliver the mail. Appellant noted that when he returned to the employing establishment, he parked the agency vehicle, and as he walked to his own car his knee buckled. He further related that he returned home, and as he walked up the two steps of his porch he fell. The next morning his knee was swollen. Appellant stopped work on September 9, 2023. The employing establishment controverted the claim and marked the box “No” in response to whether appellant was injured in the performance of duty. It noted that appellant had not worked since July 27, 2022, reported to work for one day on September 8, 2023, and then called out sick. The employing establishment also noted that appellant indicated that he hurt his knee but did not state the location. OWCP assigned File No. xxxxxx253 to this claim.

In a letter dated September 19, 2023, the employing established explained that it provided appellant with a modified job offer in May 2023 based upon his most recent restrictions; however, he refused to sign, and a letter of suitability was sent to OWCP. Appellant was given 30 days to report to work and that he did not report until September 8, 2023.<sup>3</sup> While appellant alleged an injury on September 8, 2023; he did not report the injury to management until September 18, 2023.

In a development letter dated September 26, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

In a letter dated September 10, 2023, and received on September 27, 2023, appellant related that on September 8, 2023, he returned to work, and his job required that he walk up and down stairs delivering packages for six hours. He noted that the next morning, his knee was extremely swollen, and he had to call in sick on September 9, 2023.

In a September 11, 2023 certificate, Dr. Lester G. Brown, Board-certified in family practice, noted that appellant was seen on September 11, 2023, and could return to work on October 9, 2023.

In a letter dated September 14, 2023, appellant requested a “limited-duty” position until he was able to return to his duties as a letter carrier.

In a development letter dated October 2, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

In a September 28, 2023 statement, appellant provided an addendum to his September 10, 2023 statement. He explained that on September 9, 2023, he spoke with his supervisor. Appellant

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<sup>3</sup> Appellant has an accepted claim for a November 19, 2012 cervical injury under OWCP File No. xxxxxx912.

stated that following his shift, as he walked to his car, his knee buckled, he did not think anything of it, as he had just worked a six-hour shift, after being off work for months. He noted that when he arrived home, he walked to the porch, and on the second step, his knee gave out and he fell on the porch. Appellant related that during the night, his knee was sore, and when he woke the next morning, it was swollen. He noted that the next morning, his wife returned the key to the station, and informed his supervisor that appellant's knee was swollen. Appellant provided text messages notifying the employing establishment on September 13, 2023 that his knee was swollen.

In an October 20, 2023 report, Dr. Paul M. Lichstein, a Board-certified orthopedic surgeon, noted that appellant was seen on October 20, 2023. He related that appellant could work with restrictions, including 50 percent weight bearing on the left lower extremity with crutches.

In a follow-up letter dated November 8, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from its October 2, 2023 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

A September 21, 2023 magnetic resonance imaging (MRI) scan of the left knee without contrast read by Dr. Thomas Zban, a Board-certified diagnostic radiologist, revealed a curvilinear fracture along the posterior medial tibial plateau and metaphysis, with surrounding bone bruise, additional small fracture in the posterior medial tibial plateau corner, and small bone bruise along the posterolateral tibial plateau, a lateral meniscal tear, surgical repair of the lateral collateral ligament (LCL) with no tear identified, and chronic avulsive changes along the inferior patellar pole with partial tear of the proximal patellar tendon. A September 21, 2023 MRI scan of the right knee without contrast read by Dr. Zban demonstrated chronic avulsive-type injury along the inferior patellar pole and proximal patellar tendon, with patellar tendinopathy and possible partial tendon tearing, no meniscal tears or ligamentous injury, and small joint effusion and enthesophyte formation at the quadriceps insertion.

In August 24, 2022 progress notes, Dr. Lichstein recounted that appellant had undergone a left knee reconstruction in 1983, and that appellant had slipped on July 22, 2022, following which he had persistent discomfort. He diagnosed acute pain of the left knee, and a tear of the LCL of the left knee, initial encounter.

By decision dated December 4, 2023, OWCP denied appellant's claim. It found that the alleged incident occurred as described, however, the medical evidence was insufficient to establish that a medical condition was diagnosed in connection with the claimed event and/or work factors.

On December 12, 2023 counsel for appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on March 7, 2024.

By decision dated April 15, 2024, OWCP's hearing representative found that appellant's claims in File Nos. xxxxxx253 and xxxxxx912 contained overlapping medical records and addressed overlapping periods of disability and should be administratively combined. The hearing representative further found that the medical component of the essential element of fact of injury had not been established. OWCP's hearing representative concluded that as appellant failed to

submit medical evidence establishing a left knee diagnosis in connection with the reported event on September 8, 2023, the medical component of the fact of injury element was not established.<sup>4</sup>

On May 7, 2024 counsel for appellant requested reconsideration, and submitted an additional report dated April 9, 2024 from Dr. Lichstein.

In the April 9, 2024 report, Dr. Lichstein noted that he saw appellant for evaluation of his left knee. He recounted appellant's history of injury and medical treatment. Dr. Lichstein diagnosed left knee pain, unspecified chronicity; tear of the LCL left, sequela; primary osteoarthritis of left knee; and chronic instability of the left knee. He noted that appellant had a long history regarding his left knee condition, which ultimately resulted in chronic instability and mechanical falls which exacerbated his discomfort subsequent to a plateau fracture. He also noted that appellant had developed tricompartmental degenerative osteoarthritis.

By decision dated May 14, 2024, OWCP modified its prior decision and found that the claim remained denied as the evidence was insufficient to establish that appellant's injury arose in the performance of duty and during the course of employment. It explained that it was unclear how and when the injury actually occurred.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish 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, 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>6</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>7</sup> Whether an injury occurs in the performance of duty is a preliminary issue addressed before the merits of the claim are adjudicated.<sup>8</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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the

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<sup>4</sup> On April 22, 2024 OWCP administratively combined appellant's claims in File No. xxxxxx253 and No. xxxxxx912, with the latter serving as the master file.

<sup>5</sup> *Id.*

<sup>6</sup> See *T.M.*, Docket No. 19-0050 (issued June 18, 2010); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *P.L.*, Docket No. 16-0631 (issued August 9, 2016); see also *M.D.*, Docket No. 17-0086 (issued August 3, 2017).

employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.<sup>9</sup>

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>10</sup> The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on September 8, 2023, as alleged,

As noted, the Board has held that whether an injury occurs in the performance of duty is a preliminary issue addressed before the merits of the claim are adjudicated.<sup>12</sup>

In his September 17, 2023 Form CA-1, appellant indicated that on September 8, 2023, he sustained an injury to the left knee while walking up and down flights of steps delivering mail and packages for a period of six hours, and that his knee buckled when he returned to the station and walked to his car. There is no dispute that appellant was in the performance of duty when he was out on his route delivering mail on September 8, 2023. As appellant was required to walk to deliver his route on September 8, 2023, and as the employing establishment has not disputed that his route required walking up and down flights of stairs to deliver the mail, these allegations also provide a description of the mechanism of injury, which is undisputed.<sup>13</sup> Furthermore, appellant timely notified his supervisor the following day, September 9, 2023, of his alleged injury, and sought medical treatment shortly thereafter. The Board, therefore, finds that this incident occurred when delivering mail while in the performance of duty on September 8, 2023, as alleged.

As appellant has established that an incident occurred in the performance of duty on September 8, 2023 as alleged, the question becomes whether the incident caused an injury.<sup>14</sup> As OWCP found that she had not established fact of injury, it did not evaluate the medical evidence.

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<sup>9</sup> See *A.R.*, Docket No. 24-0242 (issued June 17, 2024); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>10</sup> *F.S.*, Docket No. 21-1040 (issued March 10, 2023); *K.F.*, Docket No. 18-0485 (issued February 18, 2020); *M.S.*, Docket No. 18-0059 (issued June 12, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

<sup>11</sup> *F.S., id.; Y.G.*, Docket No. 20-0688 (issued November 13, 2020).

<sup>12</sup> *Supra* note 8; see also *Charles Walker*, 55 ECAB 238 (2004); *Charles W. Bishop*, 6 ECAB 571 (1954).

<sup>13</sup> *E.D.*, Docket No. 10-0590 (issued January 3, 2011).

<sup>14</sup> *L.G.*, Docket No. 21-0343 (issued May 9, 2023); *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

The case must, therefore, be remanded for consideration of the medical evidence of record.<sup>15</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish an injury causally related to the accepted September 8, 2023 employment incident.

**CONCLUSION**

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on September 8, 2023, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 14, 2024 decision of the Office of Workers Compensation Programs is reversed, and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 29, 2024  
Washington, DC

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

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

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

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<sup>15</sup> *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).