

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

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**D.W., Appellant**

**and**

**U.S. POSTAL SERVICE, CHILLUM PLACE,  
Washington, DC, Employer**

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**Docket No. 09-1502  
Issued: February 19, 2010**

*Appearances:*  
*Appellant, pro se*  
*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 May 11, 2009 appellant filed a timely appeal from an April 16, 2009 merit decision of the Office of Workers' Compensation Programs denying her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant established that she sustained a recurrence of disability on January 5, 2009 causally related to her August 21, 2007 employment injury.

On appeal, appellant contends that she is entitled to wage-loss compensation for the period January 5 through May 2, 2009 when she was out of work due to her employment injury. She argued that her disability was due to her ongoing injury and that she did not experience a recurrence or a new injury.

## **FACTUAL HISTORY**

On September 10, 2007 appellant, then a 23-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that, while delivering mail on August 21, 2007, she felt a pop in her left knee while walking up steps. She stopped working that day. The Office accepted the claim for effusion of the left knee joint and left knee medial meniscus tear. It also approved a left knee arthroscopy and partial medial meniscectomy, which appellant underwent on January 29, 2008. Appellant was released to full-time light duty on September 13, 2007, but because the employing establishment could not fully accommodate her work restrictions, she returned to part-time light duty on April 12, 2008.

On January 30, 2009 appellant filed a claim for total wage-loss compensation (Form CA-7) for the period January 6 through 29, 2009.<sup>1</sup>

In a January 5, 2009 report, Dr. David M. Smink, a Board-certified orthopedic surgeon, stated that appellant experienced increased pain in her left knee and that she had difficulty climbing stairs or standing for prolonged periods of time. He noted that she was pregnant. Dr. Smink diagnosed persistent left knee pain due to medial meniscus tear with acute onset of patellar tendinitis. He stated that appellant would remain off work for the following two weeks due to the severity of her pain. Dr. Smink opined that the presentation of appellant's patella tendinitis was not surprising due to the atrophy of her left quadriceps muscle and her increased weight during pregnancy.

In a January 19, 2009 attending physician's report, Dr. Smink diagnosed left knee medial meniscus tear and stated that appellant was off work from January 5 through February 3, 2009. He indicated that the condition was caused by an employment activity and noted that appellant did not have a previous left knee condition. Further, in a January 22, 2009 work capacity evaluation, Dr. Smink diagnosed left knee medial meniscus tear and indicated that appellant was not capable of performing her usual job due to severe left knee pain limiting her function. He indicated that appellant was able to sit for eight hours but provided total restrictions on other activities including walking, standing, reaching, pushing, pulling, lifting, squatting, kneeling, climbing and operating a motor vehicle at work.

Appellant further submitted two medical notes dated January 5 and 19, 2009 taking her off work from January 5 through February 3, 2009 due to a left knee medial meniscus tear and left knee pain.

By letter dated February 3, 2009, the Office requested that appellant complete a notice of recurrence of disability and submit additional factual and medical evidence to support her claim for total disability.

On February 24, 2009 appellant filed a claim for a January 5, 2009 recurrence of disability (Form CA-2a). She indicated that after her injury she returned to light duty with limitations including no lifting over 20 pounds, only climbing stairs and squatting for 10 minutes

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<sup>1</sup> Appellant also submitted wage-loss compensation forms dated February 5 and March 12, 2009 for the period January 30 through March 16, 2009.

every hour and with 5-minute breaks every hour. Appellant stated that after her January 29, 2008 surgery she still experienced the same problems and that she could not stand or walk on her legs for long periods of time. She noted that she had not returned to work since her recurrence.

In attending physician's reports dated February 2 through March 23, 2009, Dr. Smink stated that appellant was totally disabled from January 5 through March 31, 2009 due to a left knee medial meniscus tear. Where asked whether he believed the condition was caused by an employment activity, he checked the box marked "yes" and noted that appellant did not have previous left knee issues. Dr. Smink further remarked that appellant was limited to climbing stairs and squatting for 10 minutes an hour.

In a January 19, 2009 report, Dr. Smink stated that appellant returned for an evaluation of her left knee and reported her complaints of increased pain including aggravating, throbbing pain while resting. He noted that appellant had been off work for two weeks. Dr. Smink diagnosed left knee medial meniscal tear and patellar tendinitis and referred appellant to physical therapy to reduce her symptoms. He recommended a left knee arthroscopic partial medial meniscectomy after obtaining authorization and after appellant's pregnancy.

In a report dated February 2, 2009, Dr. Smink diagnosed left knee persistent pain due to recurrent medial meniscus tear with recent onset of patellar tendinitis. He stated that, due to the recent exacerbation of appellant's symptoms, including the patellar tendinitis, he recommended a new physical therapy regimen. Dr. Smink opined that appellant could not work due to the severity of her pain. He provided a February 2, 2009 medical note excusing appellant from work from January 19 through February 17, 2009 due to left knee pain.

Further, in February 16, 2009 reports, Dr. Smink stated that a follow-up evaluation of appellant's left knee did not reveal any changes in her condition. He diagnosed left knee medial meniscus tear and patellar tendinitis and stated that appellant remained off work as recommended in the last visit. Dr. Smink further reported that appellant experienced decreased ability to stand and walk due to her severe medial and anterior pain and that she had limited stamina and muscle strength due to the longevity of her condition. He recommended physical therapy to increase appellant's strength, stamina and comfort.

By decision dated April 16, 2009, the Office denied appellant's claim for a recurrence of disability on the grounds that she did not submit rationalized medical evidence establishing that she sustained a recurrence of her August 21, 2007 employment injury. It also found that she did not show a change in the nature and extent of her light-duty job requirements.

### **LEGAL PRECEDENT**

A person seeking benefits under the Federal Employee's Compensation Act<sup>2</sup> has the burden of establishing the essential elements of her claim. 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 has resulted from a previous injury or illness without an intervening

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

injury or new exposure to the work environment that caused the illness.”<sup>3</sup> A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>4</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>5</sup>

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she 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 she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>6</sup> To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.<sup>7</sup>

### ANALYSIS

The Office accepted appellant’s claim for effusion of the left knee joint and left knee medial meniscus tear. It also authorized a January 29, 2008 left knee arthroscopy and partial medial meniscectomy. The issue is whether appellant established that she sustained a recurrence of disability on January 5, 2009 causally related to her August 21, 2007 employment injury.

On appeal, appellant contends that she did not sustain a recurrence or a new injury but that her disability from January 5 through May 2, 2009 was due to her original employment injury. However, as she returned to part-time light duty on April 12, 2008 and stopped working

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<sup>3</sup> *R.S.*, 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

<sup>4</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>5</sup> See *Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

<sup>6</sup> *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986); 20 C.F.R. § 10.5(x) provides, “*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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.”

<sup>7</sup> *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); *Maurissa Mack*, 50 ECAB 498, 503 (1999).

on January 5, 2009, her claim for wage-loss compensation beginning January 5, 2009 is more properly considered as a recurrence of disability. Appellant did not contend that there was a change in the nature and extent of her light-duty requirements. Thus, she must establish that she experienced a change in the nature and extent of her injury-related condition which disabled her from performing her light-duty job.<sup>8</sup> The Board finds that appellant has not met her burden of proof.

In support of her claim, appellant submitted numerous reports from her treating physician, Dr. Smink. In notes dated January 5 through February 2, 2009, Dr. Smink placed appellant off work from January 5 through February 17, 2009 due to a left knee medial meniscus tear and left knee pain. These notes are of diminished probative value because he did not address the cause of the left knee medial meniscus tear or left knee pain or describe how these conditions prevented appellant from working her light-duty position.<sup>9</sup>

Dr. Smink also completed several attending physician's reports dated January 19 through March 23, 2009, in which he stated that appellant was totally disabled from work from January 5 through March 31, 2009 due to a left knee medial meniscus tear. He indicated that the condition was work related and noted that appellant did not have any prior left knee injuries. Dr. Smink also limited appellant's stair climbing and squatting to 10 minutes. Further, in a January 22, 2009 work capacity evaluation, he stated that appellant was not capable of performing her usual job due to severe left knee pain from her left knee condition, which limited her functioning. Dr. Smink provided total restrictions on all physical activities but indicated that appellant could sit for eight hours. These reports are also insufficient to establish appellant's claim because he did not provide a rationalized medical opinion explaining how her left knee condition prevented her from working light duty.<sup>10</sup> Further, Dr. Smink did not describe a change in her condition or explain why, after working light duty for over eight months, she was unable to perform her light-duty position beginning January 5, 2009.<sup>11</sup>

In medical reports dated January 5 through February 16, 2009, Dr. Smink reported appellant's complaints of increased pain in her left knee, including throbbing pain while resting and difficulty climbing stairs, walking or standing for prolonged periods of time. He diagnosed left knee medial meniscus tear and patellar tendinitis. Dr. Smink placed appellant off work due to severe pain. He stated that appellant had a decreased ability to stand and walk due to her severe medial and anterior pain and that she had limited stamina and muscle strength due to the longevity of her condition. Dr. Smink opined that the presentation of appellant's patella tendinitis was not surprising due to the atrophy in her left quadriceps muscle and increased weight during pregnancy. He recommended a repeat left knee arthroscopic partial medial meniscectomy following appellant's pregnancy.

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<sup>8</sup> See *Theresa L. Andrews*, 55 ECAB 719 (2004).

<sup>9</sup> See *Donald T. Pippin*, 54 ECAB 631 (2003).

<sup>10</sup> See *S.F.*, 59 ECAB \_\_\_\_ (Docket No. 07-2287, issued May 16, 2008).

<sup>11</sup> See *Richard A. Neidert*, 57 ECAB 474 (2006).

The Board finds that these reports are similarly insufficient to establish appellant's claim. Although Dr. Smink opined that appellant could not return to work due to the severity of pain from the left knee medial meniscus tear, he did not explain the cause of the severe pain or why her medial meniscus tear, which she sustained in 2007, was presenting increased problems almost two years later.<sup>12</sup> Further, he did not provide an opinion explaining how the longevity of her condition would cause limited stamina and muscle strength.<sup>13</sup> Moreover, although Dr. Smink diagnosed patella tendinitis and partially related it to atrophy of appellant's left quadriceps muscle, he did not specifically relate this condition or the muscle atrophy to her employment injury.<sup>14</sup> He did not provide a rationalized medical opinion explaining how she experienced a change in her left knee condition or how this condition caused her to be totally disabled for her light-duty position. Therefore, the Board finds that Dr. Smink's medical reports are insufficient to establish appellant's burden of proof.<sup>15</sup>

### CONCLUSION

The Board finds that appellant did not establish that she sustained a recurrence of disability on January 5, 2009 causally related to her August 21, 2007 employment injury.

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<sup>12</sup> *See id.*

<sup>13</sup> *See Conard Hightower*, 54 ECAB 796 (2003).

<sup>14</sup> *See id.*

<sup>15</sup> *See Cecelia M. Corley*, 56 ECAB 662 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 19, 2010  
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