United States Department of Labor
Employees' Compensation Appeals Board

A.R., Appellant	)	
and	)	**Docket No. 11-692**
	)	**Issued: November 18, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 26, 2011 appellant, through his representative, filed a timely appeal from an October 29, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 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 met his burden to establish that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On March 22, 2010 appellant, then a 53-year-old letter carrier, filed an occupational disease claim alleging that he sustained bilateral knee pain and swelling and a slight medial meniscal tear due to climbing up and down steps for many years. He became aware of his

[1] 5 U.S.C. § 8101 *et seq.*

condition on March 12, 2003 and realized its relationship to his federal employment on November 24, 2009. Appellant stopped work on February 6, 2010 and returned to duty on March 2, 2010.

OWCP informed appellant in an April 30, 2010 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit a physician's report explaining how employment factors caused or aggravated the alleged injury.

In an April 27, 2010 report, Dr. Colin A. Campbell, an osteopathic internist, related that appellant experienced constant and progressive bilateral knee pain that hampered his ability to perform activities of employment and daily living. He diagnosed degenerative joint disease on the basis of a December 10, 2009 x-ray scan performed by Dr. Randall W. Snyder, III, a Board-certified diagnostic radiologist.[2]

OWCP advised Dr. Campbell in a May 19, 2010 letter that he did not offer rationalized medical opinion explaining the cause of appellant's condition and gave him 15 days to furnish a narrative report. Dr. Campbell subsequently provided progress notes from March 2 to May 21, 2010 diagnosing internal derangement and adverse effects of the work environment.[3]

By decision dated June 2, 2010, OWCP denied appellant's claim, finding the medical evidence insufficient to establish that his accepted employment duties caused or aggravated a bilateral knee condition.

Appellant submitted additional medical evidence. Duty status reports from Dr. Campbell dated March 2 and 30, 2010 noted that appellant experienced knee symptoms since March 2003. He observed bilateral edema and tenderness on examination, particularly in the left knee, diagnosed left knee derangement and released appellant to restricted duty. In a May 24, 2010 report, Dr. Campbell opined, "The bilateral knee degradation that [appellant] is suffering is directly related to his employment as a postal carrier. His official diagnosis is osteoarthritis of the knee, bilaterally."

Appellant's counsel requested a hearing. Following a preliminary review, an OWCP hearing representative determined on August 4, 2010 that the June 2, 2010 decision should be set aside and remanded for further medical development. She found that, while Dr. Campbell did not provide sufficient rationale in support of his opinion regarding how appellant's condition was employment related, his uncontroverted medical opinion was sufficient to establish a *prima facie* case for an occupational disease claim. The hearing representative directed OWCP to refer appellant for a second opinion and, following such further development as deemed necessary, issue a *de novo* decision.

An August 23, 2010 statement of accepted facts detailed that appellant filed an occupational disease claim and that OWCP accepted that he walked up and down steps for many years in his capacity as a letter carrier.

[2] Appellant also submitted Dr. Campbell's March 2 and April 26, 2010 prescription notes.

[3] Dr. Campbell specifically cited ICD-9-CM codes 717.9 and V62.1, respectively. He also diagnosed hypertension, a condition that is not presently before the Board.

On August 25, 2010 OWCP referred appellant for a second opinion evaluation to Dr. Lawrence Barr, an osteopath and Board-certified internist. In a September 15, 2010 report, Dr. Barr related that appellant was descending steps when he felt a pop in his left knee and thereafter experienced bilateral knee pain. Appellant previously sustained a medial meniscal tear in 2003 and right knee symptoms in 2006. On examination, Dr. Barr observed parapatellar tenderness and crepitus of the right knee and parapatellar, medial and lateral joint line tenderness, patellofemoral joint crepitus and full flexion pain of the left knee. After reviewing the medical file, he diagnosed degenerative joint disease of the knees. Dr. Barr remarked, "Based on the Statement of Accepted Facts, it is my opinion that [appellant] has bilateral knee and degenerative joint disease. On this basis, I did not find causal relationship between either [sic] knee symptomatology and the work occurrence of March 12, 2003." He further explained that "[t]here is no well-done, epidemiologically-sound studies linking [appellant's] degenerative joint disease with his occupational duties."

By decision dated October 29, 2010, OWCP denied appellant's claim, finding that the weight of Dr. Barr's report did not support causal relationship.

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, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[4] 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.[5]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.[6] To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[7]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *See S.P.*, 59 ECAB 184, 188 (2007).

[7] *See R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

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.[8]

ANALYSIS

By decision dated June 2, 2010, OWCP accepted that appellant climbed up and down steps for many years, but denied his occupational disease claim on the grounds that the medical evidence did not sufficiently demonstrate that this employment factor was causally related to a bilateral knee condition. Following receipt of Dr. Campbell's May 24, 2010 report asserting that appellant's bilateral knee osteoarthritis was directly related to his postal employment, an OWCP hearing representative set aside this decision and remanded the case for further medical development. In a September 15, 2010 report, Dr. Barr conducted a second opinion evaluation and evaluated appellant's history of injury, medical records and clinical findings. He concluded that the "work occurrence of March 12, 2003" did not contribute to appellant's bilateral knee symptomatology. By decision dated October 29, 2010, on the weight of Dr. Barr's report, OWCP denied the claim once again.

The Board finds that the case is not in posture for decision. To assure that the report of a medical specialist is based upon a proper factual background, OWCP provides information through the preparation of statement of accepted facts.[9] When an OWCP medical adviser, second opinion specialist or referee physician renders a medical opinion based on a statement of accepted facts which is incomplete or inaccurate or does not use the statement of accepted facts as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.[10] In the present case, Dr. Barr indicated that he reviewed the August 23, 2010 statement of accepted facts and concluded that appellant's degenerative joint disease could not be attributed to "the work occurrence of March 12, 2003." The statement of accepted facts, however, did not refer to a March 12, 2003 employment incident and appellant does not attribute his claimed condition to a March 12, 2003 incident. Instead, the statement of accepted facts stated that he filed an occupational disease claim and attributed his bilateral knee condition to walking up and down stairs over many years in his job. By contrast, Dr. Barr's opinion was more consistent with a claim for traumatic injury since he suggested that appellant's condition developed over a single day rather than over a period of time.[11] To the extent that Dr. Barr's report was outside the framework of the August 23, 2010 statement of accepted facts, it is of diminished probative value.[12]

[8] *I.J.*, 59 ECAB 408 (2008); *Woodhams*, *supra* note 5.

[9] *Mirna Cruz*, Docket No. 06-183 (issued April 5, 2006).

[10] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

[11] *See* 20 C.F.R. § 10.5(q) and (ee).

[12] *Cruz*, *supra* note 9. *See also M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

The Board finds that Dr. Barr's second opinion evaluation report did not sufficiently address causal relationship as his report is not based on an accurate factual background. Once OWCP starts to procure medical opinion, it must do a complete job. It has the responsibility to obtain from its referral physician an evaluation that will resolve the issue involved in the case.[13] In the present case, OWCP has not met that responsibility. The case will be remanded for OWCP to further develop the medical evidence and obtain reasoned medical opinion from a referral physician, based upon an accurate factual background, which addresses whether appellant's years of walking up and down steps in his job caused or aggravated his claimed condition. Following this and after conducting such further development as it may find necessary, OWCP shall issue an appropriate decision.[14]

CONCLUSION

The Board finds that the case is not in posture for decision.

[13] *Richard F. Williams*, 55 ECAB 343 (2004); *see Mae Z. Hackett*, 34 ECAB 1421, 1426 (1983).

[14] The Board notes counsel's contentions that appellant established a *prima facie* case based on Dr. Campbell's May 24, 2010 report and that OWCP failed to issue a *de novo* decision with full appeal rights after the hearing representative's August 4, 2010 decision. However, where a *prima facie* claim is established, this does not mean that the claim must be accepted, only that OWCP has the responsibility to take the next step, either of notifying the claimant of what additional evidence is needed to establish the claim fully or of developing the evidence in order to reach a decision. *See Robert P. Bourgeois*, 45 ECAB 745 (1994). Here, OWCP directed further medical development. The Board also finds that any error by OWCP in failing to issue a *de novo* decision with full appeal rights after the August 4, 2010 remand is harmless in view of the Board's disposition of the present appeal.

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: November 18, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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