

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

Appellant, then a 56-year-old letter carrier, filed an occupational disease claim on August 13, 2007, alleging that his preexisting right knee condition was aggravated by factors of his federal employment, 28 years of standing and walking in his job as letter carrier.

On December 12, 2007 OWCP advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive report from a treating physician describing his symptoms and the medical reasons for his condition, an opinion as to whether his claimed condition was causally related to his federal employment. OWCP requested that appellant submit this evidence within 30 days.

Appellant submitted a May 29, 2007 hospital report, received by OWCP on December 27, 2007. OWCP indicated that he underwent total right knee arthroplasty surgery on that date. The surgery was performed by John C. Baker, Board-certified in orthopedic surgery.

On December 27, 2007 OWCP received a letter dated July 18, 2007 from O.D. Elliott, a union representative, who provided a description of appellant's work duties. In a handwritten note dated July 31, 2007, Dr. Baker stated that appellant underwent a total right knee arthroplasty on May 29, 2007 and that the arthritis in his knee was aggravated by his job as a letter carrier for 28 years. The handwriting was not entirely legible but the note appeared to be signed by Dr. Baker.

By decision dated February 27, 2007, OWCP denied the claim, finding that appellant failed to submit sufficient medical evidence to establish that his claimed right knee condition was causally related to factors of employment.

On March 5, 2008 appellant requested an oral hearing, which was held on July 11, 2008. At the hearing he testified that he tore his anterior cruciate ligament in 1977 and was in a motorcycle accident in 1977 in which he broke his right leg and pelvis, but had fully recovered from these injuries. Appellant stated that his right knee condition began to worsen during the 1980's although he never called in sick. He worked full duty until undergoing the right knee surgery in May 2007. Appellant did not return to work. He asserted that he sustained another, nonwork-related injury to the knee in December 2007 in which he was swinging a golf club and twisted the knee the wrong way. Appellant tore his patella tendon, which required him to undergo surgery again on December 28, 2007.

By decision dated September 19, 2008, OWCP's hearing representative set aside the February 27, 2008 decision. She found that the evidence established that the signature on the July 23, 2007 handwritten annotation was that of Dr. Baker and was sufficient to further develop the claim. OWCP's hearing representative directed OWCP to obtain medical records from his December 2007 nonwork-related injury, prepare a statement of accepted facts and refer appellant to an orthopedic specialist for a second opinion examination to address if the osteoarthritis of the right knee was causally related to employment factors. The second opinion examiner was asked to address whether the total knee replacement performed on May 29, 2007 was necessitated by a work-related condition.

OWCP referred appellant to Dr. Lawrence Blumberg, Board-certified in orthopedic surgery, for a second opinion examination. Dr. Blumberg stated findings on examination, reviewed the medical history and statement of accepted facts and asserted that appellant's complaints of right knee pain were due to his preexisting right knee osteoarthritis, not his work duties. He noted x-ray results dated October 4, 2006, stated that appellant's right knee arthritis developed over years and probably began with the 1977 anterior cruciate ligament injury. Dr. Blumberg advised that appellant's degenerative arthritis of the knee had progressed overtime with normal activities of daily living and was not causally related to his job as a postal worker. He opined that appellant's arthritis condition was due to the development of degenerative changes consistent with his age and level of activity, and the prior, nonwork-related anterior cruciate ligament tear. Dr. Blumberg further stated that appellant's May 2007 total knee replacement surgery was not related to any work condition, but was due to age and the onset of degenerative osteoarthritis.

By decision dated January 13, 2009, OWCP found that the medical evidence was not sufficient to establish that appellant's claimed preexisting right knee osteoarthritic condition was causally related to factors of employment and that his May 2007 knee surgery was not necessitated by an accepted condition. It determined that Dr. Blumberg's second opinion report represented the weight of the medical evidence.

On January 22, 2010 appellant requested an oral hearing, which was held on February 23, 2010.

By decision dated April 12, 2010, OWCP's hearing representative affirmed the January 13, 2010 decision.

By letter dated December 9, 2010, appellant, through his union representative, requested reconsideration.

In a May 20, 2010 report, Dr. Samy F. Bishai, Board-certified in orthopedic surgery, stated that appellant's work as a letter carrier involved a great deal of walking and standing, which caused him to have intermittent, but progressively worsening symptoms in his right knee over. This culminated in the May 29, 2007 total right knee replacement surgery. Dr. Bishai advised that the stress on appellant's knee was exacerbated by the fact that he worked an average of between 8 to 10 and sometimes 12 hours a week in overtime. He asserted that appellant's job required him to walk for long distances on his mail route carrying a satchel of mail. Dr. Bishai stated:

"The type of work he does, the prolonged standing and walking and the prolonged carrying of the heavy mailbag all contributed to him developing degenerative arthritis of his right knee joint. There is no question in my mind that his development of the degenerative arthritis of the right knee joint is definitely correlated with and is the cause of the symptoms that he has had in his knee while he was working. The degenerative arthritic condition that developed in his right knee joint continued over the years and got worse as time went by and he had to ask for a transfer to move to a warm climate state like Florida in order to avoid the problems with the cold weather that was affecting his right knee quite severely

and causing his symptoms. He still continued to work hard and was putting in quite a bit of overtime work in the neighborhood of between 8 [to] 12 hours extra work every week and all that contributed to the development and worsening of the degenerative arthritic condition that developed while he continued to work. Eventually the pain got so bad that he decided to go ahead and have it treated and he ended up having to have the right total knee replacement surgery which relieved his pain but he was unable to go back to regular work after that and he retired from the [employing establishment].

“[Appellant] has suffered from a degenerative arthritic condition that developed while he was working for the [employing establishment] and was predisposed by a previous injury that happened while he was younger at the age of 26 with a tear of the anterior cruciate ligament that was repaired surgically.

“It is my opinion, within a reasonable degree of medical probability, that [appellant’s] symptoms are directly related to the degenerative arthritic condition that he developed in his right knee joint as he worked for the [employing establishment] for all these years. It is also my opinion, within a reasonable degree of medical probability, that the degenerative arthritic condition that he developed is directly correlated and is caused by and aggravated by the type of work that he does for the [employing establishment] and he is putting in quite a bit of overtime and working in a capacity that entails a great of walking and standing on his feet.

“It is also my opinion, within a reasonable degree of medical probability, that the total knee replacement of his right knee joint that was performed on May 29, 2007 is directly related to and is caused by the degenerative condition of his right knee that developed from the type of work that he did and the overtime that he has put in for many years over the course of his employment with the [employing establishment].”

By decision dated January 21, 2011, OWCP denied modification of the prior decisions.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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 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 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

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

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

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 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. To establish causal relationship, a claimant must submit a physician's report in which the physician reviews the employment factors identified by the claimant as causing the claimed condition and taking these factors into consideration as well as findings upon examination, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of the opinion.⁴

Any contribution of employment factors to the diagnosed condition is sufficient to establish the element of causal relationship.⁵

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁶

ANALYSIS -- ISSUE 1

This case is not in posture for decision.

The Board finds that, a conflict exists in the medical opinion evidence between Dr. Bishai and Dr. Blumberg as to whether appellant's right knee condition, was causally related to his employment duties or whether his surgery on May 29, 2007 was necessitated by his duties as a letter carrier. Dr. Bishai, appellant's treating physician, stated that appellant's duties as a letter carrier for many years contributed to the development and worsening of his degenerative arthritic condition in his right knee. This contrasted with the opinion of Dr. Blumberg, an OWCP second opinion physician, who found that appellant's osteoarthritis was not work related but was attributable to degenerative changes the aging process.

The Board will set aside the January 21, 2011 OWCP decision and remand the case for referral of appellant, the case record and a statement of accepted facts to an appropriate impartial medical specialist.

⁴ *D.D.*, 57 ECAB 734 (2006).

⁵ *L.R., claiming as widow of E.R.*, 58 ECAB 369 (2007).

⁶ 5 U.S.C. § 8123(a).

LEGAL PRECEDENT -- ISSUE 2

Section 8103 of FECA⁷ provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation.⁸ In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under FECA. OWCP has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. It therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on OWCP's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.⁹

ANALYSIS -- ISSUE 2

As noted, there is a conflict in the medical opinion before Dr. Blumberg and Dr. Bishai. In its January 13, 2009 decision, OWCP relied on Dr. Blumberg's opinion that appellant's claimed osteoarthritic condition in his right knee was not causally related to his employment and that his May 29, 2007 total knee replacement surgery was not related to his work. Dr. Bishai stated in his May 20, 2010 report that appellant's work as a letter carrier entailed a great deal of walking and standing, which caused him to have intermittent, but progressively worsening symptoms in his right knee which culminated in the May 29, 2007 total right knee replacement surgery. He opined, within a reasonable degree of medical probability, that this procedure was directly related to and caused by the degenerative condition of his right knee that developed from the type of work he performed. There is an unresolved conflict in the medical evidence regarding the causal relation of appellant's right knee condition and whether his May 29, 2007 surgery was necessitated by a work-related condition.

CONCLUSION

The Board finds that that the case is not in posture for decision; there is an unresolved conflict in the medical evidence which requires referral to an independent medical specialist.

⁷ *Supra* note 2.

⁸ *Id.* at § 8103.

⁹ *Dale E. Jones*, 48 ECAB 648 (1997); *Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2011 Office of Workers' Compensation Programs' decision is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: November 3, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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