

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

---

**R.W., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Atlanta, GA, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 12-1747  
Issued: March 5, 2013**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 15, 2012 appellant filed a timely appeal of the March 6, 2012 decision of the Office of Workers' Compensation Programs (OWCP), which denied his claim for an occupational disease. He also appealed a May 7, 2012 decision of OWCP, which denied merit review. 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 the case.

**ISSUES**

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an occupational disease in the performance of duty; and (2) whether OWCP properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a).

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

On August 18, 2011 appellant, then a 31-year-old city carrier, filed a Form CA-2, notice of occupational disease, alleging an aggravation of degenerative joint disease as a result of prolonged walking and climbing stairs while delivering mail. He noted that in 2000 he had a total left knee replacement and in 2006, a right knee replacement. Appellant received treatment for his conditions from the Department of Veterans Affairs (VA). He became aware of his condition and realized it was causally related to his employment on March 29, 2000. Appellant did not stop work.

Appellant provided VA medical records. He was treated by Dr. Alice Fann, a Board-certified physiatrist, on March 29, 2011 for carpal tunnel syndrome. Dr. Fann noted that his history was significant for cervical myelopathy with C3-7 surgical decompression in 2008. She noted appellant's symptoms of bilateral hand numbness, pain in the left forearm and right hand which worsened with repetitive activities. Dr. Fann noted that a March 29, 2011 electromyogram (EMG) revealed evidence of bilateral severe median neuropathy at the wrist consistent with carpal tunnel syndrome and possible diabetic neuropathy. She recommended wrist splints and possible surgery. A March 29, 2011 right wrist x-ray revealed chondrocalcinosis affecting both wrists with associated degenerative changes and widening of the scapholunate intervals bilaterally. On April 7 and 11, 2007 appellant had a prescription refilled by Dr. Pawanjit Singh, a Board-certified internist. On April 7, 2011 he was treated by a physician's assistant for carpal tunnel syndrome of the bilateral wrists, neuropathy, possible cervical radiculopathy and peripheral diabetic neuropathy. On April 7, 2011 Dr. Mark D. Walsh, a Board-certified surgeon, performed a carpal tunnel injection. Appellant was treated by Dr. Tania A. Barroso, a Board-certified physiatrist, from April 12 to 26, 2011, for degenerative joint disease of the right knee. On April 12, 19 and 26, 2011 she performed intra-articular injections of the right knee.

On August 30, 2011 OWCP advised appellant of the evidence needed to establish his claim. It requested that he submit a physician's reasoned opinion addressing the causal relationship of his claimed condition to specific work factors.

On October 26, 2011 OWCP denied appellant's claim finding that the medical evidence was insufficient to establish that the diagnosed degenerative joint disease was causally related to his work activities.

On January 11, 2012 appellant requested reconsideration. He submitted a November 29, 2011 report from Dr. Singh, who diagnosed severe degenerative joint disease of the hips and knees. Appellant would soon require joint replacement surgeries. Dr. Singh further opined that it was very likely that years of walking while carrying heavy loads contributed to the degenerative joint disease in his hips and knees.

In a March 6, 2012 decision, OWCP denied modification of the October 26, 2011 decision.

On April 24, 2012 appellant requested reconsideration. He advised that he was sending additional evidence to OWCP. No evidence was received.

In a decision dated May 7, 2012, OWCP denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant a merit review.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.<sup>2</sup>

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) 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 claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical 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 background of the claimant, 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>3</sup>

### **ANALYSIS -- ISSUE 1**

It is not disputed that appellant's duties as letter carrier included standing, walking and climbing steps. He was been diagnosed with degenerative joint disease of the knees and hips. The Board finds that appellant has not submitted sufficient medical evidence to establish that his degenerative joint disease of the knees and hips was causally related to the accepted employment activities.

In a November 29, 2011 report, Dr. Singh diagnosed severe degenerative joint disease of the hips and knees and noted that appellant would require joint replacement surgeries. He stated that it was "very likely" that years of walking while carrying heavy loads contributed to appellant's degenerative joint disease. Although Dr. Singh generally supported causal

---

<sup>2</sup> See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Solomon Polen*, 51 ECAB 341 (2000).

relationship, he did not provide adequate medical rationale explaining the basis of the causal relationship between appellant's degenerative joint disease of the hips and knees and the factors of employment.<sup>4</sup> He did not explain the extent of walking or the heavy loads appellant performed or how this would cause the diagnosed condition. Dr. Singh did not exclude such factors as age-related degenerative changes or any preexisting conditions. His reports are insufficient to meet appellant's burden of proof. Appellant was also treated by Dr. Barroso for degenerative joint disease of the right knee. However, Dr. Barroso did not address whether appellant's employment activities caused or aggravated the diagnosed medical condition.<sup>5</sup>

In a March 29, 2011 report, Dr. Fann treated appellant for carpal tunnel syndrome. She noted that his history was significant for cervical myelopathy with a prior C3-7 surgical decompression in 2008. Dr. Fann noted a March 29, 2011 EMG revealed evidence of bilateral severe median neuropathy at the wrist consistent with carpal tunnel syndrome and possible diabetic neuropathy. On April 7, 2011 Dr. Walsh performed carpal tunnel injections. The physicians did not support that appellant had an employment-related aggravation due to his work. The reports of diagnostic testing are insufficient to establish the claim as they do not provide any opinion on causal relationship. The record also contains treatment information from a physician's assistant. However, this evidence is of no probative medical value as a physician's assistant is not competent to render a medical opinion under FECA.<sup>6</sup>

The Board finds that the medical evidence does not establish that appellant's degenerative joint disease is causally related to his employment. An award of compensation may not be based on surmise, conjecture or speculation. Neither, the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>7</sup>

On appeal, appellant asserted that he submitted sufficient medical evidence to support that his diagnosed degenerative joint disease was work related and referenced a report by Dr. Singh. As noted, this evidence is not sufficient to establish that his degenerative joint disease was aggravated by his employment. Reports from appellant's physicians failed to provide sufficient medical rationale explaining how appellant's degenerative joint disease was causally related to particular employment factors.

---

<sup>4</sup> See *T.M.*, Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>5</sup> *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>6</sup> See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

<sup>7</sup> See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.<sup>8</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Under section 8128(a) of FECA,<sup>9</sup> OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(1) Shows that OWCP erroneously applied or interpreted a specific point of law;  
or

“(2) Advances a relevant legal argument not previously considered by [OWCP];  
or

“(3) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”<sup>10</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.<sup>11</sup>

### **ANALYSIS -- ISSUE 2**

OWCP denied appellant’s claim on the grounds that he failed to provide sufficient medical evidence to establish that the diagnosed condition was causally related to his work duties. Thereafter, it denied appellant’s reconsideration request, without a merit review.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim. In his request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not identify a specific point of law or show that it was erroneously applied or interpreted. Appellant did not advance a new and relevant legal argument. He asserted in his April 24, 2012, reconsideration request that he was sending additional evidence to support that his condition worsened over the years. However, no additional evidence was received. These assertions do not show a legal error by OWCP or a new

---

<sup>8</sup> With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

<sup>9</sup> 5 U.S.C. § 8128(a).

<sup>10</sup> 20 C.F.R. § 10.606(b)(2).

<sup>11</sup> *Id.* at § 10.608(b).

and relevant legal argument. The underlying issue in this case is whether appellant's diagnosed condition is causally related to his work duties. That is a medical issue which must be addressed by relevant new medical evidence.<sup>12</sup> However, appellant did not submit any new and relevant medical evidence in support of his claim.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that his claimed conditions were causally related to his employment. The Board further that OWCP properly denied his request for reconsideration.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 7 and March 6, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 5, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

---

<sup>12</sup> See *Bobbie F. Cowart*, 55 ECAB 746 (2004).