

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

J.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Ypsilanti, MI, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 13-1513
Issued: December 11, 2013**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 12, 2013 appellant, through her attorney, filed a timely appeal from a May 17, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 met her burden of proof to establish a right knee condition causally related to her employment activities.

FACTUAL HISTORY

On April 15, 2011 appellant, then a 30-year-old carrier technician, filed an occupational disease claim alleging that her right knee injury sustained on December 8, 2008 was not getting better after 12 months. She indicated that she first realized her condition was caused or

¹ 5 U.S.C. § 8101 *et seq.*

aggravated by her employment on March 1, 2010. The employing establishment indicated that appellant stopped work on April 6, 2011.

Under claim number xxxxxx347, OWCP accepted a right knee strain for a December 8, 2008 traumatic injury while appellant was working as a letter carrier. Appellant was medically released from all treatment on April 22, 2009 with no work restrictions. She received no further medical treatment until April 6, 2011, when she sought care due to right knee instability and inability to work her duties of letter carrier.²

In an undated statement, appellant related that she had been put on a new route that was very long and her knee started to swell and give out.

In an August 31, 2011 letter, Dr. Vasilios Moutzouros, a Board-certified orthopedic surgeon, noted that appellant had previously injured her knee on December 8, 2008 which OWCP accepted for right knee strain and appellant underwent several arthroscopic procedures. He stated that appellant was last seen on April 22, 2009 where she had noticed improvement and her work restrictions were changed to unlimited driving, two hours walking and three hours standing. Dr. Moutzouros reported that appellant came to his clinic in early 2011 complaining of right knee swelling and pain. Right knee radiographs and magnetic resonance imaging (MRI) scan showed healed prior surgical repair of the weight-bearing surface of the medial femoral condyle and early degenerative changes within the patellofemoral compartment. Dr. Moutzouros stated that, due to “this” and appellant’s impact activities with work, she developed swelling and difficulties participating in activities of daily living. He noted that appellant underwent conservative measures, including cortisone injections, which relieved her symptoms for a few weeks and then elected to have revision of cartilage procedure, which included an osteochondral autograft transfer. Dr. Moutzouros stated that appellant did well following surgery and full recovery would take a 5- to 12-month period of time.

In an October 27, 2011 letter, OWCP requested a supplemental report from Dr. Moutzouros asking for a list of diagnosis for appellant’s condition and an opinion as to whether appellant’s work exposure caused or aggravated her right knee condition. Dr. Moutzouros was asked to address each condition separately, identify specifically the work activities and provide medical reasons, supported by objective findings. OWCP provided him with a statement of accepted facts and accepted definitions and provided him 30 days to submit the requested information. In a December 6, 2011 letter, Dr. Moutzouros’ office requested prepayment of fees for a narrative report.

By decision dated January 4, 2012, OWCP denied appellant’s claim. It found that she failed to establish that her claimed medical condition was related to the accepted work activities.

² Initially OWCP converted the April 15, 2011 occupational disease claim to a recurrence claim under case number xxxxxx347. The factual and medical evidence did not support a claim of recurrence as defined by FECA, but did support a new occupational disease claim. OWCP subsequently created a new occupational disease claim under case number xxxxxx816 with a date of injury of March 1, 2010 for an injury to the right knee. Case number xxxxxx816 was doubled into case number xxxxxx347, with case number xxxxx347 as the master case file.

In a letter dated January 26, 2012, appellant filed a request for reconsideration. In a January 16, 2012 report, Dr. Moutzouros noted that he was responding to OWCP's letter. He indicated that appellant has a history of some right knee degenerative changes and cartilage damage. Dr. Moutzouros noted that appellant had undergone osteochondral allograft implantation surgery to the right knee and described the physical requirements of her position as a letter carrier, which he opined has led to the degenerative changes in her right knee. He indicated that appellant's job duties were not exclusively the cause of the degenerative changes but that her work duties exacerbated her condition. Dr. Moutzouros noted that appellant underwent surgery in July 2011 to replace allograft cartilage plugs, which stabilized her condition.

By decision dated April 30, 2012, OWCP denied modification of its earlier decision.

On April 18, 2013 appellant again requested reconsideration. In an April 12, 2013 report, Dr. Moutzouros reported that he first met appellant on April 14, 2011 for an evaluation of knee pain. He noted that in 2004 she had sustained a blunt injury to the medial side of her knee which led to multiple arthroscopies of the patellofemoral and cartilage damage. Dr. Moutzouros reported that appellant did well until she reinjured her knee at work in 2009, when she slipped on ice. He noted that appellant returned on May 5, 2011 with more information and confirmation that she had a full thickness cartilage injury in the past that was treated with an osteochondral allograft plug. Dr. Moutzouros noted that radiologic testing confirmed the lack of cartilage and support of the plug. He noted that a cortisone injection provided short-term pain relief and appellant later underwent a right knee arthroscopy with osteochondral allograft transplantation. Dr. Moutzouros discussed appellant's postoperative treatment and progress, noting that she has been able to work since her operation and has reached maximum medical improvement nearing two years postsurgery. He advised that he did not meet appellant until after the numerous surgeries to her right knee, but opined that she had a cartilage injury that undoubtedly has been aggravated by her employment as a postal worker. Dr. Moutzouros noted that the allografts have performed poorly in terms of long-term benefit especially when stressing the knee with continuous walking.

By decision dated May 17, 2013, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between

the claimed conditions and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.³

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such an opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and that such a relationship must be supported with affirmative evidence, explained by medical rationale and be based on a complete and accurate medical and factual background of the claimant.⁴ Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation.⁵

ANALYSIS

The Board finds that OWCP properly adjudicated appellant's claim as a new occupational disease claim. Appellant returned to work after her December 8, 2008 work injury and was medically released from all treatment on April 22, 2009. She had no further medical treatment until April 6, 2011, when she sought care due to right knee instability and inability to work her duties of letter carrier. Appellant reported that her route had changed and was very long. This represents a change in her work duties after her return to work and medical release of treatment. As she implicated work factors that occurred after her return to full work duties, appellant's current claim was properly adjudicated as an occupational disease claim.⁶ The issue is whether the new employment duties of a long route caused or contributed to her right knee condition.

The Board finds that the medical evidence of record does not establish, with rationalized medical opinion, that appellant sustained an aggravation of her preexisting right knee condition, which included degenerative changes and several surgeries, as a result of the accepted factors of her federal employment. OWCP received several reports from Dr. Moutzouros in which the physician opined that the physical requirements of her position as a letter carrier led to the exacerbation of her preexisting degenerative changes and cartilage damage to the right knee. However Dr. Moutzouros failed to provide a well-rationalized medical opinion which discussed how appellant's right knee condition materially worsened to the point surgery was required and has failed to provide any medical rationale explaining the nature of the relationship between any diagnosed condition and her specific employment factors.⁷ In his August 31, 2011 letter,

³ *Lourdes Harris*, 45 ECAB 545, 547 (1994); *A.P.*, Docket No. 11-1802 (issued April 10, 2012).

⁴ *Conard Hightower*, 54 ECAB 796 (2003).

⁵ *Albert C. Brown*, 52 ECAB 152 (2000).

⁶ *See A.P.*, *supra* note 2; Section 10.104 of OWCP's regulations provide that a notice of recurrence should not be filed when a new injury, new occupational disease, or a new event contributing to an already existing occupational disease has occurred. In these instances, the employee should file a Form CA-1 or CA-2. 20 C.F.R. § 10.404.

⁷ *Albert C. Brown*, 52 ECAB 152 (2000).

Dr. Moutzouros opined that she experienced right knee pain and swelling in part to her work activities; however, he has not specified definitive diagnoses or provided medical rationale as to what conditions were caused or aggravated by her work activities. In his January 16, 2012 report, Dr. Moutzouros described the physical requirements of appellant's letter carrier position and opined that her job duties exacerbated her condition, which included a history of degenerative changes and cartilage damage to the right knee. Dr. Moutzouros failed to discuss how her preexisting right knee condition was aggravated or materially worsened by her work activities beginning March 2010. In his April 12, 2013 report, Dr. Moutzouros reported a nonspecific cartilage injury that had been aggravated by appellant's employment. A "cartilage injury" however is not a definitive diagnosis and Dr. Moutzouros failed to provide a well-rationalized opinion on how her job duties aggravated her preexisting knee condition. While Dr. Moutzouros briefly discussed appellant's work duties, he offered no medical rationale as to how such exposure aggravated her preexisting right knee condition. Dr. Moutzouros addressed how allografts perform poorly in terms of long-term benefit especially when stressing the knee with continuous walking, but did not provide any specific diagnostic findings from March 2010 clearly demonstrating the change in the underlying condition as opposed to just an increase in symptoms. Dr. Moutzouros' opinions on causal relationship are not well rationalized and are insufficient to establish the critical element of causal relationship. As a result, appellant has not met her burden of proof.

On appeal, appellant's counsel contends that OWCP's decision is contrary to fact and law. For the reasons stated, there is no medical evidence which offers a well-reasoned explanation of how appellant's work factors from March 2010 caused a diagnosed medical condition which materially aggravated her preexisting right knee condition leading to surgery. Appellant has not met her burden of proof to establish her claim for compensation benefits. The Board will therefore affirm OWCP's May 17, 2013 decision to deny her claim.

Appellant may submit new evidence or argument as part of a formal 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her right knee condition is causally related to her employment activities.

ORDER

IT IS HEREBY ORDERED THAT the May 17, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 11, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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