

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

On appeal, counsel contends that the impartial medical examiner found that appellant's employment activities contributed to his diagnosed condition and was employment related.

### **FACTUAL HISTORY**

This case has previously been before the Board. On January 29, 2000 appellant, then a 50-year-old housekeeper aid, filed an occupational disease claim alleging that he developed bilateral aggravation of degenerative joint disease and torn menisci in his knees due to his employment activities.

In an April 8, 2013 decision,<sup>3</sup> the Board found an unresolved conflict of medical opinion evidence between appellant's physician, Dr. Richard Zamarin, a Board-certified orthopedic surgeon, and Dr. Bong S. Lee, a second opinion physician and Board-certified orthopedic surgeon. They disagreed as to whether appellant's knee condition was causally related to his accepted employment activities. Dr. Zamarin advised that appellant's condition was aggravated by his work activities as a house keeping aide while Dr. Lee attributed his condition to the aging process and not to work factors. The Board remanded for OWCP to refer the case to an impartial medical examiner. The facts of the case as set forth in the Board's prior decision are adopted herein by reference.

On July 11, 2013 OWCP referred appellant, a statement of accepted facts and a list of questions to Dr. Andrew J. Collier, a Board-certified orthopedic surgeon, for an impartial medical examination. It asked Dr. Collier to provide all the diagnoses found, any work-related factors of disability, any preexisting disability and his prognosis and recommendations for medical treatment. OWCP also asked that he describe any work limitations or any restrictions attributable to preexisting conditions. It provided Dr. Collier with a statement noting that Dr. Lee found that appellant's bilateral knee arthritis was not the result of any job activities while Dr. Zamarin opined that appellant's degenerative joint disease in both knees was aggravated by his work activities such as constant standing and lifting.

Dr. Collier examined appellant on July 24, 2013 and reviewed his work history, employment duties and history of knee pain. Appellant described his current condition and treatment with over-the-counter medication. Dr. Collier noted that appellant had marked bilateral genu varum with slight hyperextension on the left. He stated that both knees demonstrated minimal synovitis, no effusion, erythema or warmth with limited range of motion. Dr. Collier found marked varus, medial osteophytes, medial collapse, negative McMurray's, Lachman and Drawer signs. He stated that appellant had a waddling gait with his cane. Dr. Collier diagnosed severe degenerative arthritis in both knees. He stated:

“[Appellant] had no work-related injuries, traumas, *etc.*, to cause this condition. The most likely cause of his symptomatology is his weight and obesity. Every step [appellant] takes of his life does contribute to his arthritis. Hence, his work-related activities would add to his condition but are not the sole cause of his condition. It does play a minor role. [Appellant] does have severe degenerative

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<sup>3</sup> Docket No. 13-206 (issued April 8, 2013).

arthritis in both knees, again not caused by his work or work activities. This is not industrial.”

Dr. Collier recommended bilateral total knee replacements and stated that appellant had significant restrictions due to his degenerative arthritis.

By decision dated August 8, 2013, OWCP denied appellant’s claim, finding that Dr. Collier determined that appellant’s severe degenerative arthritis in both knees was due to his weight and not his work activities.

### **LEGAL PRECEDENT**

OWCP’s regulations define an occupational disease as “a condition produced by the work environment over a period longer than a single workday or shift.”<sup>4</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) 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 condition 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.<sup>5</sup>

Questions to physicians should address all unresolved medical issues and the claims examiner should provide the physician with OWCP’s definition of direct causation and aggravation.<sup>6</sup> The aggravation of a preexisting condition is as compensable as an original or new injury and the resulting disability is compensable regardless of the degree of such aggravation.<sup>7</sup> If the referee specialist submits an opinion which is equivocal, lacks rationale or fails to address

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<sup>4</sup> 20 C.F.R. § 10.5(q).

<sup>5</sup> *Lourdes Harris*, 45 ECAB 545, 547 (1994).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development Claims*, Chapter 2.800.8.c(4) (November 2004). Aggravation occurs if a preexisting condition is worsened, either temporarily or permanently, by an injury arising in the course of employment. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2b (January 2013).

<sup>7</sup> *J.O.*, Docket No. 10-785 (issued September 21, 2011); *P.M.*, Docket No. 06-1813 (issued February 28, 2007); *John D. Ayers*, 48 ECAB 440 (1997); *Henry Klaus*, 9 ECAB 333 (1957); *Charles A. Duffy*, 6 ECAB 470, 471 (1954).

the specified medical issues or conflict, the claims examiner should seek clarification or further rationale from that physician.<sup>8</sup>

### **ANALYSIS**

The Board previously found that there was a conflict of medical opinion regarding whether appellant's employment activities caused or aggravated his underlying bilateral knee osteoarthritis. OWCP referred him for an impartial medical examination to Dr. Collier.

In a July 24, 2013 report, Dr. Collier provided a proper history of injury and listed findings on examination. He diagnosed severe degenerative arthritis in both knees. Dr. Collier stated:

"Every step [appellant] takes of his life does contribute to his arthritis. Hence, his work-related activities would add to his condition but are not the sole cause of his condition. It does play a minor role."

The Board finds that Dr. Collier's opinion on causal relationship does not resolve the underlying conflict of whether appellant's employment aggravated his preexisting condition. OWCP did not provide him with the definition of an aggravation or contribution. It did not ask that Dr. Collier address any aggravation of an underlying condition in the questions provided him. As a result of this deficiency, Dr. Collier did not adequately address Dr. Zarmarin's conclusions that appellant's bilateral knee condition was aggravated by his work activities as a housekeeping aide. Dr. Bong related the condition to aging without contribution by work factors.

When OWCP secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, it has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. Unless this procedure is carried out by OWCP, the intent of section 8123(a) of FECA will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.<sup>9</sup> OWCP should request clarification from Dr. Collier on whether appellant sustained an employment-related aggravation of his preexisting osteoarthritis and, if so, whether any aggravation was temporary or permanent. It should provide the physician with the definitions for aggravation and contribution for his reference. The Board will set aside the August 8, 2013 decision and remand the case for further medical development to be followed by a *de novo* decision.

### **CONCLUSION**

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

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<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.11.e (October 2010).

<sup>9</sup> *Patricia E. McNally*, Docket No. 05-338 (issued May 5, 2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 8, 2013 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.<sup>10</sup>

Issued: June 10, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

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

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<sup>10</sup> Richard J. Daschbach, Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after May 16, 2014.