

reassigned to another area performing sedentary duties on August 14, 2002. He explained that he believed that the repeated kneeling and ladder climbing over a four- to-five year period contributed to his condition. He provided a description of his duties which included the use of ladders, kneeling and bending to perform his work on various aircraft carriers and indicated that he was advised that he needed a total knee replacement for both knees.¹

In an August 13, 2002 report, Dr. James H. Levi, an attending Board-certified orthopedic surgeon, diagnosed advanced degenerative joint disease (DJD) of the left knee with complete collapse and advised surgery. He performed a left total knee replacement arthroplasty on September 25, 2002. In an October 1, 2002 report, Dr. Levi diagnosed hemarthrosis of the lower leg and checked "yes" in response to whether he believed the condition was caused by appellant's employment. He explained that appellant had a previous knee injury worsened by his job duties of climbing up and down ladders. Dr. Levi provided disability certificates keeping appellant off work until December 9, 2002.

By letter dated January 6, 2003, the Office asked appellant to submit additional information, including a comprehensive medical report from his treating physician which included a reasoned explanation as to how specific work factors identified by appellant had contributed to his claimed DJD condition. The Office allotted appellant 30 days within which to submit the requested information.

In a January 14, 2003 report, Dr. Levi explained that appellant was first seen in his office on December 2, 1998 regarding a work injury in which appellant slipped on wet paint and fell onto his right knee. He was diagnosed with peripatellar bursitis and chondrocalcinosis was noted on x-ray. Dr. Levi explained that appellant was treated and discharged on January 7, 1999. He was next seen on August 13, 2002 after he engaged in squatting, kneeling and climbing up and down ladders at work. Upon examination of the x-rays, Dr. Levi noted that appellant had a complete collapse of the medial joint of the right knee with large marginal osteophytes and was developing similar characteristics in the left knee. Dr. Levi diagnosed advanced DJD involving the left knee with complete collapse medially, involvement of the other compartments of his right knee and advancing DJD and obvious chondrocalcinosis. He also noted that appellant had advanced cervicothoracic and lumbar degenerative disc disease, along with generalized degenerative changes over many parts of his body and opined that he "suspected that his activities at work may have exacerbated problems with appellant's knees but certainly were not causative."

On May 2, 2003 the Office referred appellant for a second opinion examination with Dr. Borislav Stojic, a Board-certified orthopedic surgeon. In a June 27, 2003 report, he noted appellant's history of injury and treatment and diagnosed a post left knee total arthroscopy and degenerative osteoarthritis of the right knee. Dr. Stojic determined that appellant had a seventeen-year history working as a preservation servicer-painter and was first treated on December 2, 1998 for a contusion to the right knee, with subsequent diagnosis of peripatellar bursitis and chondrocalcinosis, which resolved on January 7, 1999. The physician noted that appellant was not seen again until August 13, 2002 for the left knee and was diagnosed with

¹ Appellant noted that he had a prior injury to his right knee in 1998 under claim No. 131176302 and that he did not need surgery at that time. He also noted a high school football injury to his left knee 42 years earlier.

bilateral chondrocalcinosis and DJD involving both knees. Dr. Stojic explained that, while the work-related activities of squatting, kneeling and frequently climbing ladders could create problems with the knees, he was unable to “rationalize the cumulative trauma as the etiological factor of the patient’s knee problems since he has been doing this line of work for almost 16 years before seeking medical advice....” Dr. Stojic opined that the cumulative trauma “more likely than not would become evident, at the most, a few years following exposure to work-related activities.” He determined that appellant’s condition reflected a natural progression of the underlying condition and advised that appellant continue working in a light-duty capacity.

In a decision dated September 18, 2003, the Office denied appellant’s claim on the grounds that the medical evidence was not sufficient to establish that his condition was caused by his federal employment.

On September 19, 2003 appellant filed a CA-7 claim for a schedule award and enclosed a report from Dr. Levi dated September 18, 2003 which provided an impairment rating.²

In a letter dated October 7, 2003, appellant requested a review of the written record indicating that he believed that the daily requirements of his position caused his knee condition.

By letter dated December 3, 2003, the Office requested that the employing establishment provide additional information.

In a December 12, 2003 letter, appellant repeated his belief that his work activities exacerbated his knee problems and enclosed a report from Dr. Levi dated October 2, 2003. He also alleged that Dr. Stojic only examined him for five minutes. Dr. Levi reviewed his treatment of appellant in 1998 and 2002 and opined that appellant’s knee condition “was probably more directly related to his chondrocalcinosis and the degenerative process [than] to his injury in 1998.” He indicated the left total knee arthroplasty surgery on September 25, 2002 was a direct result and appellant had a 20 percent permanent impairment. Dr. Levi advised that appellant could work in a reduced capacity with limitations as to standing, climbing, squatting, kneeling and heavy carrying.

By decision dated January 28, 2004, the Office hearing representative affirmed the September 18, 2003 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act 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 the Act, that the claim was filed within the applicable time limitations of the Act, 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.”³ These are the essential

² No matter pertaining to a schedule award is before the Board on the present appeal.

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁴

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 a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors identified by the claimant.⁵

ANALYSIS

Appellant alleged that he developed a bilateral knee condition as a result of performing his preservation servicer duties, which consisted of climbing ladders, kneeling and bending.

In support of his claim, appellant submitted several reports from his treating physician Dr. Levi. In his August 13, 2002 report, Dr. Levi determined that appellant had advanced DJD with complete collapse and recommended surgery which was performed on September 25, 2002. However, he did not offer any opinion regarding the cause of appellant's condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.⁶ In his October 1, 2002 report, Dr. Levi diagnosed hemarthrosis of the lower leg and indicated that appellant's condition was caused by his employment and explained that his previous injury was worsened by appellant's job duties of climbing up and down ladders. However, he did not provide an explanation of how factors of appellant's employment caused or contributed to his preexisting condition. For example, Dr. Levi offered no explanation with regard to distinguishing appellant's preexisting degenerative problems from his employment activities. Furthermore, in his January 14, 2003 report, Dr. Levi indicated that he suspected that appellant's activities at work may have exacerbated his knee problems, but that they were not the cause. Medical opinions that are speculative or equivocal in character have little probative value.⁷ Furthermore, in his October 2, 2003 report, Dr. Levi explained that appellant's condition was probably more directly related to

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

⁶ *Jaja K. Asaramo*, 55 ECAB ____ (Docket No. 03-1327, issued January 5, 2004).

⁷ *Kathy A. Kelley*, 55 ECAB ____ (Docket No. 03-1660, issued January 5, 2004).

his chondrocalcinosis and the degenerative process than his 1998 injury.⁸ He did not address how the claimed employment factors may have caused or aggravated the claimed condition.

Moreover, the report of Dr. Stojic, the Office referral physician, found that appellant's employment did not cause or aggravate his claimed condition. Dr. Stojic provided a rationalized opinion in which he reviewed the record and noted findings on examination. He indicated that, while appellant's work-related activities of squatting, kneeling and frequently climbing ladders could create problems with the knees, appellant had performed this type of work for almost 16 years before seeking medical advice. Dr. Stojic explained that the cumulative trauma would become evident, at most, a few years after such work activities. Instead, he opined that he condition reflected a natural progression of his preexisting condition and advised that appellant continue working in his light-duty capacity. Dr. Stojic reported no basis on which to conclude that appellant's employment activities caused or aggravated his claimed condition. Although appellant asserted that he only examined him for five minutes, Dr. Stojic's report indicates that he conducted a full review of the record, reported extensive findings on examination and provided reasons for his conclusions.

Because the medical evidence submitted does not establish a causal relationship between appellant's claimed condition and factors of his employment, he has not met his burden of proof in establishing his claim.

CONCLUSION

Under the circumstances described above, the Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

⁸ The Board notes that matters pertaining to the 1998 injury are not before the Board on the present appeal.

ORDER

IT IS HEREBY ORDERED THAT the January 28, 2004 decision of the Office of Workers' Compensation Programs is affirmed.⁹

Issued: October 25, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ The Board notes that appellant's appeal to the Board was accompanied by new evidence. The Board's jurisdiction on appeal is limited to a review of the evidence which was in the case record before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). Therefore, the Board is precluded from reviewing this evidence.