United States Department of Labor
Employees' Compensation Appeals Board

K.C., Appellant	)	
and	)	**Docket No. 09-1860**
	)	**Issued: March 22, 2010**
U.S. POSTAL SERVICE, NORTHLAND STATION, Columbus, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 14, 2009 appellant filed a timely appeal from a June 23, 2009 decision of the Office of Workers' Compensation Programs denying his claim for a left knee condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant sustained a left knee condition in the performance of duty.

FACTUAL HISTORY

On December 13, 2006 appellant, then a 42-year-old mail carrier, filed an occupational disease claim alleging that he sustained an injury to his left knee caused by his job duties, including standing, lifting and walking. He first became aware of his condition on May 10, 2006. Appellant stated that he had been off work since January 20, 2006. He

underwent back surgery on March 20, 2006.[1] On September 25, 2006 appellant underwent a total left knee replacement. He contended that his accepted back condition also contributed to his left knee condition.

In an October 27, 2006 report, Dr. Scott J. Van Steyn, an attending Board-certified orthopedic surgeon, stated that he had treated appellant for numerous musculoskeletal conditions since August 1998, including bilateral osteoarthrosis of the knees and lumbar spine with resulting degenerative disc disease and spinal stenosis. Despite these chronic conditions, he continued to work as a mail carrier. In March 2006, appellant underwent a spinal fusion and decompression at L5-S1 due to his lumbar spine osteoarthritis and spinal stenosis. As a result of his arthritic conditions, he underwent a total left knee replacement in September 2006. Dr. Van Steyn opined that appellant's 22-year history as a mail carrier contributed to the progressive deterioration of his knees and back and the development of his arthritis.

By letter dated February 20, 2007, the Office asked Dr. Van Steyn to provide a detailed medical report identifying the specific employment activities that contributed to appellant's left knee arthritis and a rationalized medical opinion as to whether his left knee condition was caused or aggravated by his employment.

In a March 12, 2007 report, Dr. Van Steyn stated that appellant had experienced pain, swelling and stiffness in his knees for the past five years. He opined that appellant's daily job requirements contributed to the advanced osteoarthritis in both knees, requiring total knee replacement surgery.

By decision dated March 19, 2007, the Office denied appellant's claim, finding that the evidence did not establish that his left knee condition was causally related to factors of his federal employment.

On April 3, 2007 appellant requested reconsideration. In a May 16, 2007 report, Dr. Van Steyn noted that appellant's job required a significant amount of walking, bending, lifting, stair climbing and squatting. These repetitive nature and duration of these activities during his workday put significant force on his knees and accelerated the progression of arthritis in his knees. Due to the acceleration of appellant's arthritis, he had to undergo bilateral knee replacements.

In a July 31, 2007 report, Dr. James H. Rutherford, a Board-certified orthopedic surgeon and an Office referral physician, reviewed appellant's medical history and provided findings on physical examination. Appellant noted that he sustained a work-related right knee injury on November 22, 1999 when he tripped at a construction site where he was delivering mail. There was no history of work-related trauma to his left knee. Dr. Rutherford opined that appellant's left knee arthritis and surgery was not caused or aggravated by his work activities. He described

[1] Appellant has a separate claim accepted for aggravation of lumbar stenosis under OWCP File No. xxxxxx986. He was released to return to work as on September 27, 2006 but he did not return to work following his left knee surgery on September 25, 2006. Appellant had surgery in 1995 for a nonwork-related right knee condition and in 1998 following a motor vehicle accident in May 1998. He sustained a work-related injury to his right knee on November 22, 1999 that was accepted under OWCP File No. xxxxxx093.

the work activities as essentially medium type work activities. Dr. Rutherford stated that the 1999 traumatic work injury to appellant's right knee contributed to a permanent aggravation of his preexisting right knee arthritis leading to a total right knee replacement. In an addendum report dated August 30, 2007, he clarified that the progression of appellant's right knee arthritis resulting in surgery in 2007 was caused by the 1999 traumatic injury, not to his daily work activities. Dr. Rutherford stated that his daily work activities did not affect the degenerative conditions in either knee.

By decision dated September 21, 2007, the Office affirmed the March 19, 2007 decision.

On September 12, 2008 appellant requested reconsideration. In a July 28, 2008 report, Dr. Martin D. Fritzhand, a Board-certified urologist, reviewed the medical history and provided findings on physical examination. He noted that appellant had experienced left knee pain and discomfort since 1999, culminating in a total knee replacement. Dr. Fritzhand opined that there was a causal relationship between appellant's left knee condition and the inherent nature of his work activities, as well as an additional relationship to his right knee and low back injuries. He stated that appellant's more than 20 years as a mail carrier could easily account for his left knee arthritic changes. In addition, the ongoing pain and discomfort involving his right knee and low back resulted in a favoring of the left knee, putting additional stress on the left knee joint and further accelerating arthritic change.

By decision dated June 23 2009, the Office denied modification of the September 21, 2007 decision.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[2] Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[3]

[2] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[3] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Section 8123(a) of the Federal Employees' Compensation Act provides that "if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination."[4]

ANALYSIS

Dr. Van Steyn stated that he had treated appellant for numerous musculoskeletal conditions since August 1998, including bilateral osteoarthrosis of the knees and lumbar spine with resulting degenerative disc disease and spinal stenosis. Despite these chronic conditions, appellant continued to work as a mail carrier. In March 2006, he underwent a spinal fusion and decompression at L5-S1 due to his lumbar spine osteoarthritis and spinal stenosis. As a result of his arthritic conditions, appellant underwent a total left knee replacement in September 2006. Dr. Van Steyn opined that appellant's 22-year history as a mail carrier contributed to the progressive deterioration of his knees and back and the development of his arthritis. He stated that appellant had experienced pain, swelling and stiffness in his knees for the past five years. Dr. Van Steyn opined that appellant's daily job requirements contributed to the advanced osteoarthritis in both knees, requiring knee replacements. He noted that appellant's job required a significant amount of walking, bending, lifting, stair climbing and squatting. These repetitive nature and duration of these activities during his workday put significant force on his knees and accelerated the progression of arthritis in his knees. Due to the acceleration of his arthritis, he had to undergo bilateral knee replacements.

Dr. Rutherford reviewed appellant's medical history and provided findings on physical examination. He noted a work-related right knee injury on November 22, 1999 when appellant tripped at a construction site where he was delivering mail. There was no history of work-related trauma to his left knee. Dr. Rutherford opined that appellant's left knee arthritis and surgery was not caused or aggravated by his work activities. He described the work activities as essentially medium type work activities. Dr. Rutherford opined that the 1999 traumatic work injury to appellant's right knee contributed to a permanent aggravation of his preexisting right knee arthritis leading to a total right knee replacement. In an addendum report, Dr. Rutherford clarified that the progression of appellant's right knee arthritis, resulting in surgery in 2007, was caused by the 1999 traumatic injury, not to his daily work activities. He stated that appellant's daily work activities did not affect the degenerative conditions in either knee.

The Board finds that this case is not in posture for a decision. There is a conflict in the medical opinion evidence between Dr. Van Steyn and Dr. Rutherford, both Board-certified orthopedic surgeons, as to whether appellant's left knee condition was causally related to his work activities, necessitating referral to a referee physician.[5] On remand, of the case, the Office

[4] 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

[5] The Board notes that Dr. Fritzhand's opinion regarding causal relationship is of diminished probative value as he is a Board-certified urologist, not a specialist in a medical discipline involving a musculoskeletal condition, such as orthopedic medicine. *See Mary S. Brock*, 40 ECAB 461 (1989).

should refer appellant to an appropriate Board-certified specialist, for an examination and evaluation to resolve the conflict in the medical opinion evidence.

CONCLUSION

The Board finds that this case is not in posture for a decision. On remand, the Office should refer appellant to an appropriate medical specialist for an examination and evaluation to resolve the conflict in the medical opinion evidence regarding his left knee condition. After such further development as the Office deems necessary, it should issue an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 23, 2009 is set aside and the case is remanded for further action consistent with this decision.

Issued: March 22, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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