United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 10-238**
	)	**Issued: October 8, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 2, 2009 appellant filed a timely appeal from a September 25, 2009 merit decision of the Office of Workers' Compensation Programs, which affirmed the February 24, 2009 denial of the claim. Pursuant to 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 established that her bilateral knee degenerative joint disease is causally related to her federal employment duties.

FACTUAL HISTORY

On November 24, 2008 appellant, a 55-year-old mail processor, filed an occupational disease claim (Form CA-2) for "post[-]traumatic degenerative arthritis" in her knees.[1] She attributed her condition to employment tasks involving bending, walking, stooping, pushing heavy equipment and working on "hard" concrete floors, after a November 7, 1996 left knee injury. Appellant noted that she first became aware of her bilateral knee condition and that it was caused by her federal employment on June 1, 1999.

Appellant submitted notes bearing illegible signatures, a collection of unsigned treatment notes and notes signed by a physical therapist.

In a January 9, 1997 note, Dr. Walter L. Everett, Jr., a Board-certified orthopedic surgeon, diagnosed patellar tendinitis of the left knee.

On June 3, 2003 Dr. Nasser Barkhordari, a radiologist, reported that x-rays of appellant's right knee, were essentially a normal study, but revealed "early changes of arthritis."

On January 11, 2006 Dr. Victor C. Gordon, an orthopedist, carefully reviewed appellant's employment history, presented findings on examination and, relative to appellant's alleged lower extremity conditions, diagnosed degenerative joint disease in appellant's knees, chondromalacia patellae, gait dysfunction with chronic pain syndrome and "reactive depression." He opined: "there appears to be a causal relationship between the vocational activities and the current findings of multiple areas of physical impairment."

Appellant submitted a January 19, 2006 note in which Dr. Steven Lewin, an orthopedist, diagnosed "degenerative changes" of the left knee, based upon x-ray studies.

On February 9, 2006 Dr. David H. Berns, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of appellant's left knee revealed tri-compartmental "arthritic disease" associated with "a small to moderate" sized joint effusion. In a subsequent report, dated February 13, 2006, Dr. Berns reported that an MRI scan of appellant's right knee revealed tricompartmental arthritic changes, small joint effusion with a popliteal cyst and degenerative changes of the menisci without a definitive tear.

Appellant submitted an October 2, 2006 report in which Dr. Gordon noted that appellant's knee arthralgia had increased, with episodic swelling, buckling and occasional locking. He diagnosed degenerative joint disease of the knees, chondromalacia patellae and gait dysfunction with chronic pain syndrome.

[1] Appellant has additional workers' compensation claims. Claim file number xxxxxx957 was accepted for a left knee contusion. Claim file number xxxxxx749 was accepted for left knee strain. Under claim file number xxxxxx059 appellant claimed work-related stress and anxiety. This claim was denied. Claim file number xxxxxx055 was accepted for lumbar strain, though later denied. Claim file number xxxxxx085 concerned a traumatic left shoulder injury. Claim file number xxxxxx698 concerned a traumatic injury claim for bilateral chronic arm pain, for which she was placed on the periodic rolls. Claim file number xxxxxx463 concerned a left arm condition.

In an October 17, 2007 note, Dr. Thomas Bryan, a Board-certified internist, related that he had examined appellant on that day for left-knee osteoarthritis. He states that employment tasks involving bending caused appellant's knee to "pop out of place." Dr. Bryan noted that appellant had osteoarthritis, but that this condition "did not come naturally [but] was initiated by a work injury." He did not relate knowledge of appellant's employment history.

Appellant thereafter submitted a series of reports from Dr. Jeffery J. Carroll, an orthopedist, dated January 28, February 7 and 21, March 6, May 19 and 30, and October 6, 2008 wherein he diagnosed right-knee degenerative joint disease, bilateral degenerative joint disease and obesity. Dr. Caroll opined that it is "certainly possible that post[-]traumatic degenerative disc disease could have occurred because of her injury described in 1996."

In a June 17, 2008 note, Dr. Thomas Mays, Board-certified in family medicine, diagnosed knee pain. On September 18, 2008 he diagnosed degenerative joint disease and gait disease.

On November 6, 2008 Dr. Carroll stated that appellant's left knee condition was "a direct result of a previous knee injury, which occurred at work described in 1996." In a subsequent note, dated November 24, 2008, he reviewed appellant's history of injury and course of treatment. Dr. Carroll stated that appellant's left knee pain began 12 years ago after a work injury when she "apparently" strained the knee during a twisting type episode. He noted that appellant had progressively worsening knee pain since the injury. Dr. Carroll also opined that her left knee problems have increased due to heavy lifting, pushing, pulling, kneeling and squatting. Regarding appellant's right knee, he stated that the right knee was injured at work on June 1, 1999. Dr. Carroll noted that prior evaluation reveals she does have significant knee degenerative joint disease, as documented by both physical examination and x-ray evaluation. Appellant recently had a right total knee arthroplasty and is doing quite well postoperatively regarding her right knee. However, right knee symptoms have been aggravated by left knee problems. Finally Dr. Carroll explained that appellant's left knee was now significantly symptomatic and she would require left knee arthroplasty as well. He concluded: "It is reasonable to assume that her left knee arthritis is directly related to her knee injury approximately 12 years ago, as well as the right knee injury in 1999. [Appellant's] left knee symptoms are getting worse due to recent right total knee."

Appellant submitted a narrative report, dated January 5, 2009, in which Dr. Mays noted that appellant's records had been lost, but that he would summarize appellant's past medical history based upon his recollection. Dr. Mays stated that she was first seen for left knee pain in March 1997 and that her work duties were the cause of her knee pain. He stated that appellant's knee pain was initially diagnosed as patellar tendinitis, but over the course of years developed into degenerative joint disease. In 2006, appellant's right knee condition worsened and she underwent right knee replacement.

Seeking a supplemental opinion concerning appellant's condition, by letter dated January 21, 2009, the Office forwarded a statement of accepted facts and a list of questions to Dr. Carroll. The Office advised Dr. Carroll that his November 24, 2008 note was insufficient because its factual history and underlying medical rational were unclear.

The statement of accepted facts noted that appellant was employed as a mail processor beginning in 1985 performing duties including lifting up to 70 pounds a day, pushing/ walking/standing eight hours per day and repeat bending four hours a day. On January 4, 1995 a mail tray fell on appellant's left leg/knee. This claim was accepted for left knee contusion. On November 17, 1996 appellant bent down to retrieve mail from a low shelf and felt a "pop" in her left knee. This claim was accepted for left knee strain. In July 1999 appellant sustained upper extremity injuries. She returned to restricted duty on July 20, 1999 and last worked on August 4, 2000. Appellant sustained two nonwork-related right knee injuries in March and July 2003, getting off a bus and walking down stairs.

In a February 9, 2009 narrative report, Dr. Carroll states that his records regarding appellant began on February 7, 2008. Regarding the left knee, he stated that appellant's condition, namely arthritis of the left knee:

> "[W]as significantly aggravated by the work-related injury but was not caused by the injury. Also because of the physical nature of [appellant's] work, it is likely that the degenerative condition was accelerated. Her arthritis symptoms were likely precipitated by the work-related injury. It is difficult to discern whether this was a temporary aggravation or permanent aggravation because I did not evaluate her at the time of her initial injury. However, it is reasonable to assume that the left knee injury was permanently aggravated by the injury in light of [appellant's] condition and her medical history. I believe that the two left knee injuries and the general job duties could be reasonably assumed to significantly aggravate her left knee. That is, there is a causal relationship between the injury and the job[-]related duties. There was also a precipitation component and a likely permanent aggravation component. These opinions are based on your definitions regarding causal relationship and permanent aggravations."

Regarding her right knee, Dr. Carroll stated that appellant had related that there was an injury that occurred at work. He thereafter concluded: "my opinion regarding her right knee is the same as that of her left knee regarding causal relationship, accelerations, precipitation, aggravations, temporary aggravations and permanent aggravation." "In summary, regarding your questions … regarding injuries of [January 4, 1995] and [November 7, 1996,] the injuries likely aggravated her possibly preexisting knee degenerative disease. Again with an acceleration, precipitation and permanent aggravation component per your definition."

By decision dated February 24, 2009, the Office accepted the employment factors appellant deemed responsible for her condition, but denied the claim because the evidence of record did not demonstrate that the established employment factors caused the diagnosed bilateral degenerative knee conditions.

Appellant disagreed and on March 2, 2009, through her attorney, requested an oral hearing.

At a hearing, conducted July 21, 2009, at which appellant and her attorney were present, appellant offered testimony concerning her condition, history of injury, course of treatment, her work duties and the other workers' compensation claims she has filed.

By decision dated September 25, 2009, the Office denied the claim because the evidence of record did not demonstrate that appellant's degenerative joint disease of the knees was causally related to factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of her claim by the weight of the evidence,[3] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[4] As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[5] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (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.[7]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion 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,

[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

[6] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

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

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.[8]

ANALYSIS

The Office accepted the employment factors appellant deemed responsible for her condition. Appellant was employed as a mail processor as of 1985 performing duties requires lifting up to 70 pounds a day, pushing/walking/standing eight hours a day, and repeat bending four hours a day. On January 3, 1995 appellant sustained a left knee contusion when a mail tray fell on her left knee, and on November 17, 1996 appellant's left knee "popped" while she was retrieving mail from a low shelf, causing a left knee strain. Appellant stopped work on August 4, 2000 due to upper extremity injuries. Appellant's burden is to demonstrate that these established employment factors caused the alleged bilateral degenerative arthritis of the knees. Causal relationship is a medical issue that can only be proven by probative medical opinion evidence. The medical evidence of record lacks the requisite reasoning to establish causal relationship and, consequently, the Board finds appellant has not established that her currently diagnosed bilateral knee conditions were causally related to her federal employment.

The Board notes initially that the report and notes bearing illegible signatures, the collection of unsigned treatment notes, and the notes signed by a physical therapist are not competent medical evidence and have no evidentiary value because they cannot be identified as having been prepared by a "physician" as defined by the Act.[9] Furthermore, because healthcare providers such as nurses, acupuncturists, physician assistants and physical therapists are not considered "physicians" under the Act, their reports and opinions do not constitute competent medical evidence.[10] Thus, this evidence does not establish a causal relationship between the established employment factors and appellant's alleged condition.

The reports and notes signed by Drs. Barkhordari, Berns, Everett and Lewin, have diminished probative value on the issue of causal relationship because they provide diagnoses of appellant's bilateral degenerative knee conditions, based upon x-ray and MRI scan studies, but lack any opinion regarding the cause of the diagnosed conditions. Their reports do indicate, however, that appellant's condition worsened based upon radiologic studies between 2003 and 2006.

While Dr. Gordon did provide a detailed report of appellant's employment history, diagnosed bilateral degenerative joint disease of the knees, chondromalacia patellae, gait dysfunction, and concluded that "there appears to be a causal relationship between the vocation activities and the current findings of multiple areas of physical impairment," he offered no medical rationale in support of his conclusion. He offered medical explanation of how the

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

[9] *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988) (reports not signed by a physician lack probative value)

[10] 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

employment activities appellant had not performed since at least August 2000, would have physiologically caused the conditions he diagnosed in 2006. Dr. Gordon's opinion is speculative at best and does not constitute rationalized medical evidence.

Dr. Bryan stated that employment tasks involving bending caused appellant's left knee to "pop out of place" and that appellant's osteoarthritis "did not come naturally and was initiated by a work injury." While it is accepted that appellant sustained a knee strain when her left knee popped out of place due to a work injury in 1997, Dr. Bryan's report did not explain how appellant's bilateral degenerative knee conditions for which he treated appellant in 2007 would in fact have been caused by the 1996 left knee strain. He proffered no explanation substantiating his conclusion and, consequently, his opinion is not sufficiently rationalized. Thus, this evidence does not establish the requisite causal relationship required to accept appellant's claim.

Dr. Mays diagnosed degenerative joint and gait disease in 2008, and he explained that appellant had been first examined in 1997 for left knee pain and that her work duties were the cause of her knee pain. However, he offered no medical rationale explaining the relationship between appellant's earlier left knee injuries and her subsequent bilateral degenerative knee conditions.

Dr. Carroll initially stated that appellant's knee condition was "a direct result of a previous knee injury, which occurred at work described in 1996." He did not explain the basis of this conclusion or support it with medical rationale.

Furthermore, Dr. Carroll's subsequent reasoning is not sufficiently rationalized. He stated that it is "*certainly possible* that posttraumatic degenerative disease *could have* occurred because of her injury described in 1996." (Emphasis added.) Dr. Carroll also stated that it is "*reasonable to assume*" that appellant's left knee arthritis is "directly related to her knee injury approximately twelve years ago, as well as the right knee injury in 1999." (Emphasis added.) However, absent from this evidence is any semblance of rationale substantiating these conclusions. Additionally, use of the words "*could have*," "*certainly possible*," and "*reasonable to assume*" indicate that Dr. Carroll's opinion is, at best, speculative.[11] (Emphasis added.) His early reports and notes have little probative value,[12] and do not establish the required causal relationship.

Pursuant to requirements prescribed by its procedural manual,[13] the Office notified appellant that additional evidence was required to accept her claim for compensation. Further, consistent with the responsibilities defined in its procedural manual, the Office sought a supplemental opinion from Dr. Carroll.[14]

[11] *Ricky S. Storms*, 52 ECAB 349 (2001); *Leslie C. Moore*, 52 ECAB 132 (2000).

[12] *See Leonard J. O Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

[13] *See*, Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800 (March 2005).

[14] *Id.* at Chapter 2.805.5 (March 2005).

Responding to the Office's January 21, 2009 letter, Dr. Carroll furnished a supplemental report, dated February 9, 2009. In lieu of sound medical rational and certainty, Dr. Carroll again shrouded his opinion in a speculative stream of "likely's," "possibly's," and "reasonably assume." Thus, for example, while Dr. Carroll states that it is "*likely*" that the "physical nature of appellant's work" "accelerated" appellant's "degenerative condition" and that appellant's duties "*could be reasonably assumed* to significantly aggravate her left knee," (Emphasis added) such speculative statements lack the requisite medical rational to establish appellant's claim.[15]

Even when directly responding to specific issues the Office raised in its January 21, 2009 letter, Dr. Carroll chose speculation over sound medical reasoning, stating, for example, that appellant's January 4, 1995 and November 7, 1996 injuries "*likely* aggravated her *possibly* preexisting knee degenerative disease." (Emphasis added.) Long on speculation, his reports lacked actual medical rational explaining the relationship of appellant's employment duties, prior to August 2000, to her conditions which he diagnosed in 2008.

Because appellant has not submitted medical opinion evidence containing a reasoned discussion of causal relationship, one that soundly explains how the established employment factors caused or aggravated a firmly diagnosed medical condition, the Board finds appellant has not established the essential element of causal relationship.

CONCLUSION

The Board finds appellant has not established she sustained bilateral degenerative knee conditions causally related to factors of her federal employment.

[15] *See Leonard J. O Keefe*, *supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 8, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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