

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

J.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Buckhannon, WV, Employer**

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**Docket No. 12-727
Issued: August 10, 2012**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 14, 2012 appellant, through his attorney, filed a timely appeal from a January 13, 2012 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On January 19, 2011 appellant, then a 56-year-old city carrier, filed an occupational disease claim alleging that he sustained right knee pain. He became aware of his condition and

¹ 5 U.S.C. § 8101 *et seq.*

its relationship to his federal employment on January 6, 2011. Appellant stopped work on January 15, 2011. He was approved for disability retirement effective October 17, 2011.

In a January 18, 2011 report, Dr. Lucas J. Pavlovich, Jr., a Board-certified orthopedic surgeon, related that appellant was unable to perform his duties as a mail carrier due to right knee pain.² On examination, he observed right medial joint line tenderness and limited range of motion (ROM). Dr. Pavlovich diagnosed right internal knee derangement and degenerative changes. In a January 18, 2011 duty status report, he advised appellant to refrain from full-time work.³

Appellant detailed in a January 31, 2011 statement that he walked approximately 10 miles a day on the job. He added that he had preexisting right knee arthritis. In or around May 2010, appellant began to experience right knee pain, which was exacerbated in the following months due to increased mail delivery. By January 16, 2011, he could not walk on his right leg.

OWCP informed appellant in a February 17, 2011 letter that additional information was needed to establish his claim. It gave him 30 days to submit a medical report from a physician explaining how work factors caused or aggravated a right knee condition.

In a January 6, 2011 report, Dr. Pavlovich noted that appellant, who was a mail carrier for 13 years, complained of worsening right knee pain that was not attributable to a specific trauma. On examination, he observed bilateral medial joint space pain and tenderness. Dr. Pavlovich diagnosed bilateral knee osteoarthritis, pointing out that the right knee was more symptomatic.

By decision dated April 25, 2011, OWCP denied appellant's claim, finding the medical evidence insufficient to establish that the accepted employment activity caused or aggravated the right knee condition.

Appellant requested reconsideration on October 14, 2011 and submitted new evidence. In a June 7, 2011 report, Dr. Pavlovich reiterated appellant's account that his right knee pain was due to increased employment activity and not a specific traumatic event. On examination, he observed medial joint space tenderness and effusion. Dr. Pavlovich diagnosed internal knee derangement.

In a July 19, 2011 report, Dr. Pavlovich pointed out that appellant previously sustained internal left knee derangement. He explained that the right knee condition "may have been aggravated by ... favoring [the right] leg [with respect to the] left knee injury."⁴ Dr. Pavlovich indicated in a November 8, 2011 report that appellant underwent left knee arthroscopic surgery.

On January 13, 2012 OWCP denied modification of the April 25, 2011 decision.

² Dr. Pavlovich originally inserted January 18, 2010 as the date of the report. He provided a second copy that corrected this error.

³ The case record also contains an April 4, 2011 duty status report. The signature, however, is illegible.

⁴ Dr. Pavlovich indicated that appellant filed a claim for the left knee. This is not presently before the Board.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA, that the claim was timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁷ To establish fact of injury in an occupational disease claim, 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.⁸

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.⁹

ANALYSIS

The case record supports that appellant walked approximately 10 miles per workday while delivering mail and that Dr. Pavlovich diagnosed bilateral knee osteoarthritis and internal knee derangement. The Board finds that the medical evidence of record is not sufficient to establish that the diagnosed condition was causally related to the accepted work activity.

In a January 6, 2011 report, Dr. Pavlovich stated that appellant was a mail carrier and that he experienced right knee pain that could not be attributed to a specific traumatic incident. Following a physical examination, he diagnosed bilateral knee osteoarthritis, noting that the right knee was more symptomatic. In January 18 and June 7, 2011 reports, Dr. Pavlovich added a

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *See S.P.*, 59 ECAB 184, 188 (2007).

⁸ *See R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁹ *I.J.*, 59 ECAB 408 (2008); *Woodhams*, *supra* note 6.

diagnosis of right internal knee derangement. In a subsequent July 19, 2011 report, he pointed out that appellant previously sustained internal left knee derangement, which led to arthroscopic surgery, and posited that the right knee condition may have been the result of overcompensation. Dr. Pavlovich's opinion did not address whether extensive walking and mail delivery in the performance of duty, as described by appellant, caused or contributed to a diagnosed medical condition.¹⁰ Furthermore, he did not offer a pathophysiological explanation regarding causal relationship.¹¹ The need for such rationale is important in this case because appellant indicated that he had preexisting right knee arthritis.¹² In the absence of rationalized medical opinion evidence, Dr. Pavlovich failed to meet his burden of proof.¹³

Counsel contends on appeal that the January 13, 2012 decision is contrary to fact and law. The Board has already addressed the deficiencies of the 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 did not establish that he sustained an occupational disease in the performance of duty.

¹⁰ See *John W. Montoya*, 54 ECAB 306, 309 (2003). See also *M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

¹¹ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

¹² See *W.S.*, Docket No. 10-1538 (issued April 1, 2011).

¹³ The Board notes that the April 4, 2011 duty status report cannot constitute competent medical evidence because one cannot determine whether the illegible signature belonged to a qualified physician. *R.M.*, 59 ECAB 690, 693 (2008).

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2012 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 10, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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