

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

W.W., Appellant)

and)

**DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, FEDERAL CORRECTIONAL
COMPLEX, Victorville, CA, Employer**)

**Docket No. 11-1758
Issued: February 27, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 26, 2011 appellant filed a timely appeal from the July 7, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his bilateral knee claim. 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 this case.

ISSUE

The issue is whether appellant's bilateral knee condition is causally related to his federal employment.

FACTUAL HISTORY

On March 18, 2005 appellant, a 55-year-old cook foreman, filed an occupational disease claim alleging that his food service duties, including being on his feet all day on a concrete floor

¹ 5 U.S.C. § 8101 *et seq.*

and pushing carts weighing up to 500 pounds, caused a left foot injury. He was last exposed to the conditions alleged to have caused his injury on January 3, 2005.

OWCP accepted appellant's claim for a temporary aggravation of degenerative joint disease of the first metatarsal phalangeal joint of the left foot. In 2005 appellant underwent a cheilectomy of the affected joint with debridement and chondroplasty. At the end of the year he retired. On December 19, 2006 appellant received a schedule award for a seven percent impairment of his left foot.

In 2009 appellant notified OWCP that he was having problems with his knees. It advised him to submit a medical report from his physician providing a rationalized opinion on the causal relationship, if any, between the work injury and the medical condition for which he was now being treated. OWCP also asked appellant to submit a detailed history of his knee problems and the reason he believed the condition related to the accepted left foot injury.

Appellant explained that he worked for the employing establishment for about 22 years and that standing, lifting, pulling and pushing contributed to the deterioration of his feet and knees. He presently worked as a cook for a new employer with the same duties he performed for the Bureau of Prisons and with the same repetitive tasks.

X-rays in April 2006 showed no significant abnormality but were compatible with minimal bilateral knee osteoarthritis. Appellant was advised that the type of arthritis he had was minimal and progressed very slowly. A magnetic resonance imaging scan of both knees in 2007 showed a mild thinning and irregularity of the patellar articular cartilage on the right. The impression, however, was a normal study.

On October 9, 2009 Dr. Cliff Jong-Ho Hwang, a Board-certified internist, reported as follows: "Patient has bilateral knee osteoarthritis contributed by prolonged standing, pushing, and pulling heavy materials at work."

On November 10, 2009 Dr. Paul C. Liu, a Board-certified orthopedic surgeon, explained that he treated appellant for chronic bilateral anterior knee pain and painful arthritis of the right knee patellofemoral compartment. He stated that appellant's knee pain dated to the mid 1990s with radiation to his legs. Dr. Liu concluded: "Standing, pushing [and] pulling contributes to his knee and leg pains as he works in food service in a detention center."

An OWCP medical adviser was asked to address whether OWCP should expand its acceptance of appellant's claim to include his bilateral knee condition. The medical adviser found that it was not medically established that the bilateral knee arthritis arose out of the accepted mechanism of injury.

In a decision dated January 14, 2010, OWCP denied appellant's bilateral knee claim. It found that Dr. Hwang offered no rationale beyond his stated conclusion that standing, pushing and pulling at work caused appellant's bilateral knee condition. Further, the medical evidence did not attribute appellant's bilateral knee condition to the accepted left foot injury.

On September 16, 2010 Dr. Liu noted that appellant had bilateral knee pain since 1999, after 15 years of working at a job that entailed kneeling and squatting. X-rays and an imaging

study showed bilateral arthritis in the medial and patellofemoral compartment. Dr. Liu addressed causal relationship:

“I write to state also that the knee problems that [appellant] currently experiences are related to the type of work that he used to do in the food service line of work, which he did from 1984 to 2005. [Appellant] also went back to work in the food service in the current workplace in 2006. The work that he used to do has a causative effect on his current knee symptoms.”

In a decision dated December 10, 2010, OWCP reviewed the merits of appellant’s claim and denied modification of its prior decision. It found that Dr. Liu did not adequately address the consequential injury issue. “The claimant did not have a knee condition when he developed the left foot condition in March 1997 and without any specific injury to the knee and only an opinion concerning weight bearing activities does not lend itself to support a consequential injury connection.” Because Dr. Liu did not provide a rationalized opinion concerning a consequential injury but instead supported that a prolonged period of standing and pushing heavy carts was the cause of appellant’s bilateral knee condition, OWCP found that he did not meet his burden of proof.

Dr. Guirguis S. Hanna, a consulting specialist in occupational medicine, noted that appellant’s physical examination was unremarkable except for bilateral patellofemoral crepitus. X-rays obtained on November 16, 2010 showed very mild osteoarthritic changes bilaterally, left slightly worse. Dr. Hanna offered his opinion on causal relationship:

“Based on patient’s history, review of his job description, my physical examination and review of imaging study, in my medical opinion, there is causal relationship between the job activities and his knee condition. Reviewing medical literature indicates that there is insufficient evidence between knee osteoarthritis and heavy lifting, standing, and walking. Nonetheless, there is some evidence for osteoarthritis development and occupational risk factors combining the squatting and kneeling with heavy lifting and climbing.”

Dr. Hanna noted that appellant was currently working his regular job duty and could continue to do so.

In a decision dated July 7, 2011, OWCP reviewed the merits of appellant’s claim and denied modification of its prior decisions. It found that Dr. Hanna’s opinion was insufficient to establish a causal relationship between the conditions diagnosed and the accepted left foot condition. OWCP noted that appellant clearly had a new injury that was not due to the effects of the left foot condition as he left the employment of his agency on December 31, 2005 and had been working as a cook for a different employer.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² An employee seeking benefits under FECA

² 5 U.S.C. § 8102(a).

has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.³

Causal relationship is a medical issue,⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty,⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁷

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent, intervening cause attributable to the employee's own intentional conduct.⁸

ANALYSIS

When appellant originally notified OWCP that he was having problems with his knees, he did not attribute those problems to his left foot injury. He explained that he worked for the employing establishment for approximately 22 years and that standing, lifting, pulling and pushing contributed to the deterioration of his feet and knees. Appellant's claim, therefore, is not one of consequential injury. It is a claim that his bilateral knee condition is causally related to his food service duties as a cook foreman for the Federal Government.

Appellant has the burden to establish the element of causal relationship. He submitted several medical opinions to support his claim. Dr. Hwang was of the opinion that prolonged standing, pushing and pulling heavy materials at work contributed to appellant's bilateral knee osteoarthritis. He offered no medical rationale, however, explaining the basis for this conclusion. Dr. Hwang did not explain how prolonged standing or pushing and pulling heavy materials contributed to the disease. According to him, medical literature indicated there was insufficient evidence between knee osteoarthritis and standing, walking or heavy lifting.

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ *John R. Knox*, 42 ECAB 193 (1990); *Lee A. Holle*, 7 ECAB 448 (1955).

Dr. Hwang did not provide a clear medical explanation of how standing, pushing and pulling contributed to the cause or progression of the bilateral knee osteoarthritis. Medical conclusions unsupported by rationale are of diminished probative value.⁹ Further, having offered this opinion, Dr. Hwang did not make clear whether he was referring to appellant's work with the Federal Government or his subsequent work performing the same duties for a private employer.

Dr. Liu stated that appellant's knee pain dated to the mid 1990s, and that standing, pushing and pulling contributed to his knee and leg pain "as he works in food service in a detention center." This opinion lacks adequate medical rationale and is of little probative value. Dr. Liu expressed the opinion that the knee problems appellant currently experienced were related to the type of work he used to do in food service from 1984 to 2005. He stated that the work appellant used to do had a causative effect on his current knee symptoms, but he did not explain how. It is not enough simply to express a conclusion on causal relationship. Dr. Liu must support that opinion with sound medical reasoning. He did not provide sufficient medical rationale necessary to establish the element of causal relationship.

Dr. Hanna, a consulting specialist in occupational medicine, generally supported appellant's claim. After opining that there was a causal relationship between appellant's job activities and his knee condition, he observed that there was some evidence in the medical literature for osteoarthritis development and occupational risk factors combining squatting and kneeling with heavy lifting and climbing. Medical texts and excerpts from publications are of no evidentiary value in establishing causal relationship, as they are of general application and are not determinative of whether the specific condition claimed was causally related to the particular employment injury involved.¹⁰ Dr. Hanna did not fully address how such physical activities affect the development of osteoarthritis, or explain how he was able to distinguish appellant's very mild osteoarthritis from the natural progression of the disease. It is not enough to point out that there is a theoretical possibility of causal relationship. Dr. Hanna did not explain what evidence of record compelled him to conclude that the development of very mild knee osteoarthritis in a man of appellant's age was something more than a natural, common or coincidental development. His opinion lacks sufficient medical rationale.

The opinions offered by Drs. Hwang, Liu and Hanna do not provide sufficient medical rationale to establish the element of causal relationship. The Board finds that appellant has not met his burden of proof. The Board will affirm OWCP's July 7, 2011 decision denying his claim.

Appellant may submit new evidence or argument with a 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 has not met his burden to establish that his bilateral knee condition is causally related to his federal employment.

⁹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

¹⁰ *Gaetan F. Valenza*, 35 ECAB 763 (1984); *Kenneth S. Vansick*, 31 ECAB 1132 (1980).

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 27, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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