United States Department of Labor
Employees' Compensation Appeals Board

G.K., Appellant	)	
and	)	**Docket No. 12-193**
	)	**Issued: June 8, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Raleigh, NC, Employer	)	

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 November 2, 2011 appellant filed a timely appeal of the July 19, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her claim for an occupational disease. Pursuant to the Federal Employees' Compensation Act[1] (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 her burden of proof to establish that she developed an occupational disease in the performance of duty.

FACTUAL HISTORY

On February 3, 2011 appellant, then a 46 year-old part-time flexible mail handler, filed an occupational disease claim, alleging that she developed a bilateral knee condition as a result of standing on hard surfaces at work. She was unable to bend her knees because she had no

[1] 5 U.S.C. §§ 8101-8193.

cartilage in either knee. Appellant became aware of her condition in May 2009 and realized that it was causally related to her work duties on October 18, 2010. She did not stop work.[2]

On February 25, 2011 OWCP advised appellant of the evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the causal relationship of her claimed knee condition and specific work factors.

Appellant submitted a surgical report from Dr. Paul Codjoe, a Board-certified orthopedic surgeon, dated August 19, 2009. Dr. Codjoe performed a left knee arthroscopy, partial medial meniscectomy, synovectomy, chondroplasty of the femoral trochlea, medial femoral condyle and proximal medial tibial plateau. He diagnosed left knee pain, degenerative joint disease, synovitis and medial meniscus tear.

Appellant came under the treatment of Dr. Paul L. Burroughs, III, a Board-certified orthopedic surgeon, who noted treating her for bilateral knee pain from July 20, 2010 to January 28, 2011. Dr. Burroughs stated that she was overweight with several underlying medical conditions. He diagnosed bilateral knee degenerative joint disease, obesity, lupus and L1-2 degenerative disc disease. In a January 28, 2011 report, Dr. Burroughs noted that appellant had severe bilateral knee osteoarthritis and opined that she could not return to her prior job standing on concrete floors for up to 10 hours a day because it would be detrimental to someone who has a predisposition to osteoarthritis and would accelerate any arthritis present. He stated that he would put appellant on permanent work restrictions "although it is very difficult to say or define the causative factors." Appellant was treated by Dr. Derek P. Watson, a Board-certified orthopedist, on November 15, 2010 who diagnosed ongoing low back pain, bilateral hip pain and radiating symptoms into her lower extremity. Dr. Watson recommended a trial of epidural steroid injections, which he performed on December 15, 2010. A January 13, 2011 magnetic resonance imaging (MRI) scan of the left knee revealed severe tricompartmental osteoarthritis of the knee including peripheral osteophyte formation, advanced meniscal degeneration.

In an April 6, 2011 decision, OWCP denied appellant's claim on the grounds that the medical evidence did not demonstrate that the claimed medical condition was related to the established work-related events.

On April 19, 2011 appellant requested a review of the written record. She submitted a March 31, 2011 report from Dr. Burroughs who diagnosed severe bilateral knee osteoarthritis and opined that her condition was aggravated and probably accelerated by her activity levels at work. Dr. Burroughs further noted that appellant's other medical comorbidities accelerated her arthritis as well and she ultimately required bilateral knee replacements. He noted that she underwent a left total knee replacement and was scheduled for a right knee replacement. Dr. Burroughs indicated that ambulation on hard surfaces combined with coexisting medical morbidities aggravated at least if not caused her bilateral knee arthritis. He stated that this was "due to plain simply the mechanical effects."

[2] Appellant filed another occupational disease claim on November 9, 2011, claim number xxxxxx440. OWCP determined that this claim was a duplicate of the present claim number xxxxxx132 and doubled claim number xxxxxx440 into xxxxxx132.

In a decision dated June 16, 2011, an OWCP hearing representative vacated the April 6, 2011 decision and remanded the matter for further medical development. The hearing representative found that appellant submitted sufficient medical and factual evidence to require OWCP to further develop the medical evidence. OWCP subsequently referred her to Dr. William A. Somers, a Board-certified orthopedist.

In a July 14, 2011 report, Dr. Somers noted reviewing the records provided and performed a physical examination of appellant. He noted that her history was significant for lupus, cerebritis and seizures. Dr. Somers noted that appellant was status post bilateral knee arthroplasty. He noted full extension of both knees, the left knee had a well-healed surgical scar, no effusion, no synovial thickening with excellent patellofemoral and tibiofemoral mobility. With regard to the right knee, there was mild swelling and a trace effusion, good patellofemoral and tibiofemoral mobility and stability and mild patellofemoral clicking related to the prosthesis in both knees. Dr. Somers diagnosed degenerative arthritis of both knees, status post right and left total knee arthroplasty. He reviewed Dr. Burroughs report and noted that there was no evidence which supported that standing on a surface increased the risk of arthritis. Dr. Somers opined that there was no history of injury to appellant's knee and he found it difficult to relate her arthritis to just standing and walking. He noted that her disabling conditions were degenerative arthritis of the bilateral knees and status post total knee arthroplasty and opined that these conditions were not caused by her duties at work. However, Dr. Somers indicated that appellant's degenerative arthritis of the knees could be related to obesity, lupus or prednisone use.[3] He advised that because there was no specific injury it was difficult to state whether her work factors aggravated her nonwork conditions. Dr. Somers advised that appellant was totally disabled from all work until after her right knee replacement in July 2011when she could return to work with temporary restrictions for one year. He opined that she was a candidate for vocational rehabilitation. In a work capacity evaluation dated July 13, 2011, Dr. Somers returned appellant to work on July 21, 2011 with restrictions as specified.

In a decision dated July 19, 2011, OWCP denied appellant's claim on the grounds that medical evidence was insufficient to establish that her claimed conditions were caused by her employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.[4]

[3] Dr. Somers indicated that appellant took prednisone to treat her lupus.

[4] *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989). *See Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury).

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) 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 causal relationship is generally 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. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[5]

ANALYSIS

Appellant's duties as a part-time flexible mail handler included prolonged standing and walking. She was diagnosed with osteoarthritis of both knees. The Board finds that appellant did not submit sufficient medical evidence to establish that her osteoarthritis of both knees was caused or contributed to by specific employment factors or conditions. On February 25, 2011 OWCP advised her of the medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from a physician addressing how specific employment factors may have caused or aggravated her claimed knee conditions.

Appellant submitted reports from Dr. Burroughs. In a January 28, 2011 report, Dr. Burroughs noted that she had severe bilateral knee osteoarthritis and opined that she could not return to her prior job standing on concrete floors because it was detrimental to someone who had a predisposition to osteoarthritis and could accelerate any arthritis present. He advised that it was "very difficult to say or define the causative factors." On March 31, 2011 Dr. Burroughs diagnosed severe bilateral knee osteoarthritis and stated that ambulation on hard surfaces combined with coexisting medical morbidities aggravated at least if not caused her bilateral knee arthritis. He advised that this was "due to plain simply the mechanical effects." The Board finds that, although Dr. Burroughs supported causal relationship, he did not provide medical rationale explaining the basis for his conclusion regarding the causal relationship between appellant's bilateral knee osteoarthritis and work factors.[6] For example, Dr. Burroughs did not explain the process by which ambulating on hard surfaces would cause the diagnosed bilateral osteoarthritis of the knees and why such condition would not be due to any nonwork factors such as an obesity, her diagnosed lupus and the natural aging process. While he noted that it was due to the "mechanical effects," he did not explain the nature of how mechanical effects of particular

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

[6] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

work duties caused or aggravated appellant's condition. The need for rationale is particularly important where she has nonwork-related underlying conditions. Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant submitted an operative report from Dr. Codjoe dated August 19, 2009 who performed a left knee arthroscopy and diagnosed left knee pain, degenerative joint disease, synovitis and medial meniscus tear. Similarly, she was treated by Dr. Watson on November 15, 2010 who diagnosed ongoing low back pain, bilateral hip pain and radiating symptoms into her lower extremity. However, these reports are insufficient to establish the claim as the physicians did not specifically address whether appellant's employment activities caused or aggravated a diagnosed knee condition.[7] Other medical reports submitted by appellant, such as the MRI scan of the left knee did not provide an opinion on the causal relationship between her job and her diagnosed osteoarthritis of both knees.

OWCP referred appellant to Dr. Somers who diagnosed degenerative arthritis of the bilateral knees, status post total knee arthroplasty. Dr. Somers opined that her conditions were not caused by her work duties, rather they were degenerative in nature and related to the normal aging process and obesity. He opined that there was no history of a specific injury to appellant's knees and he found it difficult to relate her arthritis to just standing on hard surfaces and walking. Dr. Somers reviewed her work duties and noted that there was no literature which supported that standing on a hard surface increases the risk of arthritis; however, he indicated that obesity was linked to degenerative arthritis of the knees. He found no basis to attribute appellant's symptoms and conditions to her employment.

The Board finds that the medical evidence does not establish that appellant has osteoarthritis of the bilateral knees causally related to her employment. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.[8] Causal relationships must be established by rationalized medical opinion evidence. As noted the medical evidence is insufficient to establish appellant's claim. Consequently, OWCP, therefore, properly found that she did not meet her burden of proof in establishing his claim.

On appeal, appellant asserts that her bilateral knee condition was caused by prolonged standing on concrete in the workplace. As noted above, the medical evidence does not establish that she has osteoarthritis of the bilateral knees causally related to her employment. Reports from appellant's physicians failed to provide sufficient medical rationale explaining how appellant's bilateral osteoarthritis of the knees was causally related to her employment and why her condition was not related to nonwork-related conditions such as lupus and obesity.

[7] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[8] *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

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 did not meet her burden of proof to establish that her claimed conditions were causally related to her employment.

ORDER

IT IS HEREBY ORDERED THAT the July 19, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 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