

condition since returning to work following the original injury: “My right and left knees would swell and get sore. On August 13, 2009 it gotten so bad I could hardly walk. No medical treatment until August 21, 2009.” Appellant then described how the recurrence happened: “After working my route on August 13, 2009 I stop and left work early ... because of soreness and swelling. These conditions didn’t bother me until the original injuries of March 6, 2007 and February 22, 2008.” He explained that his left knee continued to bother him on and off, but on February 22, 2008 he reinjured both knees in another work accident.³ To support his claim, appellant submitted disability slips.

OWCP notified appellant that it was adjudicating his recurrence claim as a new traumatic injury claim. Appellant described how the injury occurred: “At the time of the injury, I was on my route #55 carrying mail (I am a letter carrier). While delivering mail, walking and climbing stairs both of my knees would swell become sore and stiff.” He advised that he had previous knee surgeries in 2007 and 2009.

On August 31, 2009 Dr. John A. Kline, the attending Board-certified orthopedic surgeon, reviewed appellant’s history of injury in 2007 and 2008. Appellant told him that he thought he was doing pretty well until he went back to work as a letter carrier. After a few days, he started to notice some problems, especially with the left knee. After a month, appellant found that, every time he walked his route, which was about eight miles a day, his left knee became swollen and painful at the end of the day. Dr. Kline described his findings on physical examination. X-rays obtained that date did not show any significant joint space narrowing or other evidence of bony injury or bony pathology.

On October 6, 2009 Dr. Palak Mehta, a Board-certified internist, noted a history of “reinjury on August 13, 2009.” He diagnosed bilateral knee swelling pain, and with a checkmark indicated that this condition was caused or aggravated by an unspecified employment activity.

In a March 11, 2010 decision, OWCP denied appellant’s claim for compensation. It found the evidence of record insufficient to show that the claimed incident occurred at the time, place and in the manner alleged. OWCP described the information on appellant’s claim as brief and vague: “The information received did not include a clear and detailed explanation of the circumstances surrounding your claim or specifically describe how your injury occurred.” It noted that appellant did not clearly describe whether the walking and stair climbing occurred in a period of one day or more, and he did not describe how much or for how long he walked and climbed stairs at work. OWCP cited the case of *Mary A. Sisneros*⁴ for the proposition that appellant must establish a factual basis for his claim by supporting his allegations with probative and reliable evidence.

OWCP also found that the medical evidence was insufficient to establish that appellant sustained a diagnosed medical condition in connection with the reported incident. X-rays showed negative findings. Form reports offered no clear diagnosis, only bilateral knee pain. Dr. Kline did not report any clear and definitive diagnosis of a medical condition. OWCP further

³ OWCP File No. xxxxxx969.

⁴ 46 ECAB 155 (1994).

found that he did not submit an opinion with medical rationale on the cause of appellant's current condition. Dr. Kline did not state whether the current condition resulted from walking a route after returning to work, from a worsening of the prior left knee injury, or from some other unstated or unknown factor or event. In addition to needing a diagnosed medical condition, OWCP explained that in the case of a preexisting condition involving the same part of the body where the issue of causal relationship involves aggravation or precipitation, the attending physician must provide a rationalized medical opinion that differentiates between the effects of the employment-related injury or disease and the preexisting condition.

Appellant requested reconsideration. He stated that, following right knee surgery in 2009, he promptly returned to full duty with no physical therapy. Every day appellant experienced pain and swelling with soreness. He was often stiff but still did his job until August 13, 2009, when he could not do it anymore.

Appellant submitted a July 1, 2010 report from Dr. Marc W. Urquhart, a Board-certified orthopedic surgeon, who noted a history of knee pain since 2007. Dr. Urquhart stated that appellant tripped and fell onto both knees while employed as a letter carrier and suffered a traumatic injury to the anterior knees. He related appellant's current complaints and noted that appellant denied any physical therapy after left knee surgery in February 2009. Dr. Urquhart examined appellant, reviewed radiographs and diagnosed bilateral patellofemoral pain. He indicated that he discussed treatment alternatives of patellofemoral pain and patellofemoral chondrosis or chondromalacia patella. Dr. Urquhart stated: "I also explained to the patient that given the contacts [sic] in which I have evaluated the patient and the patient's history, I cannot causally relate his symptoms to any one specific accident or incident."

Appellant's representative argued that the additional medical evidence proved that appellant sustained a compensable injury on August 13, 2009 by way of aggravation of previous right and left knee arthritic conditions.

In a June 8, 2011 decision, OWCP reviewed the merits of appellant's case and denied modification of its prior decision. It found that his statement failed to adequately describe his work activities and whether he was claiming a traumatic or occupational injury. As the factual basis of appellant's claim remained unclear or unknown, OWCP found no need to discuss the medical evidence submitted.

Appellant's representative contends on appeal that OWCP denied authorization for an imaging study and treatment, effectively preventing a diagnosis of appellant's knee injuries, preventing proper medical treatment, and preventing evidence as to the nature and extent of his injuries and as to the causal relationship between those injuries and work factors from April 6 through August 13, 2009. He alleges that OWCP confused the nature of appellant's claim and should have determined it to be occupational in nature. Appellant's representative argues that there was substantial medical evidence which OWCP failed to review. He also argues that OWCP should have reviewed evidence in appellant's other claim files.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁵ An employee seeking benefits under FECA 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.⁶

An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁷

Causal relationship is a medical issue,⁸ 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,⁹ must be one of reasonable medical certainty,¹⁰ 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.¹¹

ANALYSIS

OWCP denied appellant's injury claim on the grounds that he did not submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. It found the information he provided was brief and vague, lacking a clear and detailed explanation of how the injury occurred. The Board finds, however, that appellant has sufficiently identified and implicated specific work factors. Appellant attributed the worsening of his bilateral knee condition to his duties as a letter carrier, over a period of more than one shift. The essential physical demands of that position are not in dispute. Appellant walked and climbed stairs while carrying and delivering mail. There is no evidence to the contrary. The employing establishment did not controvert this aspect of appellant's claim.

⁵ 5 U.S.C. § 8102(a).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Caroline Thomas*, 51 ECAB 451 (2000).

⁸ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹⁰ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹¹ *See William E. Enright*, 31 ECAB 426, 430 (1980).

Appellant made sufficiently clear that both his knees became sore and stiff while walking and climbing stairs in the course of his employment as a letter carrier. The Board finds that he is claiming an occupational injury.

On August 31, 2009 Dr. Kline explained how appellant's condition, by history, developed over a period of time. A few days after returning to work as a letter carrier, appellant started to notice problems. After a month, he found that, when he walked his route, which was about eight miles a day, his left knee became swollen and painful by the end of the day. This was not a traumatic incident of August 13, 2009; appellant implicated an occupational injury that occurred from the time he returned to work until he stopped work on August 13, 2009.

OWCP cited the case of *Mary A. Sisneros*¹² for the proposition that appellant must establish a factual basis for his claim by supporting his allegations with probative and reliable evidence. But *Sisneros* involved perceptions of harassment, perceptions of retaliation and perceptions of favoritism. The Board explained that mere perceptions were not compensable, that the claimant thus had to substantiate her allegations with probative and reliable evidence. This case is distinguishable. Appellant attributed his bilateral knee condition to the actual physical demands of his job. His statement alleging that an injury occurred at a given time, place and manner is not refuted by strong or persuasive evidence. The Board will modify OWCP's June 8, 2011 decision.

It is not enough for appellant to establish a compensable factor of employment. He must also establish that such exposure caused an injury. The Board has reviewed the medical evidence and finds that it does not establish the element of causal relationship. Dr. Kline related appellant's history of injury but did not address whether walking in the course of employment caused any knee injury. Dr. Mehta, the internist, indicated with an affirmative checkmark that appellant's bilateral knee swelling and pain was caused by employment activity. He did not describe that activity and he offered no actual diagnosis of appellant's bilateral knee condition. The Board has held that, when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.¹³ Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning. Dr. Urquhart, an orthopedic surgeon, noted appellant's prior history but did not mention the employment factors appellant implicated in his current injury claim. He suggested a diagnosis of bilateral chondrosis or chondromalacia patella but could not relate appellant's symptoms to any specific accident or incident.

The Board finds that the medical opinion evidence is insufficient to establish the element of causal relationship. Appellant bears the burden of proof to establish the essential elements of his claim, and he has not submitted a physician's well-reasoned opinion on whether there is a causal relationship between any diagnosed condition and the established factors of employment. On these grounds, the Board will affirm OWCP's June 8, 2011 decision denying appellant's occupational injury claim.

¹² 46 ECAB 155 (1994).

¹³ *E.g., Lillian M. Jones*, 34 ECAB 379 (1982).

Appellant's representative argues that OWCP prevented a diagnosis of appellant's bilateral knee injury by denying authorization for an imaging study, but he has not shown this was so. Appellant bears the burden of proof, and he has failed to establish his claim for compensation. Although the Board finds that appellant presented an occupational injury claim, appellant was not as clear concerning the nature of his injury. This was due, in part, to filing a claim that he sustained a recurrence on August 13, 2009, which, looking at the record as a whole, must be viewed as the date of last exposure. Medical evidence in appellant's other claims is immaterial to whether the work factors currently implicated caused a new injury. Counsel contends evidence from other claims may establish that work factors aggravated his knee condition but no physician has offered such an opinion.

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 he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2011 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: June 15, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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