



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> In an April 7, 2009 decision, the Board set aside a May 19, 2008 OWCP decision and remanded the claim for medical development on whether appellant developed osteoarthritis of the right knee as a result of performing his employment duties.<sup>3</sup> In an April 19, 2011 decision, the Board found a conflict in medical opinion between Dr. Andrew M. Hutter, an OWCP referral physician, who found that appellant's osteoarthritis of the right knee was due to the natural aging and degenerative process and not due to his employment and Drs. Robert T. Goldman and David Weiss, treating physicians, who supported that the diagnosed osteoarthritis of the right knee was accelerated or aggravated by his work as a letter carrier. The Board remanded the case for referral to an impartial medical specialist to resolve the conflict in the medical opinions.<sup>4</sup> The facts of the case as set forth in the Board's prior decisions are incorporated herein by reference.

OWCP referred appellant to Dr. Dean L. Carlson, a Board-certified orthopedic surgeon, on December 23, 2011.

On December 27, 2011 counsel, requested a copy of the statement of accepted facts and questions submitted to Dr. Carlson. He also requested that OWCP indicate how it selected Dr. Carlson. In a January 5, 2012 letter, OWCP provided appellant the statement of accepted facts and questions submitted to Dr. Carlson. It provided an MEO23 Integrated Federal Employees' Compensation System (iFECS) report which stated that appellant's referee appointment was scheduled with Dr. Carlson on January 19, 2012. It included screen shots that included a list of physicians who were bypassed with explanations for the bypass. Dr. James Aragona and Dr. Jeffrey Baydin were bypassed on the basis that they did not accept federal workers' compensation referrals and Dr. Donald Gennace was bypassed because appellant was previously seen by the physician.

In a January 19, 2012 report, Dr. Carlson reviewed the medical treatment records and appellant's history. On examination, he found normal gait and station, no limp, normal ability to step up to a stool with each leg and get on and off the examining table. For the right knee, appellant had a well-healed surgical incision scar, flexion was 120 degrees, extension was zero degrees, no ligamentous instability, no effusion, no local tenderness or crepitation of the right knee. Right knee extensor power and flexor power were intact, right and left leg sensory examination was intact and deep tendon reflexes were equal and symmetrical. January 19, 2012 x-rays revealed total right knee arthroplasty with anatomic alignment of components, no loosening of components and no calcifications or heterotopic bone. Dr. Carlson found that the relationship of appellant's right knee osteoarthritis to his letter carrier occupation was not established. He noted that Dr. Weiss diagnosed cumulative and repetitive trauma of the right knee and aggravation of preexisting quiescent degenerative joint disease of the right knee.

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<sup>2</sup> On November 29, 2006 appellant, a letter carrier, filed an occupational disease claim alleging that he developed osteoarthritis of the right knee while walking, lifting, casing and standing at work. He became aware of his condition on September 27, 2006. Appellant stopped work on September 22, 2006 and did not return.

<sup>3</sup> Docket No. 08-2009 (issued April 7, 2009).

<sup>4</sup> Docket No. 10-1863 (issued April 19, 2011).

Dr. Carlson stated that these diagnoses were not found in the professional codebook for physician codes and were not legitimate medical diagnoses. He noted that the sole epidemiological study devoted to postal workers noted that there was no clear association between any of the occupational activities recorded and a history of knee pain or recorded total knee arthroplasty. Dr. Carlson noted that a known risk factor for knee osteoarthritis was obesity, previous knee injury and an occupation with frequent deep kneeling, which were not among appellant's job duties. He concluded that appellant's right knee osteoarthritis was due to natural aging and degeneration. The osteoarthritis progressed to the need for a total knee arthroplasty no matter appellant's occupation. Dr. Carlson disagreed with the conclusion that being a letter carrier caused the need for a right total knee arthroplasty. He opined that osteoarthritis was not aggravated by appellant's occupation and there were no objective findings that his employment-related activities caused objective symptoms. Dr. Carlson found that appellant had no disability and could continue to work his regular duties. He further noted that appellant was unable to kneel with his right knee but his job did not ordinarily require kneeling. Appellant reached maximum medical improvement 12 months after the right total knee arthroplasty or on February 7, 2007. This allowed for complete healing and rehabilitation following the right total knee replacement. Dr. Carlson opined that appellant required no additional medical care and could continue performing his regular duties.

In a decision dated February 8, 2012, OWCP denied appellant's claim. It found that the factual and medical evidence was insufficient to support that his right knee osteoarthritis was causally related to the duties of his employment.

On February 22, 2012 appellant requested an oral hearing which was held on June 5, 2012. In a July 3, 2012 letter, counsel objected to the selection of Dr. Carlson as referee physician contending that he performed second opinion examinations and OWCP had bypassed several physicians without explanation. Appellant submitted a July 2, 2012 report from Dr. Thomas W. Findley, a Board-certified physiatrist, who noted reviewing Dr. Carlson's report and opined that the literature cited did not focus on duties performed by appellant including walking on hard surfaces, hills or prolonged carrying loads. Dr. Findley stated that Dr. Carlson provided no detailed occupational history and, without this information, he did not believe Dr. Carlson could make any inferences regarding the specific forces on the knee. He also stated that Dr. Carlson misconstrued information from the studies and recommended referring appellant to a physiatrist for examination.

In a decision dated August 20, 2012, OWCP's hearing representative affirmed the February 8, 2012 decision.

### **LEGAL PRECEDENT**

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence,<sup>5</sup> including that he or she is an "employee" within the meaning of FECA<sup>6</sup> and that he or

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<sup>5</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>6</sup> *See M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

she filed his or her claim within the applicable time limitation.<sup>7</sup> The employee must also establish that he or she sustained an injury in the performance of duty as alleged and that his or her disability for work, if any, was causally related to the employment injury.<sup>8</sup>

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.<sup>9</sup>

Section 8123 of FECA provides that if there is a disagreement between the physician making the examination for the United States and the employee's physician, OWCP shall appoint a third physician who shall make an examination.<sup>10</sup>

### ANALYSIS

Appellant filed an occupational disease claim alleging osteoarthritis of the right knee while in the performance of duty. The Board's April 19, 2011 decision found a conflict in medical opinion between Dr. Hutter, an OWCP referral physician, and Drs. Goldman and Weiss, appellant's treating physicians, regarding whether the diagnosed osteoarthritis of the right knee was accelerated or aggravated by appellant's employment as a letter carrier. Thereafter, OWCP referred appellant to Dr. Carlson to resolve the conflict.

The Board finds that the opinion of Dr. Carlson is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight. Dr. Carlson determined that the diagnosed osteoarthritis of appellant's right knee was not causally related to his employment as a letter carrier. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>11</sup>

In a January 19, 2012 report, Dr. Carlson reviewed appellant's history and reported findings on physical examination. He noted a normal gait and station, no limp, a well-healed surgical incision scar on the right knee, normal flexion and extension of the right knee, no ligamentous instability, no crepitance of the right knee, intact strength and intact sensory examination in the lower extremities with reflexes equal and symmetrical. Dr. Carlson noted

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<sup>7</sup> *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); see 5 U.S.C. § 8122.

<sup>8</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>9</sup> See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>10</sup> 5 U.S.C. § 8123(a); see also *Charles S. Hamilton*, 52 ECAB 110 (2000); *Leonard M. Burger*, 51 ECAB 369 (2000); *Shirley L. Steib*, 46 ECAB 39 (1994).

<sup>11</sup> *Solomon Polen*, 51 ECAB 341 (2000). See 5 U.S.C. § 8123(a).

x-rays studies of January 19, 2012 revealed total right knee arthroplasty with anatomic alignment of components, no loosening of components and no calcifications or heterotopic bone. He found that the relationship of the osteoarthritis of appellant's right knee to his letter carrier occupation was not established. Dr. Carlson explained that epidemiological studies supported that there was no clear association between any of the occupational activities recorded and a history of knee pain or recorded total knee arthroplasty. He noted known risk factors for knee osteoarthritis was obesity, previous knee injury and an occupation with frequent deep kneeling, which were not appellant's job duties. Dr. Carlson found that appellant's right knee osteoarthritis was due to natural aging and degeneration and that the osteoarthritis would have progressed to the same extent no matter his occupation. He noted that the osteoarthritis was not aggravated by appellant's occupation and there were no objective findings that appellant's employment-related activities caused objective symptoms. Dr. Carlson opined that appellant had no disability, he required no additional medical treatment and could continue to work his regular duties. He noted that appellant reached maximum medical improvement 12 months after the right total knee arthroplasty or on February 7, 2007 and that this period of time allowed for complete healing and rehabilitation following his right total knee replacement.

The Board finds that Dr. Carlson had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Carlson is a specialist in the appropriate field. He determined that appellant did not develop a right knee condition causally related to the accepted employment activities. Dr. Carlson's opinion as set forth in his report of January 19, 2012 is found to be probative evidence and reliable. The Board finds that his opinion constitutes the weight of the medical evidence and establishes that appellant did not develop a right knee condition causally related to his accepted employment duties.

After Dr. Carlson's examination appellant submitted a report from Dr. Findley dated July 2, 2012. Dr. Findley stated that Dr. Carlson misconstrued the epidemiological studies. He indicated that Dr. Carlson's report provided no detailed occupational history and he did not believe Dr. Carlson could make any inferences regarding the specific forces on the knee without this information. The Board finds that, although Dr. Findley supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's right knee condition and the factors of employment.<sup>12</sup> Dr. Findley did not explain the process by which walking a mail route and carrying a mail satchel would cause the diagnosed condition and he also did not address why the osteoarthritis would not be due to nonwork factors such as the normal aging process. Therefore, this report is insufficient to meet appellant's burden of proof to overcome the weight of the independent medical specialist.

On appeal, appellant through his attorney asserts that Dr. Carlson's referee report was not well rationalized or based on a complete and accurate factual history and therefore cannot be the weight of the evidence. Counsel asserted that Drs. Goldman, Weiss and Findley provided an accurate history and support that appellant developed a right knee condition causally related to

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<sup>12</sup> See *T.M.*, 60 ECAB Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

his letter carrier duties. As noted, Dr. Carlson set fourth an accurate history of the relevant facts and evaluated the course of appellant's condition. He found that appellant did not develop a right knee condition causally related to the accepted employment activities. Dr. Carlson noted that the osteoarthritis was not aggravated by appellant's occupation and there were no objective findings that appellant's employment-related activities caused objective symptoms. Dr. Findley's report was not well rationalized and insufficient to overcome Dr. Carlson's report or to create a new medical conflict as he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's right knee condition and the factors of employment.<sup>13</sup>

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 his burden of proof to establish that his claimed conditions were causally related to his employment.

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<sup>13</sup> Before OWCP, counsel objected to the selection process used to choose Dr. Carlson as the referee physician since other doctors were bypassed. He also noted that Dr. Carlson performed second opinion examinations for OWCP. The Board notes that the record contains an MEO23 IFEC's report, which states that appellant's referee appointment was scheduled with Dr. Carlson on January 19, 2012. OWCP included screen shots for the physicians who were bypassed with an explanation for each bypass. The Board finds that OWCP provided a reasonable explanation for bypassing the physicians and that the selection process was proper and consistent with OWCP procedures. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b) (July 2011); *see also R.H.*, Docket No. 12-1701 (issued April 24, 2013). While counsel stated that Dr. Carlson performed second opinion examinations for OWCP, this does not preclude a physician from being selected as an impartial specialist in a matter pertaining to another claimant. *See Harold Burkes*, 42 ECAB 199 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 20, 2012 is affirmed.

Issued: July 19, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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