



examination, citing to the Board's decision in *K.F.*<sup>2</sup> He requests that the Board direct OWCP to approve appellant's claim for the permanent aggravation of bilateral degenerative joint disease of the knees or alternatively, remand the case for appellant to be referred, together with a statement of accepted facts, to a second opinion physician.

### **FACTUAL HISTORY**

On May 2, 2012 appellant, then a 51-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained an aggravation of his degenerative joint disease in both knees and right foot plantar fasciitis as a result of his federal employment duties. OWCP had previously accepted an occupational disease claim for right plantar fascial fibromatosis<sup>3</sup> and a right knee sprain sustained on September 16, 2009.<sup>4</sup> Appellant stated that both of his knees had bothered him since September 16, 2009 and his doctors had explained that his work duties aggravated and accelerated the arthritis and degenerative joint disease in both of his knees, as well as the plantar fasciitis in his right foot.

Appellant submitted a November 15, 2011 narrative statement indicating that his duties included walking, bending, climbing steps and carrying a 35-pound mailbag and physical therapy notes dated November 5 through December 23, 2009.

In reports dated October 29, 2009, Dr. Gouri S. Atri, a physician Board-certified in occupational medicine, diagnosed knee/leg sprain and internal derangement of knee. He released appellant to work that day with the following restrictions: no squatting; no kneeling; no climbing stairs or ladders.

On October 28, 2009 Dr. Steven B. Cohen, a Board-certified orthopedic surgeon, diagnosed right knee medial compartment degenerative joint disease with medial meniscus tear upon review of x-ray reports and a magnetic resonance imaging (MRI) scan dated September 23, 2009. He indicated that appellant slipped on grass while delivering mail on September 16, 2009 and had been working modified duty walking two to three hours a day. Dr. Cohen opined that it was difficult to discern whether appellant's symptoms were truly coming from medial meniscus pathology versus medial compartment degenerative joint disease. On December 23, 2009 he indicated that appellant was back at work for the last two or three weeks working full duty as a postal carrier. Dr. Cohen stated that appellant had degenerative changes in the medial compartment of both knees as well as a question of a degenerative medial meniscus tear and appeared to have had a flare up of the arthritic changes in his knee.

Appellant submitted reports dated January 18, 2010 through May 13, 2011 from Dr. Craig A. Rubenstein, a Board-certified emergency medicine physician, who diagnosed osteoarthritis of the bilateral knees, left knee prepatellar bursitis and bilateral knee degenerative

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<sup>2</sup> Docket No. 12-1527 (issued January 8, 2013).

<sup>3</sup> OWCP File No. xxxxxx531.

<sup>4</sup> OWCP File No. xxxxxx034.

joint disease. On January 18, 2010 Dr. Rubenstein indicated that appellant's knee hurt him a lot at work, especially by the end of the day.

In an April 16, 2012 report, Dr. Zamarin reviewed appellant's medical history and records and conducted a physical examination. He indicated that appellant was working full duty and complaining of pain on the medial aspect of both knees. Appellant stated that he had problems with sitting, standing and walking because his symptoms were aggravated with excessive activity and his knees swelled at the end of the day. He noted that he was diagnosed with right foot plantar fasciitis in 2006. Dr. Zamarin indicated that appellant's duties included sorting mail for about two hours while standing on a concrete floor, picking up mail at relay boxes, delivering mail to homes while carrying a 35-pound satchel, walking approximately 15 miles a day, climbing, bending and twisting. He opined that the combination of standing, bending, walking and climbing stairs put a lot of stress on the weight bearing joints of the lower extremities and over the course of many years would lead to an increased risk for plantar fasciitis as well as the acceleration of degenerative disease in the knee joints. Dr. Zamarin concluded that the weight bearing and repetitive nature of appellant's duties could not only cause acceleration of a degenerative or an inflammatory process in the lower extremities, but could also aggravate preexisting disease from normal activity or an employment-related injury, such as one that occurred on September 16, 2009. He noted that at that time appellant's left knee did not bother him but eventually symptoms set in there also as he continued to work.

In a June 29, 2012 letter, OWCP informed appellant of the deficiencies of his claim and afford him 30 days to submit additional evidence. Appellant did not respond.

By decision dated August 16, 2012, OWCP denied the claim on the basis that the evidence of record failed to establish causal relationship between appellant's conditions and factors of his federal employment.

Subsequently, appellant submitted a narrative statement dated October 11, 2012 and a February 5, 2010 diagnostic report which revealed no evidence of deep venous thrombosis. He also submitted reports dated February 22, 2010 through January 6, 2012 from Dr. Rubenstein, who reiterated his diagnoses and reports dated February 9, 2010 through August 14, 2012 from Dr. Eric Ratner, a Board-certified anesthesiologist and pain medicine specialist, who indicated that appellant's bilateral knee pain due to severe osteoarthritis was worse with walking and standing and that he had pain when he worked as a mail carrier.

On August 22, 2012 appellant, through his attorney, requested a hearing which was held before an OWCP hearing representative *via* telephone on December 6, 2012.

By decision dated February 20, 2013, OWCP's hearing representative affirmed the August 16, 2012 decision on the basis that the medical evidence submitted was not sufficient to establish causal relationship.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>5</sup> 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 of FECA, and that an injury<sup>6</sup> was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup>

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (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>8</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>9</sup>

## ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP previously accepted that appellant sustained a right knee sprain on September 16, 2009 under File No. xxxxxx034 and right plantar fascial fibromatosis under File No. xxxxxx531. In support of his claim, appellant submitted an April 16, 2012 report from Dr. Zamarin, who indicated that appellant’s duties included sorting mail for about two hours while standing on a concrete floor, picking up mail at relay boxes, delivering mail to homes while carrying a 35-pound satchel, walking approximately 15 miles a day, climbing, bending and twisting. Dr. Zamarin opined that the combination of standing, bending, walking and climbing stairs put a lot of stress on the weight bearing joints of the lower extremities and over the course of many years would lead to an increased risk for plantar fasciitis as well as the acceleration of

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<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>7</sup> See *J.C.*, Docket No. 09-1630 (issued April 14, 2010). See also *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>8</sup> *Id.* See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>9</sup> See *I.J.*, 59 ECAB 408 (2008). See also *Victor J. Woodhams*, 41 ECAB 345 (1989).

degenerative disease in the knee joints. He concluded that the weight bearing and repetitive nature of appellant's duties could not only cause acceleration of a degenerative or an inflammatory process in the lower extremities, but could also aggravate preexisting disease from normal activity or an employment-related injury, such as one that occurred on September 16, 2009. Dr. Zamarin also noted that, at that time, appellant's left knee did not bother him but eventually symptoms set in there also as he continued to work.

The Board notes that, while Dr. Zamarin's report is not completely rationalized, it is consistent in finding that appellant's duties included standing, bending, walking and climbing stairs and the weight bearing and repetitive nature of his duties could not only cause acceleration of a degenerative or an inflammatory process in the lower extremities, but could also aggravate preexisting disease from normal activity or an employment-related injury, such as one that occurred on September 16, 2009. This report is not contradicted by any substantial medical or factual evidence of record.<sup>10</sup> While the report is not sufficient to meet appellant's burden of proof to establish a claim, it raises an inference of causal relationship between the claimed conditions and factors of his federal employment.<sup>11</sup>

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>12</sup>

On remand, OWCP should refer appellant, together with the case record and a statement of accepted facts, for examination by an appropriate specialist and a rationalized medical opinion as to whether he sustained an aggravation of his degenerative joint disease in both knees and right foot plantar fasciitis as a result of his federal employment duties. After such further development as it deems necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

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<sup>10</sup> See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>11</sup> *Id.*; see also *John J. Carlone*, 41 ECAB 354 (1989).

<sup>12</sup> See *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard (Lionel F. Richard)*, 53 ECAB 430 (2002); *William J. Cantrell*, 34 ECAB 1233 (1993); *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 20, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: November 20, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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