United States Department of Labor
Employees' Compensation Appeals Board

W.B., Appellant	)	
and	)	**Docket No. 14-855**
	)	**Issued: August 27, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Federal Way, WA, Employer	)	

Appearances:
Rainer Brown, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 4, 2014 appellant, through his representative, filed a timely appeal from the January 28, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained additional left hip and knee conditions caused or aggravated by his established employment factors; and (2) whether appellant met his burden of proof to establish that his left hip and knee surgery were warranted as a consequence of his accepted employment injury or other factors of his federal employment.

On appeal, appellant's representative contends that OWCP improperly referred appellant to a second opinion examination as appellant had provided medical evidence from physicians

[1] 5 U.S.C. § 8101 *et seq.*

who found that his left knee and hip conditions were aggravated by his work duties. Appellant contends that the opinion of OWCP's referral physician was not independent as he is an employee of MES Solutions and OWCP is a client of the service company. Appellant's representative asserts that there is a conflict in medical opinion between the second opinion physician and appellant's attending physicians and that appellant should have been referred to an impartial medical specialist.

FACTUAL HISTORY

OWCP accepted that appellant, then a 59-year-old mail handler, sustained temporary aggravation of osteoarthritis of the patellofemoral joint on the left knee due to standing, walking, pushing over-the-road containers and in-house containers, using a can-puller at inbound and carrying nonmoving objects at work.

On April 9 and 23 and May 7, 2013 appellant filed claims for compensation for leave without pay (Form CA-7) from April 5 through May 24, 2013. On March 18, 2013 he requested that his left hip condition be added to his claim.

In duty status reports (Form CA-17) dated February 28 and March 26, 2013, Dr. Steven M. Teeny, an attending Board-certified orthopedic surgeon, diagnosed severe left hip degeneration and left knee degenerative joint disease. He listed appellant's restrictions and advised that he was not able to perform his regular work duties. In narrative reports and a follow-up note dated February 28, 2013, Dr. Teeny noted appellant's complaints of severe pain in his left knee, groin and lateral hip. He obtained a history of appellant's medical treatment, family and social background. Dr. Teeny stated that appellant's symptoms had been present for years and were significantly aggravated by his job, which involved constant walking, standing, lifting, prolonged weight-bearing and twisting activities. He listed findings on physical and x-ray examination. Dr. Teeny diagnosed osteoarthritis of the left leg and pelvis that required a total hip replacement first followed by a total knee replacement. He believed that some of appellant's knee pain was due to the referred hip pain. Dr. Teeny advised that appellant's hip degeneration had been a long-standing progressive process which worsened his knee pain. In a March 26, 2013 follow-up note, he reiterated the diagnoses of left knee and hip osteoarthritis. In a report also dated Mach 26, 2013, Dr. Teeny advised that appellant could return to modified-duty work on April 1, 2013 with restrictions.

By letter dated April 9, 2013, OWCP referred appellant for a second opinion evaluation with Dr. Lee A. McFadden, a Board-certified orthopedic surgeon, for May 3, 2013 at 3:45 p.m. by MES Solutions.

In an April 23, 2013 Form CA-17 report, Dr. Teeny reiterated his prior diagnoses of left knee and hip degenerative joint disease.

In an April 23, 2013 report, Tiffany Crabb, a physician's assistant, listed findings on physical examination and diagnosed osteoarthritis of the left leg and pelvis.

In an April 25, 2013 report, Dr. John R. Replogle, a Board-certified internist, stated that he reviewed appellant's x-rays and medical history. He noted that appellant had been evaluated

for severe patellofemoral osteoarthritis and referenced his current open claim under File No. xxxxxx921 for this condition. Dr. Replogle advised that recent radiographs showed severe osteoarthritis of the left hip, which had progressed markedly since prior films taken in 2005. He opined that it was more probable than not that this related to appellant's work at the employing establishment. Dr. Replogle concluded that appellant would likely need a total left hip replacement.

In a May 3, 2013 report, Dr. McFadden reviewed the medical record and statement of accepted facts. He listed a history of appellant's medical treatment, family, social and employment background. Dr. McFadden noted that appellant was honorably discharged from the Army with a 90 percent service-related disability. Appellant underwent arthroscopic surgery on both knees in 1981. He had restrictions regarding activities of daily living, walking, climbing, kneeling, bending, stooping, twisting, pushing and pulling. Dr. McFadden noted appellant's complaints of left knee and hip pain. On physical examination, he reported that appellant had an antalgic gait. Appellant used a cane for ambulation and had a shortened stance phase on the left compared to the right. He was unable to stand independently on the left side secondary to pain. Appellant demonstrated significant limitations in range of motion secondary to pain at both the hip and knee, which made an accurate assessment of ranges of motion somewhat problematic. He could flex his hip to approximately 60 degrees before a significant report of pain. Appellant could bend the knee to approximately 110 degrees. He had 10 degrees short of frill extension at the knee. Abduction was to 30 degrees with significant discomfort. Adduction was to five degrees. Internal rotation was at -10 degrees. External rotation was minimal with perhaps 5 degrees more external rotation from a relatively fixed position of 15 degrees of external rotation. There was palpable crepitation in the patellofemoral joint with the elicited limited range of motion. There was no ligamentous laxity about the left knee. Appellant had a negative Lachman's test and no vans or valgus instability with vans and valgus stressing at 20 degrees of flexion.

Dr. McFadden advised that appellant had end-stage osteoarthritic changes of the left knee, primarily involving his patellofemoral joint. He also had bone-on-bone involvement of the tibiofemoral joint as evidenced on his lateral view. This was substantiated by objective findings and appellant's subjective complaints. Dr. McFadden advised that he had severe end-stage osteoarthritis of the left hip, as evidenced by severe loss of joint space, a subchondral cyst formation, lateralization of the femoral head, curtain osteophyte formation over the cotyloid fossa and severe limitations in range of motion. He stated that appellant's left hip condition was not precipitated by his accepted left knee condition. Dr. McFadden related that appellant's condition should only be added if the overall perception was that his activities as a mail carrier and mail handler had any substantive role in the progression of his arthritis. If this were accepted as a medical fact, then the same precipitating factors that contributed to appellant's degenerative changes in his knee would have contributed to degenerative changes in his hip. Dr. McFadden opined that appellant had a long-standing history of ongoing issues with his knees and hip with significant disability associated with his retirement from the Army for arthritic conditions. He opined that the natural progression of the disease process in the knee and hip had certainly been more symptomatic for appellant due to his mail carrier and mail handler activities. However, Dr. McFadden stated that it was unlikely on a more probable than not basis that these activities made any significant structural difference in the development of his osteoarthritis or the progression of his condition. He related that individuals who had significant degenerative

changes involving their joints were likely to have more symptoms if they needed to put higher loads on these joints. Common sense indicated that, if one had an arthritic knee and walked on it a lot, it would tend to hurt more. Dr. McFadden advised that this was appellant's condition, as he had preexisting and unrelated arthritic changes of his joints. Appellant's occupational choice to become a mail carrier at the employing establishment was not the best option for someone who already had symptomatic arthritic joints.

Dr. McFadden stated that it was unlikely that appellant's occupational exposures made any significant difference in the natural progression of his disease process. He agreed that appellant's workplace tolerances would be likely significantly impacted by his ongoing hip and knee arthritic changes, however, this was not the natural history of everyone that worked at the employing establishment. Dr. McFadden opined that it was more probable than not that neither appellant's hip nor knee condition was causally related to his occupational exposures at the employing establishment. Appellant had pain due to his preexisting arthritis that he walked on every day. He would still have arthritis even if he did not walk on it, it would just hurt less. Dr. McFadden related that more pain with more weight bearing represented the natural history of his disease process and did not represent either a temporary or permanent aggravation of the underlying disease process by his occupational exposures at work. He recommended hip and knee arthroplasty with the hip being done first followed by the knee.

In an undated letter, the employing establishment stated that it had no work available within Dr. Teeny's March 26, 2013 restrictions.

In a May 22, 2013 decision, OWCP denied appellant's claim for compensation for the period April 5 to May 22, 2013. It found that the medical evidence of record was insufficient to establish his left hip condition or temporary aggravation of his left knee condition causally related to his accepted employment-related injury. OWCP also found that the medical evidence did not establish appellant's inability to work from April 5 to May 22, 2013 due to the accepted injury.

On June 6, 2013 appellant requested a review of the written record by an OWCP hearing representative.

In a November 26, 2013 decision, an OWCP hearing representative reversed in part and set aside in part the May 22, 2013 decision. She found that the factual and medical evidence was sufficient to establish appellant's entitlement to wage-loss compensation for the period April 5 to May 22, 2013. The hearing representative found that the issue in the case was whether appellant's left hip condition should be accepted as causally related to his employment activities, not whether it was related to or precipitated by his employment-related left knee condition. She noted that OWCP did not ask Dr. McFadden to determine whether appellant's left hip and knee osteoarthritis were causally related through aggravation, precipitation or exacerbation and if so, whether the conditions were permanently or temporarily aggravated, precipitated or exacerbated. The hearing representative found that Dr. McFadden's report was of diminished probative value in determining causal relationship between appellant's left knee and hip osteoarthritis and his employment as OWCP failed to properly identify the issues to be addressed. She noted evidence submitted by appellant's representative which indicated that Dr. McFadden was not a Board-certified orthopedic surgeon as indicated in OWCP's decision. On remand, the hearing

representative instructed OWCP to contact MES Solutions to determine his professional qualifications. She also instructed OWCP to rewrite the statement of accepted facts to reflect that appellant filed an occupational disease claim and not a traumatic injury claim. If it was determined that Dr. McFadden was a Board-certified orthopedic surgeon, then OWCP should request an addendum report from him and, if not, then a new second opinion examination should be arranged to determine whether the medical and factual evidence demonstrated that appellant's left knee and/or left hip osteoarthritis was causally related to his employment activities and whether his left knee and/or left hip replacement surgery was necessitated as a result of any employment-related conditions.[2]

On December 26, 2013 OWCP requested that Dr. McFadden review a corrected statement of accepted facts and provide a supplemental report to clarify his opinion as to whether appellant's left knee and hip osteoarthritis were causally related to his employment duties and whether the proposed left knee and hip replacement surgeries were causally related to any employment-related conditions. Appellant was also asked to list his work restrictions.

On January 8, 2014 Dr. McFadden advised that the medical and factual evidence did not demonstrate that appellant's left hip and knee osteoarthritis were causally related to his mail handler employment activities. He further advised that the proposed hip and knee replacement surgeries were not causally related to appellant's occupational exposures as a mail carrier. There was no convincing evidence that occupational exposures (increased levels of physical activity) caused any statistically significant increase in the rates of symptomatic osteoarthritis. The largest longitudinal study in the literature regarding osteoarthritis progression (the Framingham study) extrapolated multiple subsequent studies using the data collected over 40 years. This data suggested a significant correlation with the progression of osteoarthritis with the female gender, advancing age, obesity and prior surgery.

Dr. McFadden stated that appellant had a significant past medical history of arthroscopic interventions on both knees in the early 1980s and significant symptomatic arthritis at the time of his discharge from the Army culminating in 90 percent disability. Appellant also had significant preexisting and ongoing risk factors that placed him at an extremely high risk of progression to symptomatic osteoarthritis. The rate of progression had been quoted as approaching five percent per year after the age of 40. This percentage was applicable to the most high risk individuals. The categories were upper third of weight for age (for appellant this was greater than 195 pounds) or prior history of knee surgery. Dr. McFadden related that appellant had both of these risk factors, as he weighed 255 pounds and had surgery on both knees prior to working at the employing establishment. Appellant also had a past history of 90 percent disability for arthritis from the Army at time of retirement. Dr. McFadden stated that there was a correlation from the Framingham study data to suggest that the development of radiographic osteoarthrosis (bone spurs and joint space narrowing) could be associated with occupations that required frequent deep knee bending, however, there was no statistically significant correlation with the development of symptomatic arthritis. Joint replacement surgery was not undertaken for x-ray changes or findings in the absence of symptoms. Appellant had preexisting and unrelated

[2] CA-17 form reports dated November 18 and December 21, 2013 contained an illegible signature. The reports stated that appellant had left knee degenerative joint disease and was not able to perform his regular work. Appellant's physical restrictions were listed.

symptomatic osteoarthritis and preexisting unrelated ongoing risk factors that included obesity and prior surgery on his knees.

Dr. McFadden reiterated that being a postal worker was a poor occupational choice for an individual with preexisting and unrelated osteoarthritis since it was a virtual certainty that symptoms would be provoked in an occupation that required prolonged standing, walking, pushing, pulling and carrying. However, provocation of pain did not equate to direct causation, permanent aggravation, acceleration or precipitation. Dr. McFadden stated that appellant's progression to symptomatic end-stage osteoarthritic changes represented the natural progression of the disease process and was not causally related, on a more probable than not basis, to his occupational exposures as a postal worker. His current work limitations were based on his preexisting disease process and the natural progression of this disease process over time, on a more probable than not basis.

In a January 28, 2014 decision, OWCP denied appellant's request to expand his claim to include left hip and knee conditions and request for authorization to undergo left hip and knee replacement surgeries. It found that Dr. McFadden's January 8, 2014 report represented the weight of the medical evidence in establishing that his left hip condition and proposed left hip and knee surgeries were not causally related to his established work duties.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[3] 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

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) a 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 a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty and must be supported by

[3] *Id*.

[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

medial rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[6] Neither the fact that appellant's condition became apparent during a period of employment nor, his or her belief that the condition was caused by his or her employment is sufficient to establish a causal relationship.[7]

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA provides for the furnishing of services, appliances and supplies prescribed or recommended by a qualified physician who OWCP, under authority delegated by the Secretary of Labor, considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation.[8] While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[9] To be entitled to reimbursement of medical expenses, a claimant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition. Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[10] In order for a surgical procedure to be authorized, a claimant must submit evidence to show that the surgery is for a condition causally related to an employment injury and that it is medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.[11]

ANALYSIS -- ISSUES 1 & 2

OWCP previously accepted appellant's occupational disease claim for temporary aggravation of osteoarthritis of the patellofemoral joint on the left knee due to his mail handler work duties. It denied his claim for the acceptance of additional injuries on the grounds that the evidence failed to establish a causal relationship between the accepted employment factors and his diagnosed conditions. The Board finds that the medical evidence of record is insufficient to establish that appellant developed left hip and knee conditions caused or aggravated by the accepted work factors.

The Board finds that the weight of the medical evidence rests with the opinion of Dr. McFadden, an OWCP referral physician Board-certified in orthopedic surgery. In a report dated May 3, 2013, Dr. McFadden reviewed the statement of accepted facts and medical record. He provided a history of appellant's medical treatment, family and social background. Dr. McFadden noted appellant's complaints of left knee and hip pain. He listed findings on examination and diagnosed end-stage osteoarthritic changes of the left knee primarily in the

[6] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *id.* at 351-52.

[7] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[8] 5 U.S.C. § 8103; *see L.D.*, 59 ECAB 648 (2008).

[9] *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004).

[10] *M.B.*, 58 ECAB 588 (2007).

[11] *See also J.H.*, Docket No. 12-1950 (issued February 13, 2013); *R.C.*, 58 ECAB 238 (2006).

patellofemoral joint, bone-on-bone involvement of the tibiofemoral joint and severe end-stage osteoarthritis of the left hip. Dr. McFadden found that it was more probable than not that appellant's left hip and knee osteoarthritis were not causally related to the accepted employment duties. He recommended hip and knee arthroplasty. OWCP asked Dr. McFadden to clarify whether appellant's left knee and hip osteoarthritis were causally related to his accepted employment duties and whether the proposed left knee and hip replacement surgeries were causally related to any employment-related conditions. In a report dated January 8, 2014, Dr. McFadden opined that the medical and factual evidence did not demonstrate that appellant's left hip and knee osteoarthritis and proposed left hip and knee replacement surgeries were caused by the accepted employment factors. He explained that there was no convincing evidence that occupational exposures caused any statistically significant increase in the rates of symptomatic osteoarthritis. Dr. McFadden referenced the Framingham study and stated that appellant had significant preexisting and ongoing risk factors, such as obesity, prior knee surgeries and 90 percent military service-related disability for arthritis, which placed him at an extremely high risk of progression to symptomatic osteoarthritis. While data from the Framingham study suggested a correlation that, the development of radiographic osteoarthrosis could be associated with occupations that required frequent deep knee bending, there was no statistically significant correlation with the development of symptomatic arthritis. He related that joint replacement surgery was not undertaken for x-ray changes or findings in the absence of symptoms. Dr. McFadden noted that being a postal worker would provoke appellant's symptoms as it required prolonged standing, walking, pushing, pulling and carrying, but stated that provocation did not equate to direct causation, permanent aggravation, acceleration or precipitation. He concluded that appellant's end-stage osteoarthritis which represented the natural progress of the disease process was not causally related to the accepted employment factors and that his current work limitations were related to his preexisting disease process and the natural progress of this disease process over time on a more probable than not basis. The Board finds that Dr. McFadden provided adequate rationale in support of his conclusions.

The Board finds that OWCP properly deferred to Dr. McFadden's opinion. Dr. McFadden provided detailed reports that were based on a complete factual and medical background and he supported his opinion with medical rationale. The Board finds that his opinion represents the weight of the medical evidence in this case.

Dr. Replogle's April 25, 2013 report found that appellant's severe osteoarthritis of the left hip was more probable than not related to his employment. He advised that appellant would likely need a total left hip replacement. Dr. Replogle's opinion is speculative and does not establish causal relationship. He did not provide adequate medical rationale explaining how the diagnosed left hip condition which required surgery was caused or aggravated by the accepted employment duties.[12] The Board finds that Dr. Replogle's opinion is insufficient to discharge appellant's burden of proof.

Dr. Teeny's reports found that appellant had severe left hip degeneration, left knee degenerative joint disease and osteoarthritis of the left leg and pelvis. He further found that appellant was unable to perform his regular work duties. However, Dr. Teeny did not provide a

[12] *See K.W.*, Docket No. 10-98 (issued September 10, 2010).

narrative opinion on causal relation. 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 relation.[13] The Board finds that Dr. Teeny's reports are of limited probative value as he did not adequately explain the causal relationship of the diagnosed left hip and knee conditions and resultant disability and the accepted employment duties.

The April 23, 2013 report of Ms. Crabb, a physician's assistant, has no probative value in establishing that the diagnosed osteoarthritis of the left leg and pelvis were causally related to the accepted employment duties.[14] A physician's assistant is not a physician as defined under FECA.

The CA-17 form reports dated November 18 and December 21, 2013 which contained an illegible signature also have no probative value in establishing a causal relationship between the diagnosed left knee degenerative joint disease conditions that required surgery and the accepted employment duties. Reports that are unsigned or bear illegible signatures, lack proper identification and cannot be considered probative medical evidence.[15]

On appeal, appellant's representative contended that OWCP improperly referred appellant to a second opinion examination without cause as appellant had provided medical evidence from physicians who found that his left knee and hip conditions were aggravated by his work duties. Alternatively, he contended that there was a conflict in medical opinion between Dr. McFadden and appellant's attending physicians and that OWCP should have referred appellant to an impartial medical specialist. As discussed above, appellant did not submit probative medical evidence that was sufficiently rationalized to establish that he sustained additional left knee and hip conditions that warranted surgery due to the accepted employment duties. Dr. McFadden provided a well-reasoned medical opinion explaining that appellant's left hip and knee conditions and proposed surgeries were not causally related to the accepted employment duties.

Appellant's representative contended that Dr. McFadden's opinion was not independent as he is an employee of MES Solutions and OWCP is a client of the same service company. He further contended that pulling, pushing, twisting and bending while carrying heavy mail 8 to 10 hours a day on a cement floor contributed to appellant's condition based on Dr. McFadden's opinion that his body weight and prior knee surgeries put him at an extremely high risk of progression to symptomatic osteoarthritis. While Dr. McFadden addressed the mechanism by which appellant's work duties could provoke the progression to symptomatic osteoarthritis due to his risk factors of obesity and prior surgeries, he explained that provocation of pain did not equate to direct causation, permanent aggravation, acceleration or precipitation. He concluded that appellant's left hip and knee conditions and proposed surgeries were not causally related to the accepted employment duties.

[13] *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

[14] *George H. Clark*, 56 ECAB 162 (2004).

[15] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

Appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.[16] Appellant may submit this or any other 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 had failed to establish that he sustained additional left hip and knee conditions caused or aggravated by his established employment factors. The Board further finds that he has failed to establish that his left hip and knee surgery were warranted as a consequence of his accepted employment injury or other factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the January 28, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 27, 2014
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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

[16] 20 C.F.R. § 501.2(c)(1).