

**United States Department of Labor
Employees' Compensation Appeals Board**

B.M., Appellant)
and) Docket No. 14-488
U.S. POSTAL SERVICE, POST OFFICE,) Issued: June 18, 2014
Hartford, CT, Employer)

)

Appearances:
Appellant, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 2, 2014 appellant filed a timely appeal from the October 15, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his occupational disease claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish an injury causally related to factors of his federal employment.

FACTUAL HISTORY

On July 26, 2013 appellant, then a 46-year-old letter carrier, filed an occupational disease claim alleging pain in his knees when he walked his route and went up and down stairs while working. He alleged that his condition began on July 16, 2013 and that he first became aware of its relation to his work on that date. Appellant stopped work on July 26, 2013. The employing

¹ 5 U.S.C. § 8101 *et seq.*

establishment noted that it was informed of the condition on that date. Appellant's supervisor stated that appellant had previously commented that he had to stop playing basketball due to bad knees.

By letter dated August 1, 2013, OWCP advised appellant that additional factual and medical evidence was needed.

In a July 16, 2013 report, Dr. John Mitamura, a Board-certified orthopedic surgeon, noted that appellant worked at the employing establishment and was seen for progressive knee pain, particularly in the right knee. Appellant reported pain while going down stairs and a sensation of near buckling and instability in the right knee. Dr. Mitamura examined appellant and diagnosed a torn medial meniscus of the right knee. He recommended a magnetic resonance imaging (MRI) scan.² In an August 1, 2013 report, Dr. Mitamura listed a July 11, 2013 date of injury and noted that appellant's occupation required that he enter and exit a truck and place mail into green boxes. He recommended a limited restriction of 50 pounds but appellant moved many of the bags as well as loaded packages. Dr. Mitamura also noted that appellant had stair climbing responsibilities. On the date of injury, appellant noted severe right knee pain, and had a limp and difficulty going up and down stairs with buckling of the knee. A July 24, 2013 right knee MRI scan showed tearing of the medial meniscus, thinning of the medial compartment and a cartilaginous defect. He examined appellant and diagnosed tearing of the medial meniscus and condylar defects in the knee. Dr. Mitamura recommended physical therapy. He opined that the tear would not heal and that appellant would need surgery; but physical therapy and knee bracing would be tried first. Dr. Mitamura stated that appellant was "totally disabled from work in light of the responsibility of lifting heavy mailbags and going up and downstairs."

A later report by Dr. Mitamura, dated August 13, 2013, reflected examination of appellant and noted his difficulty rising from a seated position, a significant right antalgic gait and a right knee valgus deformity. He diagnosed torn right knee meniscus, suspected left knee meniscal tear and osteochondral defect of both ankles. Dr. Mitamura recommended MRI scan studies to the left knee, right and left ankle and physical therapy for both knees. He reiterated that appellant was totally disabled for work as a mail carrier and could not bend, stoop, squat, or carry more than 5 to 10 pounds maximum on an intermittent basis. Dr. Mitamura opined that "secondary to the numerous steps and carrying of mail which can be up to 70 pounds including getting in and out of the truck has led to repetitive trauma and impacts, which have led to the injuries to the right and left ankles and right and left knees." He noted that appellant explained his work activities when exiting his truck and delivering mail, and carrying parcels weighing up to 50 pounds. Dr. Mitamura explained that this "further creates accelerated impact on stepping and onto the ground." The duties led to appellant's repetitive stresses and the injuries he sustained to knees and ankles. In a September 4, 2013 report, Dr. Mitamura noted appellant's status. He diagnosed internal derangement of both knees, worse on the right and both ankles. Dr. Mitamura requested authorization for right knee arthroscopy and opined that appellant was totally disabled.

² A July 24, 2013 right knee MRI scan, read by Dr. Andre Khoury Yacoub, a diagnostic radiologist, revealed a horizontal tear of the posterior horn and posterior half of the body of the medial meniscus with thinning and irregularity of the medial compartment with cartilaginous defects and mild effusion with fissures through the cartilage of the lateral aspect of the patella.

Appellant provided an August 13, 2013 statement in which he indicated that he worked for the employing establishment for over 19 years. He stated that he engaged in excessive walking, going up and down stairs, carrying, pushing and pulling the maximum weight of 70 pounds during package deliveries, carrying mail on his shoulders during inclement weather and stepping in and out of work trucks approximately 200 times per day. Appellant indicated that the trucks had two steps from the curb to the sidewalk. He advised that he completed these tasks five to six days a week for 8 to 12 hours a day. Appellant explained that on July 10, 2013 he completed his assignment and when he woke up, his right knee was swollen. He noted that he went to work with a limp and when he told his supervisor, she informed him that he should take his time completing his assignment. Appellant indicated that his work duties caused his knee condition, especially on the right knee, with swelling, severe pain, buckling tingling and wear and tear of the knees. He noted that his outside activities included spending time with his child, driving her to tutoring sessions and any of her activities. OWCP also received physical therapy progress notes.

In an October 15, 2013 decision, OWCP denied the claim, finding that the medical evidence did not demonstrate that the claimed condition was related to established work events.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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, that an injury was sustained 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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 causal relationship, generally, is 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

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

ANALYSIS

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

The evidence establishes that appellant has bilateral knee conditions and performed work activities such as walking his route, climbing up and down steps, carrying packages weighing up to 70 pounds and stepping in and out of his truck. The Board notes that the medical reports of record generally support that appellant has internal derangement to the right and left knees and that arthroscopy was recommended. The record also reflects that appellant has a torn medial meniscus in the right knee.

In an August 1, 2013 report, Dr. Mitamura explained that appellant's occupation required that he enter and exit a truck, place mail into boxes, move mailbags and load packages. He also noted that appellant also had stair climbing responsibilities. Dr. Mitamura indicated that on the date of injury, appellant noted severe pain in his right knee, and had a limp and difficulty going up and down stairs and reported it to his supervisor. He confirmed that appellant had buckling to the knee and noted that a right knee MRI scan showed tearing of the medial meniscus with thinning of the medial compartment. Dr. Mitamura opined that appellant was "totally disabled from work in light of the responsibility of lifting heavy mailbags and going up and downstairs." In an August 13, 2013 report, he noted findings and diagnosed torn right knee meniscus and suspected tear of the left knee meniscus and osteochondral defect to the right and left ankles. Dr. Mitamura advised that appellant was totally disabled for work as a mail carrier and opined that "secondary to the numerous steps and carrying of mail which can be up to 70 pounds including getting in and out of the truck has led to repetitive trauma and impacts, which have led to the injuries to the right and left ankles and right and left knees." He referenced work activities of exiting a truck, delivering mail and carrying parcels weighing up to 50 pounds. Dr. Mitamura explained that this "further creates accelerated impact on stepping and onto the ground." He opined that appellant's duties led to repetitive stresses and the injuries he sustained to his knees and ankles. Dr. Mitamura's reports identify work factors contributing to appellant's condition, provide diagnoses and opine that appellant's conditions were caused by his employment duties. While his opinion is not sufficiently rationalized to meet appellant's burden of proof, it generally supports causal relation between his accepted employment duties and his knee and ankle conditions and is sufficient to require OWCP to undertake further development of appellant's claim.⁶

The case will be remanded to OWCP for further development of the medical evidence, for referral to an appropriate medical specialist for a rationalized opinion as to whether appellant's work duties contributed to his bilateral leg conditions. Following this and such other development as it deems necessary, OWCP shall issue a *de novo* decision.

⁵ *Id.*

⁶ See also E.J., Docket No. 09-1481 (issued February 19, 2010); *John J. Caralone*, 41 ECAB 354, 358-60 (1989).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: June 18, 2014
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