

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

M.M., Appellant)

and)

**DEPARTMENT OF LABOR, MINE SAFETY &
HEALTH ADMINISTRATION,
Madisonville, KY, Employer**)

**Docket No. 14-1034
Issued: November 24, 2014**

Appearances:

Ronald K. Bruce, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 1, 2014 appellant, through his representative, filed a timely appeal from the February 4, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his 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 the advanced degenerative arthritis in appellant's right knee, for which he underwent a total right knee replacement in 2007, was causally related to the accepted work injury on September 18, 1987.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 18, 1987 appellant, a 38-year-old coal mine inspector (electrical), sustained a traumatic right knee injury in the performance of duty while crawling during an electrical inspection. Dr. James M. Donley, a Board-certified orthopedic surgeon, evaluated him on September 23, 1987. He diagnosed tendinitis in the anterior aspect of the right knee. Dr. Donley noted preexisting degenerative arthritis in the right knee and unstable knee ligaments. He advised that appellant needed no further medical treatment and added that appellant had maintained his regular work activities. OWCP accepted appellant's claim for tendinitis of the right knee.

In 2002 x-rays showed significant degenerative arthritis of the right knee with cystic changes in the osseous structure with what appeared to be multiple spurs and possible loose bodies. In 2003 Dr. Donley diagnosed osteoarthritis and administered regular injections of viscosupplementation.

In 2007 appellant underwent a total right knee replacement. Indications for surgery included advanced degenerative arthritis and failed conservative treatment.

On October 5, 2011 appellant filed a claim for a schedule award. In support thereof, he submitted a September 20, 2011 impairment evaluation performed by Joseph D. Chengler, MD, finding his good result following total knee replacement represented a 37 percent impairment of the right lower extremity.

In a decision dated May 23, 2013, OWCP found that the medical evidence did not establish that appellant required additional medical treatment due to a worsening of the accepted work injury and the resulting right knee tendinitis without intervening cause.

Dr. David W. Gaw, a Board-certified orthopedic surgeon, examined appellant on May 21, 2013. With respect to any preexisting problems, he noted that appellant was involved in a motorcycle accident in 1975, at which time he bruised the right knee "but there was no surgery involved following that accident although he apparently had a fracture of his right leg at that time." Dr. Gaw described the physical demands of appellant's job as an underground coal miner since 1969. Appellant began to have bilateral knee problems soon thereafter, including soreness and swelling that would come and go. In September 1987, after he became an electrical inspector, the pain and swelling became worse, so he sought medical attention. Appellant continued to do his job but with increasing bilateral knee pain, more on the right, the severity of which waxed and waned. In 2007 he had a total right knee replacement.

Dr. Gaw examined appellant and offered the following opinion on causal relationship:

"Based upon the history as given by the patient and the type of work that he describes doing, it is more likely than not that the underground coal mining-type work activities for 25 plus years, prior to the knee replacement, is the cause of his need for the knee replacement surgery. These work activities were either the significant factor in the development of arthritis involving the knee or it

aggravated an arthritic condition but his work activities are the most likely major factor in his need for the total knee replacement.”

Dr. Gaw determined that appellant’s good result following surgery represented a 25 percent impairment of the right lower extremity under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). He stated that he had reviewed the notes and operative reports of Dr. Cheng and Dr. Donley.

In a decision dated February 4, 2014, an OWCP hearing representative noted that appellant had testified that his condition continued to worsen over the years, and he continued to work underground, which aggravated his right knee symptoms. Therefore, appellant appeared to be alleging a new injury for which he should pursue an occupational disease claim. The hearing representative also noted that Dr. Gaw attributed appellant’s right knee surgery to ongoing employment exposure, which implicated a new injury. She found that the medical evidence failed to establish a recurrence of a medical condition causally related to the September 18, 1987 work injury.

Appellant’s representative argues that the finding that appellant’s accepted employment has not remained active is not supported by the evidence.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her duty.² A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence,³ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁴

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his or her claimed condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant’s employment injury, and must explain from a medical perspective how the claimed condition is related to the injury.⁵

² *Id.* at § 8102(a).

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁶

ANALYSIS

OWCP accepts that appellant sustained a traumatic injury in the performance duty on September 18, 1987 while crawling during an electrical inspection. Dr. Donley, an orthopedic surgeon, saw him five days later and diagnosed tendinitis in the anterior aspect of the right knee. OWCP accepted appellant's traumatic injury claim for tendinitis.

In 2007 appellant underwent a total right knee replacement, for which he filed a schedule award claim.

The question that arises is relationship of the knee replacement surgery to the accepted work injury on September 18, 1987. The record indicates that the work injury was not severe enough to prevent appellant from performing his usual duties as a mine inspector. It appears the only medical attention he required was an appointment with Dr. Donley on September 23, 1987. Dr. Donley examined him and found that no further medical attention was necessary.

Dr. Gaw, an orthopedic surgeon, did not offer a rationalized opinion on causal relationship. He did not address what happened on September 18, 1987 or otherwise acknowledge the traumatic nature of appellant's accepted tendinitis injury. Instead, Dr. Gaw stated that appellant had developed an occupational disease over the course of his career. He mentioned that appellant's pain and swelling had become worse in September 1987, but he did not discuss Dr. Donley's diagnosis of tendinitis or appellant's discharge from further care following the September 18, 1987 work injury, or OWCP's acceptance of tendinitis. Medical conclusions based on inaccurate or incomplete histories are of diminished probative value.⁷

It was Dr. Gaw's opinion that underground coal mining activities over 25-plus years more likely than not caused the need for appellant's knee replacement surgery. Such work activities were either the significant factor in the development of arthritis or had aggravated appellant's arthritic condition, but Dr. Gaw did not explain from an orthopedic or physiological point of view how underground coal mining activities over many years caused or aggravated degenerative arthritis. He did not adequately address what evidence demonstrated to him that appellant's degenerative arthritis was materially affected by coal mine work in federal employment, as opposed to the natural progression of a preexisting condition. Dr. Gaw gave no indication how he distinguished the two. The mere fact that a condition manifests itself or worsens during a period of federal employment raises no inference of causal relationship.⁸

⁶ *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁷ *James A. Wyrick*, 31 ECAB 1805 (1980) (the physician's report was entitled to little probative value because the history was both inaccurate and incomplete). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

⁸ *Steven R. Piper*, 39 ECAB 312 (1987).

Temporal relationships are thus distinguished from causal relationships, the former being necessary but not sufficient to establish the latter. Medical conclusions unsupported by rationale are of diminished probative value.⁹

The Board finds that the medical evidence of record does not support that the need for surgery arose from the injury of September 18, 1987. The medical evidence tends to support, but does not establish, that the need for surgery arose from a different injury, namely, degenerative arthritis developed over the course of appellant's career. As noted by the hearing representative, appellant may pursue an occupational disease claim.

Given the record presented on appeal, the Board finds that appellant has not met his burden to establish the degenerative arthritis in his right knee, for which he underwent a total right knee replacement in 2007, was causally related to the September 18, 1987 work injury. Dr. Gaw based his opinion on an incomplete history and did not offer medical rationale to establish the critical element of causal relationship. The Board will therefore affirm OWCP's February 4, 2014 decision.

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 the advanced degenerative arthritis in his right knee, for which he underwent a total right knee replacement in 2007, was causally related to the accepted work injury on September 18, 1987.

⁹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 24, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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