

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

M.R., Appellant)	
)	
and)	Docket No. 14-1393
)	Issued: November 17, 2014
U.S. POSTAL SERVICE, POST OFFICE, Rockingham, NC, Employer)	
)	

Appearances:
Martin Kaplan, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 2, 2014 appellant, through counsel, timely appealed the March 17, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his traumatic injury 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 the claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on February 1, 2013.

FACTUAL HISTORY

On February 1, 2013 appellant, then a 50-year-old letter carrier, filed a claim for a knee injury that reportedly occurred earlier that same day. After dismounting his mail delivery vehicle, appellant took a couple steps and heard a loud popping noise in his knee. Although he initially identified his left knee, appellant later clarified it was the right knee he injured on February 1, 2013. Appellant previously sustained a work-related right knee injury on or about

¹ 5 U.S.C. §§ 8101-8193 (2006).

September 4, 2011, which OWCP accepted for torn medial meniscus (xxxxxx380). He reported having undergone right knee arthroscopic surgery in September 2011. At the time of the February 1, 2013 employment incident, appellant also had a preexisting left knee condition and was awaiting left total knee arthroplasty.

Appellant was treated in the emergency room (ER) on February 1, 2013, but the ER records he submitted did not include a specific diagnosis. He was excused from all work for two days due to right knee pain and permitted to return to light-duty work effective February 4, 2013.

On February 25, 2013 appellant was seen by a physician's assistant for complaints of persistent right medial knee pain of three weeks' duration.² He reportedly stepped wrong getting off his mail truck. An x-ray revealed right knee degenerative changes. Appellant received a diagnosis of lateral meniscal tear and knee degenerative joint disease. A right knee intra-articular steroid injection was administered and appellant was advised to follow-up in two months.

On February 27, 2013 appellant underwent left knee replacement surgery.

OWCP denied the claim on March 25, 2013. Appellant requested an oral hearing, which was held on August 16, 2013. He also submitted February 1, 2013 ER nurse treatment notes and a July 3, 2013 right knee magnetic resonance imaging (MRI) scan. The MRI scan revealed a previous meniscectomy of the posterior horn of the medial meniscus, with only minimal residual tissue evident posteriorly. The anterior horn remained intact, but there was a small apical tear of the posterior horn of the lateral meniscus. There was also evidence of a prominent joint effusion, with extensive articular cartilage loss at the medial femorotibial joint compartment.

OWCP also received another copy of the February 25, 2013 treatment notes; however, this latest copy was countersigned by Dr. Jason E. Guevara, a Board-certified orthopedic surgeon.

By decision dated November 13, 2013, the hearing representative modified OWCP's prior decision to reflect that appellant established fact of injury. However, the claim remained in denial status because appellant failed to prove that his right knee condition was causally related to the February 1, 2013 employment incident.³

Appellant timely requested reconsideration and submitted a January 28, 2014 report from Dr. Matthew T. Manzo, a Board-certified family practitioner, who indicated that appellant had been his patient for several years. Dr. Manzo further stated that appellant had degenerative joint

² Certain health care providers such as physician assistants, nurse practitioners, physical therapists and social workers are not considered "physician[s]" as defined under FECA. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t)(2014). Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

³ The hearing representative noted appellant's September 4, 2011 right knee injury and his September 23, 2011 arthroscopic surgery under claim number xxxxxx380. He suggested that OWCP consider doubling appellant's two right knee claims.

disease of his knees along with a meniscal tear. He explained that the disease process, while not due to appellant's employment, was hastened by his work. Dr. Manzo also explained that the tear was completed by appellant stepping out of a truck at work on February 1, 2013. He described appellant's employment as consisting of "walking and stepping." Dr. Manzo stated that over several years of this trauma, appellant ended up with his present condition.

On February 13, 2014 OWCP wrote to Dr. Manzo seeking clarification on the issue of causal relationship. It placed particular emphasis on the question of aggravation of appellant's preexisting right knee condition, including his underlying degenerative joint disease.

In a February 25, 2014 report, Dr. Manzo explained that prior to February 1, 2013 appellant had right knee meniscal problems and had undergone a meniscectomy in 2011. He further explained that appellant's knee was apparently doing well until his work injury aggravated the problem. Dr. Manzo also noted that a right knee MRI scan showed minimal remnant meniscus with subchondral bone changes suggesting arthritis. He indicated that it was difficult to say definitively whether the changes were due to the work injury, but it seemed intuitive given that appellant's symptoms began and increased after this injury. Although Dr. Manzo believed that appellant's job and the incident exacerbated the underlying degenerative joint disease, he conceded that an orthopedist's opinion would be of more value in this situation.

In a decision dated March 17, 2014, OWCP denied modification of the hearing representative's November 13, 2013 decision.

LEGAL PRECEDENT

A claimant seeking benefits 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, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁴

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁵ The second component is whether the employment incident caused a personal injury.⁶ An employee may establish that an injury occurred in the performance of duty

⁴ 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.⁷

ANALYSIS

The Board finds that the case is not in posture for decision. Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden to establish entitlement to compensation; however, OWCP shares responsibility in the development of the evidence to see that justice is done.⁸

In response to appellant's latest reconsideration request, OWCP asked Dr. Manzo to explain how the February 1, 2013 employment incident either caused or contributed to appellant's current right knee condition, which included a meniscal tear and underlying degenerative joint disease. Dr. Manzo attributed the meniscal tear to the February 1, 2013 employment incident, and further indicated that the incident and appellant's letter carrier duties exacerbated the underlying degenerative joint disease. Although he is admittedly not an orthopedist and his causal relationship analysis was somewhat inartful, Dr. Manzo nonetheless provided *prima facie* evidence of a link between appellant's employment and his current right knee condition.

Appellant previously injured the same right knee at work on or about September 4, 2011. The hearing representative suggested that OWCP combine appellant's two right knee injury claims, but it did not heed his advice. Accordingly, the March 17, 2014 decision shall be set aside, and the case remanded to OWCP for further development. On remand, OWCP shall double the current right knee injury claim with appellant's previously accepted right knee injury (xxxxxx380).⁹ The combined case records shall then be referred to the district medical adviser for review. After such further development of the case record as OWCP deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The case is not in posture for decision.

⁷ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁸ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8 (February 2000).

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: November 17, 2014
Washington, DC

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

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

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