

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

M.E., Appellant)
and) Docket No. 14-1064
U.S. POSTAL SERVICE, PROCESSING &) Issued: September 29, 2014
DISTRIBUTION CENTER, Kearny, NJ,)
Employer)

)

Appearances:

Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 7, 2014 appellant, through his attorney, filed a timely appeal from the December 6, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his 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 this case.

ISSUE

The issue is whether a March 29, 2013 work incident caused appellant's right knee injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 9, 2012 appellant, a 54-year-old motor vehicle operator, sustained a traumatic injury in the performance of duty under OWCP File No. xxxxxx631.² OWCP accepted the claim for right knee internal derangement, lateral meniscus tear and aggravation of right knee degenerative joint disease. It authorized arthroscopic surgery performed on November 21, 2012.

Physical therapy notes on March 20, 2013 indicated that, in addition to his right knee condition, appellant had left leg joint pain and difficulty walking.

Appellant returned to limited duty on March 29, 2013 working two hours a day. After the first day, he stopped work and did not return. On April 9, 2013 appellant filed a recurrence of disability claim alleging that he sustained knee pain as a result of excessive walking to and from his work area on March 29, 2013.³

The employing establishment controverted the claim and noted that the most walking appellant would have done on March 29, 2013 was a total of approximately 15 minutes walking in and out of the building.

An April 1, 2013 disability certificate indicated that appellant was totally disabled beginning March 30, 2013: “Operative arthroscopy right knee November 21, 2012. [ICD-9] 717.9 Internal derangement of knee.”

An April 13, 2013 magnetic resonance imaging (MRI) scan of the left knee showed a complex tear of the anterior horn of the lateral meniscus, joint effusion, osteoarthritis and a mild subluxation of the patella laterally.

OWCP determined that appellant was not claiming a recurrence of disability due to his March 9, 2012 work injury but was instead claiming a new traumatic injury caused by specific events occurring on March 29, 2013, namely, walking to and from work that day. It asked him to submit a physician’s opinion, supported by a medical explanation, as to how the reported work incident caused or aggravated a medical condition.

Dr. Mark A.P. Filippone, a Board-certified physiatrist, first saw appellant on May 30, 2013. He related that appellant reported for work on March 29, 2013 and it took him 30 minutes to walk from the parking lot to the building in which he worked. “By then I was already exhausted and I had a lot of pain in both knees.” Dr. Filippone reviewed an April 4, 2012 MRI scan of appellant’s right knee, a March 14, 2013 x-ray of his left knee and the April 13, 2013 MRI scan of his left knee. He noted that appellant suffered from bronchitis, for which he used inhalers. Appellant stopped smoking four years ago.

Dr. Filippone noted that appellant was returned to work on March 29, 2013, but he could not walk from the parking lot to the front door of the employing establishment without

² Appellant stepped out of a truck and felt a pop in his right knee.

³ Appellant indicated that he returned to work with limitations on walking, sitting and kneeling.

excruciating pain, which was causing him to flare-up in the right knee and now with the left knee as well. He described his findings on physical examination and noted that appellant felt he had returned to work too soon. Dr. Filippone diagnosed internal derangement of the right knee, lumbosacral radiculitis, rule out lumbosacral radiculopathy, rule out sciatic neuropathy and internal derangement of the left knee secondary to overuse from limping off the injured, painful right knee. He stated that appellant was totally disabled for work: "Driving and walking to and from the parking lot is injuring [appellant]."

In a decision dated June 17, 2013, OWCP denied appellant's March 29, 2013 injury claim. It accepted that the work incident occurred as alleged and that he was in the performance of duty, but found that Dr. Filippone provided insufficient medical rationale as to how the accepted walking caused or aggravated the diagnosed knee conditions.

Appellant, through his representative, requested an oral hearing before an OWCP hearing representative.

Dr. Filippone completed an attending physician's form report indicating with an affirmative mark that the history of injury described in his May 30, 2013 report caused or aggravated the internal derangement of both knees. He indicated that there was no history or evidence of concurrent or preexisting injury or disease or physical impairment.

On August 22, 2013 Dr. Filippone noted that appellant's left knee was worsening despite his not working. On September 17, 2013 he again noted that the left knee was worsening as a result of limping off the more painful injured right knee, despite not working, modifying activities of daily living, walking less and taking medications.

On October 21, 2013 Dr. Filippone stated:

"In my professional medical opinion, it is well within a reasonable degree of medical probability that the aggravation of [appellant's] right knee injury is a direct and sole result of doing additional walking, sitting and kneeling associated with his job as well as the long distance he had to walk back and forth through the facility to his vehicle to commute to work."

In a decision dated December 6, 2013, an OWCP hearing representative affirmed the denial of appellant's March 29, 2013 injury claim. She found that the medical evidence did not provide a physician's explanation of how walking approximately 30 minutes to work contributed to his diagnosed right or left knee conditions.

On appeal, appellant's representative argues that appellant has provided *prima facie* factual and medical evidence sufficient to establish a work injury or at least require additional development.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁴ An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.⁵

Causal relationship is a medical issue⁶ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁷ must be one of reasonable medical certainty⁸ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁹

ANALYSIS

OWCP accepted that appellant walked from the parking lot to his work location when he reported to work on March 29, 2013 and that he walked back to his vehicle at the end of his two-hour assignment. Appellant has established that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The question for determination is whether the accepted work incident caused or aggravated his knee condition.

Dr. Filippone, the attending physiatrist, offered an opinion generally supporting the element of causal relationship. Appellant had related that it took him 30 minutes to walk from the parking lot to the building in which he was supposed to work on March 29, 2013. “By then I was already exhausted and I had a lot of pain in both knees.” Dr. Filippone stated that the aggravation of appellant’s right knee condition was a direct and sole result of doing additional walking, sitting and kneeling associated with his job, as well as the long distance he had to walk back and forth through the facility to his vehicle to commute to work.

The claim appellant filed on April 9, 2013 did not attribute his knee pain to walking, sitting and kneeling associated with his limited duty on March 29, 2013. Appellant indicated that, when he returned to work on March 29, 2013, he had limitations on walking, sitting and kneeling. He attributed his knee pain instead to walking to and from his work area. As appellant

⁴ 5 U.S.C. § 8102(a).

⁵ *John J. Caralone*, 41 ECAB 354 (1989).

⁶ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁷ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁹ See *William E. Enright*, 31 ECAB 426, 430 (1980).

advised Dr. Filippone, the walk to and from the parking lot that day caused pain in both knees. Pain is generally considered a symptom, not a firm medical diagnosis.

Appellant injured his right knee on March 9, 2012, which OWCP accepted for right knee internal derangement, lateral meniscus tear and aggravation of right knee degenerative joint disease under OWCP File No. xxxxxx631. He underwent arthroscopic surgery on November 21, 2012. If walking to and from the parking lot on March 29, 2013 aggravated appellant's right knee conditions, Dr. Filippone did not explain from a biomechanical point of view what effect the act of walking has on such a condition and what objective findings demonstrated to him that the walking appellant performed on March 29, 2013 had caused an aggravation of the preexisting condition. Appellant's attending physician's report erroneously listed that there was no evidence of concurrent or preexisting injury or disease.

Physical therapy notes document that appellant had left leg joint pain and difficulty walking prior to his return to limited duty on March 29, 2013. An April 13, 2013 MRI scan of the left knee showed a complex tear of the anterior horn of the lateral meniscus, joint effusion, osteoarthritis and a mild subluxation of the patella laterally. If walking to and from the parking lot on March 29, 2013 caused or aggravated the left knee conditions, Dr. Filippone failed to explain how and identify the objective findings that demonstrate such. He would later note that the left knee was getting worse as a result of limping off the more painful injured right knee, despite appellant not working, modifying activities of daily living, walking less and taking medications.

The Board finds that the reports of Dr. Filippone are of diminished probative or evidentiary value because he has failed to offer sound medical reasoning to support his stated conclusion.¹⁰ Dr. Filippone's narrative reports are effectively no more probative than his attending physician's form report, wherein he indicated with an affirmative mark that the internal derangement of both knees was caused or aggravated by the employment activity described. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.¹¹ Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning.

The evidence submitted is not based on a full or accurate medical history. Appellant had trouble with both knees before reporting to work on March 29, 2013 and both his knees worsened over time despite not working. Dr. Filippone, who first saw appellant two months after the claimed injury, did not adequately address the contribution, if any, the walking on March 29, 2013 made to his diagnosed knee conditions. He did not sufficiently address the issue of causal relation.

The Board finds that appellant has not met his burden of proof to establish that the March 29, 2013 work incident caused a knee injury. The medical opinion evidence is not well

¹⁰ See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions). *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

¹¹ *E.G., Lillian M. Jones*, 34 ECAB 379 (1982).

rationalized. The Board will therefore affirm OWCP's December 6, 2013 decision denying appellant's traumatic injury claim.

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 of proof to establish that the March 29, 2013 work incident caused a knee injury.

ORDER

IT IS HEREBY ORDERED THAT the December 6, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 29, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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