United States Department of Labor
Employees' Compensation Appeals Board

A.G., Appellant	)	
and	)	**Docket No. 15-616**
	)	**Issued: June 12, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Trenton, NJ, Employer	)	

Appearances:
Jason S. Lomax, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 26, 2015 appellant, through counsel, filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) merit decision dated August 1, 2014. Pursuant to the Federal Employees' Compensation Act[1] (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 has met his burden of proof to establish that he sustained a bilateral knee condition in the performance of duty.

FACTUAL HISTORY

On July 10, 2013 appellant, a 53-year-old retired letter carrier, filed a Form CA-2 claim for benefits, alleging that he developed a bilateral knee condition causally related to factors of his employment.

[1] 5 U.S.C. § 8101 *et seq.*

In a statement dated September 16, 2013, appellant asserted that he worked for approximately 23 years as a letter carrier for the employing establishment. He stated that his duties as a letter carrier required him to work 8- to 10-hour shifts per day, depending on overtime. Six to seven hours each day were spent walking on concrete or asphalt surfaces which were occasionally not level. Appellant was required to stand on his feet for most of his shift, and was frequently required to walk up and down stairs. He related that he carried a mail satchel that typically weighed up to 35 pounds and occasionally up to 50 pounds.

By letter dated October 3, 2013, OWCP advised appellant that it required additional information to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether his claimed condition was causally related to his federal employment. OWCP requested that appellant submit the additional evidence within 30 days.

In a July 3, 2013 report, Dr. Laura E. Ross, an osteopath, stated that she initially examined appellant for evaluation of his bilateral knee pain on April 16, 2013. She related that he sustained a work-related cumulative trauma to his right knee in May 1999, which included a medial meniscal tear and medial collateral ligament (MCL) strain. Appellant underwent an arthroscopic partial medial meniscectomy and patellofemoral chondroplasty of the right knee on June 1, 1999, a procedure that was performed by Dr. William Gomez, Board-certified in orthopedic surgery. Dr. Ross stated that appellant experienced some intermittent pain following his surgery, but had no further complaints of knee pain until July 2010, when he began to have sporadic medial right knee pain, especially when bearing weight on the knee. Appellant underwent several injections into his right knee and Dr. Gomez diagnosed mild patellofemoral medial compartment arthritis. He had continued complaints of anterior right knee pain and he underwent a magnetic resonance imaging (MRI) scan on February 24, 2011 which showed a complex tear involving the posterior horn and body of the medial meniscus. Dr. Gomez performed an arthroscopic partial medial meniscectomy and a trochlear chondroplasty on the right knee on March 8, 2011. Appellant underwent a course of physical therapy and was released to full duty with no restrictions on April 19, 2011. However, he began to experience worsening right knee pain and sought treatment on September 15 and October 3, 2011, at which time Dr. Gomez administered injections into his right knee.

Dr. Ross related that Dr. Gomez reevaluated appellant on December 15, 2011. He noted that appellant continued to have complaints of right knee pain with weight bearing. Dr. Gomez recommended that appellant perform limited duties at work to decrease the time he would be on his feet. He administered another intraarticular injection into appellant's right knee on February 6, 2012 and opined that it would not get to the point where he could continue his duties with the employing establishment. Dr. Gomez advised that he would submit a letter recommending that appellant be limited to performing only sedentary duties. On March 15, 2012 appellant returned to Dr. Gomez and stated that he could no longer walk or work. Dr. Gomez advised that, if appellant was not able to perform sedentary work, he should not work at all. He recommended that appellant undergo a total right knee replacement procedure in light of the fact that his right knee symptoms had not improved with conservative treatment.

Dr. Ross further related that on December 14, 2012 appellant was evaluated by Dr. Thomas J. Capotosta, Board-certified in orthopedic surgery and Dr. Gomez' associate, for

evaluation of his left knee. Appellant stated that his left knee had become severely painful and swollen over the previous few days. Dr. Capotosta had appellant undergo x-ray tests of his left knee, the results of which were normal, and administered injections to his right knee. Appellant also underwent an MRI scan of his left knee on January 2, 2013, which showed linear surface tear posterior horn medial meniscus, mild medial collateral bursitis, possible mild MCL sprain, and mild patellofemoral chondrosis. He underwent arthroscopic surgery to his left knee on March 27, 2013.

Dr. Ross stated that appellant was unable to bend or squat at the time of his April 16, 2013 examination. She related that he had lost power and strength in his legs, particularly in the right knee, and had gained 20 to 30 pounds. Appellant had been out of work since February 6, 2012. Dr. Ross advised that on examination his knees revealed crepitus with range of motion of both knees, especially the right knee, and had tenderness along the joint lines, bilaterally, with no gross instability or significant varus or valgus malalignment in his knees. She stated that her examination of the left knee was limited due to its postoperative state. Dr. Ross recommended that appellant undergo a new MRI scan of his right knee. With regard to his left knee, she stated that she would consider further treatment options at a subsequent examination. Dr. Ross advised that appellant underwent an MRI scan on May 1, 2013, which showed a partial tear of the anterior cruciate ligament and a bucket handle medial meniscus tear with popliteal cyst, chondromalacia patella, partial tear of the medial patella retinaculum, tendinopathy of the patella and quadriceps tendon, and lateral collateral ligament (LCL) sprain. Dr. Ross recommended that appellant undergo Orthovise for both knees and continue to use a brace for his right knee.

Dr. Ross issued the following diagnoses: articular collateral ligament (ACL) tear of the right knee with medial meniscus tear, exacerbation of underlying degenerative joint disease, and left knee, status post arthroscopic surgery on March 27, 2013; linear surface tear posterior horn medial meniscus, mild medial collateral bursitis, possible mild MCL sprain, and mild patellofemoral chondrosis. She opined, after reviewing objective medical evidence which included multiple diagnostic studies and consultation reports from the Trenton Orthopedic Group, that the injuries appellant sustained to his knees were directly and causally related to the cumulative trauma caused by his position as a letter carrier for the employing establishment. Dr. Ross related that appellant was required to walk 6 to 7 hours out of an 8- to 10-hour shift, on asphalt or concrete. In addition to the force of weight bearing on his bilateral knees, appellant was required to carry a mail satchel that could weigh between 35 to 50 pounds. Dr. Ross stated that, after reviewing appellant's account of his job duties, his bilateral knee condition had developed as a result of cumulative trauma and was not attributable to one single, identifiable event.

Dr. Ross concluded that, as a result of his injuries, appellant had been out of work and unable to return since February 6, 2012. Appellant required further medical treatment for his left knee, which might include visco-supplementation injections and/or physical therapy, and additional medical treatment for his right knee, which could include visco-supplementation injections and possible surgical intervention, including total right knee arthroplasty as recommended by the physicians from Trenton Orthopedic Group.

By decision dated December 12, 2013, OWCP denied appellant's claim, finding that he failed to submit factual and medical evidence sufficient to establish that he sustained the claimed bilateral knee condition in the performance of duty. It found that he did not establish fact of

injury, as the evidence did not support that the injury or event(s) occurred as he described. OWCP further found that appellant did not submit medical evidence sufficient to establish that he sustained a diagnosed medical condition causally related to the work injury or event.

On December 23, 2013 appellant requested an oral hearing, which was held on June 23, 2014.

In a follow-up report dated June 20, 2014, Dr. Ross stated that appellant returned to her office on July 29, 2013 to undergo injections into his right knee, which he also underwent on August 5 and 12, 2013. She advised that he did quite well upon receiving the injections and returned to her office on October 7, 2013 for further evaluation. Dr. Ross stated that appellant had crepitus with range of motion of the bilateral knees and tenderness along the joint lines; she advised that she would obtain new x-rays of both knees in four months, at which time she would reevaluate him. She reiterated her previous findings, diagnoses, and conclusions regarding whether his bilateral knee condition was causally related to employment factors.

On June 30, 2014 OWCP also received a copy of a March 8, 2011 surgical report from Dr. Gomez, and a copy of a March 27, 2013 surgical report from Dr. Capotosta. In his report Dr. Gomez related that appellant had a retear of the right medial meniscus, and had undergone arthroscopic partial medial menisectomy of the right knee with trochlear chondroplasty. Dr. Capotosta related in his March 27, 2013 report that appellant had undergone arthroscopy and partial meniscectomy of the left knee.

By decision dated August 1, 2014, an OWCP hearing representative modified and affirmed the December 12, 2013 decision. He modified the December 12, 2013 decision in part, finding that appellant had established fact of injury by presenting factors of employment, which showed that the claimed injury or event(s) had occurred as he described. OWCP found, however, that appellant failed to submit medical evidence sufficient to establish that he sustained a diagnosed medical condition causally related to the described factors of employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing that 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.[2] 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.[3]

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

[2] *Joe D. Cameron,* 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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 is usually rationalized medical 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 relationship between the diagnosed condition and the specific employment factors identified by the claimant.[4]

Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between his claimed right shoulder condition, and his federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.[5]

ANALYSIS

In the instant case, appellant has failed to submit sufficient medical opinion containing a rationalized, probative report which relates his claimed bilateral knee condition to factors of his employment. For this reason, he has not met his burden of proof to establish his claim that this condition was sustained in the performance of duty.

Appellant submitted reports dated July 3, 2013 and June 20, 2014 from Dr. Ross, who related a series of his complaints of bilateral knee pain and presented diagnoses of ACL tear of the right knee with medial meniscus tear, exacerbation of underlying degenerative joint disease, and left knee, status post arthroscopic surgery on March 27, 2013, linear surface tear posterior horn medial meniscus, mild medial collateral bursitis, possible mild MCL sprain, and mild patellofemoral chondrosis, but did not provide a rationalized medical opinion that these conditions were causally related to factors of his employment.

In her July 3, 2013 report, Dr. Ross stated that appellant's bilateral knee symptoms were due to work-related cumulative trauma which began with his May 1999 work injury, including a medial meniscal tear and MCL strain. Following the arthroscopic partial medial meniscectomy and patellofemoral chondroplasty of the right knee appellant underwent on June 1, 1999, he did not have significant right knee pain until July 2010, when he began to experience sporadic medial right knee pain, especially with weight bearing. Dr. Ross noted that Dr. Gomez had diagnosed mild patellofemoral medial compartment arthritis and advised that the results of a February 24, 2011

[4] *Id.*

[5] *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

right knee MRI scan showed a tear of the right medial meniscus. Dr. Gomez performed an arthroscopic partial medial meniscectomy and a trochlear chondroplasty on the right knee on March 8, 2011; however, appellant continued to have complaints of right knee pain with weight bearing. On February 6, 2012 he took appellant off work and opined on March 15, 2012 that, if he could not perform sedentary work, he should not work at all. Dr. Gomez recommended that appellant undergo a total right knee replacement procedure in light of the fact that his right knee symptoms had not improved with conservative treatment. After Dr. Capotosta, Dr. Gomez' associate, diagnosed a torn posterior horn medial meniscus, mild medial collateral bursitis, possible mild MCL sprain and mild patellofemoral chondrosis, as indicated by a left knee MRI scan, appellant underwent arthroscopic surgery to his left knee on March 27, 2013. Dr. Ross advised that appellant underwent an MRI scan of the left knee on May 1, 2013 which showed a partial tear of the anterior cruciate ligament and a bucket handle medial meniscus tear with popliteal cyst, chondromalacia patella, partial tear of the medial patella retinaculum, and tendinopathy of the patella and quadriceps tendon, and lateral collateral ligament sprain. She opined, after reviewing a description of his job duties and the objective medical evidence from Drs. Gomez and Capotosta, that the injuries appellant sustained to his knees were directly and causally related to cumulative trauma caused by his position as a letter carrier for the employing establishment and were not due to one single, identifiable event. Dr. Ross stated that, as a result of his injuries, appellant had been out of work and unable to return since February 6, 2012. She essentially reiterated these findings and conclusions in her June 20, 2014 report.

Dr. Ross' reports did not provide a probative, rationalized medical opinion that the claimed conditions or disability were causally related to employment factors. Her opinion on causal relationship is of limited probative value as it does not contain any medical rationale how or why appellant's claimed bilateral knee condition was currently affected by or related to factors of employment.[6] The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy, and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[7] Dr. Ross noted that appellant's job duties included walking while carrying a mail satchel, but she did not explain the medical process through which such duties would have been competent to cause the claimed condition. Her opinion is of limited probative value as it does not contain any medical rationale explaining how his job duties physiologically caused the diagnosed bilateral knee condition. A rationalized opinion is especially important in this case as appellant's knee condition is long standing and complicated in nature. Dr. Ross' reports thus did not constitute sufficient medical evidence to establish that his claimed bilateral knee condition was causally related to his employment.

While appellant also submitted surgical reports from Dr. Gomez and Dr. Capotosta, neither of these reports address the cause of appellant's bilateral knee conditions.

On appeal, appellant's counsel argues that appellant submitted factual and medical evidence sufficient to establish that his bilateral knee condition was causally related to employment factors and that he therefore is entitled to compensation for this condition, as it was

[6] *William C. Thomas*, 45 ECAB 591 (1994).

[7] *See Anna C. Leanza*, 48 ECAB 115 (1996).

sustained in the performance of duty. He contends that appellant clearly outlined his work duties as letter carrier and that Dr. Ross thoroughly explained the manner in which his claimed bilateral knee condition developed as the long term, cumulative result of these work duties. Counsel argues that, given the length of appellant's career and the rigors associated with his job over that time, it would be implausible to suggest that his job duties did not play a role in the deterioration of his knees. Counsel therefore contends that OWCP's August 1, 2014 decision should be reversed and that appellant's bilateral knee conditions be accepted or alternatively, that the decision be set aside, and remanded for further development of the medical evidence, as Dr. Ross' opinion on causation is uncontroverted. The Board does not accept counsel's contentions. For the reasons set forth above, the August 1, 2014 decision of OWCP's hearing representative is affirmed.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither, the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[8] Causal relationship must be established by rationalized medical opinion evidence and he failed to submit such evidence.

OWCP advised appellant of the evidence required to establish his claim, however, he failed to submit such evidence. Consequently, appellant has not met his burden of proof in establishing that his claimed bilateral knee condition was causally related to his employment.

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 failed to meet his burden of proof to establish that he sustained a bilateral knee condition in the performance of duty.

[8] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 1, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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