

appellant's occupational disease claim for bilateral knee osteoarthritis. The Board found that the opinion of Dr. Lawrence Barr, a Board-certified internist and second opinion physician in the case, could not represent the weight of the medical evidence as it was based on an inaccurate factual history inconsistent with the statement of accepted facts. The Board remanded the case to OWCP to obtain a referral opinion regarding whether appellant's years of walking up and down steps in his job caused or aggravated his claimed condition. The law and facts of the case as set forth in the Board's prior decision and order are incorporated by reference.

On remand of the case, OWCP obtained a second opinion from Dr. Stanley Askin, a Board-certified orthopedic surgeon, who provided a January 26, 2012 report attributing appellant's bilateral knee osteoarthritis to aging. Dr. Askin submitted a February 10, 2012 addendum report finding no causal relationship between appellant's employment and the development of the claimed condition.

By decision dated April 2, 2012, OWCP denied appellant's occupational disease claim on the grounds that causal relationship was not established, based on Dr. Askin's opinion as the weight of the medical evidence. Counsel disagreed with this decision and requested a hearing.

By decision dated June 3, 2012, OWCP's Branch of Hearings and Review set aside the April 2, 2012 decision on the grounds that Dr. Askin's opinion could not represent the weight of the medical evidence. The hearing representative found that Dr. Askin's reports were based on an incomplete history and insufficiently rationalized. She directed that OWCP prepare a new statement of accepted facts, detailing the 2003 and 2011 occupational knee injuries, then request an addendum from Dr. Askin based on that factual framework.

On June 28, 2012 OWCP prepared an updated statement of accepted facts, noting that appellant walked "up and down steps over many years as a letter carrier." It listed a February 21, 2003 left knee injury under claim File No. xxxxxx922, an April 30, 2011 right knee sprain under claim File No. xxxxxx852, and a left knee contusion sustained in a work-related motor vehicle accident claim under File No. xxxxxx345. At OWCP's request, Dr. Askin submitted July 5, November 28, and December 11, 2012 addendum reports. He opined that appellant's knee injuries and employment duties did not cause, aggravate, or accelerate the claimed bilateral knee osteoarthritis.

By decision dated May 21, 2013, OWCP denied appellant's occupational disease claim on the grounds that causal relationship was not established, based on Dr. Askin's reports as the weight of the medical evidence.

In a May 28, 2013 letter, counsel requested a hearing. At the hearing, held September 24, 2013, he asserted that Dr. Askin's opinion should be given no medical weight as he was unable to clarify his opinion on causal relationship in any of his five reports. The probative value of Dr. Askin's opinion was further diminished by his reliance on incomplete statements of accepted facts.

Counsel provided a September 21, 2013 report from Dr. Colin A. Campbell, an attending osteopathic physician Board-certified in internal medicine, who noted treating appellant for many years. Dr. Campbell opined that the 2003 left meniscal tear, October 2011 left knee

contusion, and the cumulative effect of bending, squatting, lifting heavy packages, and carrying a heavy mail satchel, were all causal factors in the deterioration of appellant's knees. He explained that climbing steps and carrying heavy packages on a deranged left knee caused additional damage to the meniscus and abnormal wear leading to arthritis. Dr. Campbell explained that the "beginning of the degradation of [appellant's] left knee started with a work[-]related injury in 2003 and has certainly been exacerbated by his physically taxing employment. [A] subsequent work[-]related injury in 2011 injured [appellant's] left knee further and has certainly helped to progress the degeneration of his knee."

Appellant provided a September 17, 2013 statement reiterating his claim that carrying mail up and down steps and the 2003 accepted left knee injury caused a left medial meniscal tear and bilateral knee osteoarthritis.

By decision dated December 11, 2013, OWCP's Branch of Hearings and Review set aside the May 21, 2013 decision. The hearing representative directed OWCP to prepare a statement of accepted facts with the full physical requirements of a letter carrier, and including accepted left knee injuries in 2003 and 2011 under claim file numbers xxxxxx922 and xxxxxx345.³ She instructed it to refer appellant to a new second opinion specialist, as Dr. Askin "already provided numerous addendums which had defects."

In a December 20, 2013 letter, OWCP prepared an updated statement of accepted facts which included appellant's job description and the 2003 and 2011 injuries. It then referred appellant to Dr. Askin for a second opinion examination. Dr. Askin provided a January 3, 2014 report opining that appellant's bilateral knee osteoarthritis was an idiosyncratic, age-related condition unrelated to his federal employment or knee injuries.

On February 18, 2014 OWCP obtained a second opinion report from Dr. Robert Smith, a Board-certified orthopedic surgeon, who opined that the 2003 knee injury was not competent to produce osteoarthritis. In a February 26, 2014 letter, it requested that Dr. Smith submit a supplemental report addressing whether appellant sustained the claimed occupational condition, noting that the claim was not for a traumatic injury. Dr. Smith provided a March 9, 2014 addendum, stating that appellant appeared to have "symmetrical primary arthritis of both knees, consistent with a 57-year-old male. There was nothing about his examination to indicate that he had post-traumatic arthritis of his knees either by the two traumatic incidents related in 2003 and 2011, or his routine work activities with the postal service." Dr. Smith characterized primary osteoarthritis as a "developmental condition and a disease of life." He concluded that appellant's work activities and the 2003 and 2011 injuries "did not cause, aggravate, accelerate, or precipitate his knee arthritis which would have occurred in any event, whether he worked for the postal service or not."

By decision dated March 12, 2014, OWCP denied appellant's occupational disease claim on the grounds that causal relationship was not established, based on Dr. Smith's opinion as the weight of the medical evidence.

³ The Board notes that by order issued August 12, 2013, under Docket No. 13-924, it remanded appellant's appeal under File No. xxxxxx345 to OWCP for doubling with File No. xxxxxx382 and issuance of a *de novo* decision. OWCP subsequently doubled the files under claim File No. xxxxxx345.

In a March 18, 2014 letter, counsel requested a hearing, held June 9, 2014. At the hearing, he contended that OWCP should have accorded the weight of the medical evidence to Dr. Campbell, who provided extensive medical rationale supporting causal relationship. Alternatively, counsel asserted a conflict between Dr. Campbell and Dr. Smith, requiring resolution by an impartial medical examiner.

By decision dated July 28, 2014, the hearing representative affirmed the March 12, 2014 decision, finding that Dr. Smith provided adequate rationale explaining that appellant's bilateral knee osteoarthritis was age related, with no contribution from his employment.

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 filed within the applicable time limitation; that an injury was sustained while 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.⁶ 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) 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 generally 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 medial 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.⁷

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ 20 C.F.R. § 10.5(q).

⁷ *Solomon Polen*, 51 ECAB 341 (2000).

Section 8123(a) of FECA provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.⁸ When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.⁹

ANALYSIS

Appellant claimed that he sustained osteoarthritis of both knees, causally related to walking up and down steps and heavy lifting at work, and to 2003 and 2011 occupational left knee injuries. OWCP denied the claim on the grounds that causal relationship was not established.

In support of his claim, appellant submitted a September 21, 2013 report from Dr. Campbell, an attending osteopathic physician Board-certified in internal medicine, who opined that the 2003 meniscal tear caused internal derangement of the left knee, predisposing appellant to degenerative osteoarthritis, accelerated by wear and tear from years of walking, heavy lifting, and carrying, and stair climbing in the performance of duty. The 2011 left knee contusion sustained in a work-related motor vehicle accident caused additional degradation.

OWCP obtained a second opinion from Dr. Smith, a Board-certified orthopedic surgeon, who opined on February 18, 2014 that appellant's presentation did not indicate a traumatic injury. Dr. Smith provided a March 9, 2014 addendum, stating that appellant's arthritis was age related as it appeared symmetrical in both knees. It had no relation to appellant's history of injury or his federal employment.

In the July 28, 2014 decision denying appellant's claim, OWCP accorded the weight of the medical evidence to Dr. Smith. The Board finds, however, that Dr. Smith's opinion as second opinion specialist is in conflict with that of Dr. Campbell, appellant's attending physician. Dr. Smith provided rationale explaining that bilaterally symmetrical knee arthritis was due to aging, whereas Dr. Campbell reasoned that walking, climbing, lifting, and carrying on a deranged left knee led directly to the development of osteoarthritis. He reached opposing conclusions regarding the etiology of the claimed condition.

As there is an outstanding conflict of medical opinion, the case will be remanded to OWCP for appointment of an impartial medical examiner.¹⁰ OWCP shall refer appellant, the medical record, and a statement of accepted facts to the impartial specialist to obtain a well-reasoned opinion on causal relationship. After this and any other development deemed necessary, it shall issue a *de novo* decision in the case.

⁸ 5 U.S.C. § 8123(a); *Robert W. Blaine*, 42 ECAB 474 (1991).

⁹ *Delphia Y. Jackson*, 55 ECAB 373 (2004).

¹⁰ 5 U.S.C. *supra* note 8; *id.*

On appeal, counsel asserts that Dr. Smith's report is insufficient to represent the weight of the medical evidence when compared to Dr. Campbell's detailed and well-rationalized opinion supporting causal relationship. He alleges that Dr. Smith did not review the updated statement of accepted facts as he misstated the 2003 date of injury, indicated that the October 11, 2011 motor vehicle accident was not included, and did not list the accepted injuries. Counsel notes that Dr. Smith used speculative language and failed to provide any medical rationale to support his opinion. Alternatively, he contends that there is a conflict of medical opinion between Dr. Campbell and Dr. Smith regarding the etiology of appellant's knee osteoarthritis. As stated above, the case will be remanded to OWCP to select an impartial medical examiner and obtain his or her opinion.

CONCLUSION

The Board finds that the case is not in posture for a decision due to a conflict of medical opinion.

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for additional development consistent with this decision and order.

Issued: March 24, 2015
Washington, DC

Patricia Howard Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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