



In an undated statement, received by OWCP on October 3, 2013, appellant explained that she could no longer perform her duties as a letter carrier. She explained that she had been in constant pain since an accepted work-related injury “six years ago.” Appellant stated that she suffered from arthritis in both knees and feet, and a bad back. She noted that her legs were of different lengths because of her previous employment injury. Appellant explained that it was no longer possible for her to carry her 35-pound mail satchel up and down steps.

The record reflects that appellant fell on April 23, 2007 while delivering mail. OWCP accepted her traumatic injury claim for the condition of closed right ankle fracture under File No. xxxxxx886. Appellant sustained another right lower extremity injury on November 14, 2013 while climbing steps in the performance of duty. OWCP accepted a sprain of the right knee and leg under File No. xxxxxx401.

Dr. Alfred M. Faulkner, an osteopathic physician, reported on December 29, 2010 that he had examined appellant’s left ankle and both right and left knees. Appellant had normal range of motion in her left ankle although she related that it had been bothering her. She had tenderness over the posterior tibial tendon and mild swelling. Dr. Faulkner found that appellant had lost her arch medially on the left and had *pes planovalgus* compared to the right. He noted left tibial tendinitis and posterior tibial tendon insufficiency and mild bilateral osteoarthritis. X-rays of appellant’s knees showed mild degenerative changes with mid-joint line narrowing. There was no sign of fracture or dislocation. Dr. Faulkner noted that he discussed the possibility with appellant that she might need surgical procedures for both her knees and left foot.

An August 2, 2013 magnetic resonance imaging (MRI) scan report on the right knee by Dr. Steven Soliman, an osteopath, disclosed a small, complex, degenerative tear of appellant’s medial meniscus. The report also noted mild tricompartmental arthritis and a very small Baker’s cyst.

In reports dated September 10 and 16, 2013, Dr. David L. Cooley, an osteopathic physician, noted that he had been treating appellant since February 8, 2006. He reported diagnoses and offered his opinion as to whether appellant’s diagnosed conditions would be aggravated by her employment. Dr. Cooley noted a tear of her left medial meniscus, osteoarthritis of the left knee, left tibia tendinitis, arthritis in her right hip, a right knee Baker’s cyst, an avulsion fracture of her right ankle, and sacral unleveling with spastic scoliosis. He reported that appellant walked with a cane and suffered persistent and worsening pain in her left knee, hip, and back. Dr. Cooley recommended against work activity that involved carrying over 10 pounds, prolonged walking, or stair climbing. In his note of September 16, 2013, Dr. Cooley found that appellant’s conditions of arthritis and scoliosis would be aggravated by prolonged walking, going up and down stairs, and carrying a mailbag.

By letter dated October 7, 2013, OWCP advised appellant of the deficiencies in her claim. It requested that she provide a medical report with the history of her condition and work duties, positive findings from physical examination, and a well-reasoned opinion as to whether her conditions were aggravated by her work duties. Appellant was afforded 30 days to submit this additional evidence. She did not respond within the allotted time.

By decision dated December 3, 2013, OWCP denied appellant's claim. It found that appellant had failed to establish that her medical conditions were causally related to her employment.

Appellant requested a telephonic hearing before a hearing representative of OWCP's Branch of Hearings and Review, which was held on June 10, 2014. At the hearing, appellant's counsel directed the hearing representative's attention to the September 10 and 16, 2013 reports of Dr. Cooley and argued that appellant's extensive walking and carrying of her mail satchel constituted an occupational exposure.

OWCP received a subsequent report from Dr. Cooley dated April 21, 2014. Dr. Cooley listed appellant's diagnoses, job duties, and physical findings. He noted that appellant had severe scoliosis and arthritis of the lumbar spine with recurrent low back pain. Dr. Cooley noted crepitation in both of appellant's knees and a limping gait caused by the unleveling of her sacrum. He again concluded that appellant's job duties were aggravating her medical conditions.

By decision dated August 26, 2014, the hearing representative set aside the prior OWCP decision dated December 3, 2013 and remanded the case to OWCP for further development. He did not order the claim on appeal to be combined with prior claims, File No. xxxxxx886 and File No. xxxxxx401.<sup>2</sup> However, the hearing representative ordered that a statement of accepted facts (SOAF) be prepared to include the facts of appellant's accepted injuries of April 23, 2007 and November 14, 2014. He directed OWCP to obtain a second opinion examination of appellant based upon the evidence in all three claim files. The issue to be determined was whether appellant had established causal relationship between her medical conditions and her employment.

On remand OWCP noted that it sent the medical records from all three of appellant's claims to the designated second opinion examiner.<sup>3</sup> An updated SOAF was drafted which referenced and described appellant's two traumatic injuries. With regard to the claim on appeal, the SOAF noted: "On September 20, 2013 the claimant filed an [o]ccupational [d]isease claim stating that on or around July 8, 2013 she was experiencing pain in her feet and unable to do her duties of climbing stairs and walking. She stated that the onset happened over a period of time. The claim was developed and subsequently denied." OWCP did not specifically mention the acceptance of the 2007 claim relating to appellant's feet in the SOAF or accompanying questions, but did identify the diagnosis of "right knee/leg sprain."

OWCP thereafter received reports, dated October 3 and December 17, 2014, from Dr. Emmanuel Obianwu, Board-certified in orthopedic surgery, OWCP's second opinion physician. Dr. Obianwu noted his belief that "the main basis for today's evaluation" was appellant's November 2013 employment injury. He later referred to "the so-called work injury of November 14, 2013." Dr. Obianwu diagnosed severe post-traumatic degenerative arthritis in appellant's right ankle, bilateral arthritis in appellant's hips, bilateral osteoarthritis in appellant's

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<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

<sup>3</sup> The Board notes that it is impossible to verify that this was done because only a single claim file was incorporated in the current case file.

knees, severe lumbar spondylosis with narrowing of all disc spaces, and lumbar scoliosis. The report dated October 3, 2014 contained the following opinion:

“As stated, the diagnosis of right knee/leg sprain has resolved.<sup>4</sup>

“The reason this individual is not medically capable of performing her regular job duties is the sequelae of the work incident of April 2007. For [the] work injury of 2007, she was placed on restrictions of no overtime duties. It appears that from the history, she never did return to regular duties without restrictions. I suspect worsening to some degree of the right ankle post[-]traumatic arthritis. At this time, she is capable of performing her duties with specific restrictions. The restrictions given in October 2007 for her right ankle of no overtime need to be further expanded because of the current state of the right ankle. It is on this basis that I have completed the OWCP-5 form.”

OWCP requested a supplemental report from Dr. Obianwu to clarify his opinion. In a report dated December 17, 2014, Dr. Obianwu explained that because of the drafting of the SOAF and accompanying questions he had not focused his specific attention on examination of appellant’s feet. He noted that he had examined appellant’s right foot in the process of his examination of her right ankle and that he “did take a look at the left foot” in connection with an examination of that ankle. Dr. Obianwu explained that because the SOAF included that the occupational disease claim had been developed and denied, he did not consider that complaints associated with that claim were “occupational.” He noted: “In the first place, all through our lengthy discussion on the day of examination, this woman did not mention any incident or event occurring in early July.” Discussing the same topic, Dr. Obianwu noted: “To the best of my recollection, she did not complain of pain in her feet.” He concluded that appellant’s feet were within normal limits.

In a decision dated February 12, 2015, OWCP affirmed the December 3, 2013 decision. It determined that Dr. Obianwu’s reports were the weight of the evidence.

Appellant requested a telephonic hearing before a hearing representative of OWCP’s Branch of Hearings and Review, which was held on September 15, 2015. By decision dated November 16, 2015, the hearing representative affirmed the February 12, 2015 denial and specifically concurred with the finding that Dr. Obianwu’s reports were the weight of the evidence.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning 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.<sup>5</sup> These are the essential elements of each and every

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<sup>4</sup> It is likely the doctor meant “knee” in this sentence.

<sup>5</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, the claimant must submit the following: (1) medical evidence establishing the 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.<sup>7</sup>

Rationalized medical opinion evidence is medical evidence that 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 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 employment factors identified by the claimant.<sup>8</sup>

### ANALYSIS

Appellant has appealed from a November 26, 2015 decision which denied her occupational disease claim. The Board finds that this case is not in posture for decision.

The Board notes that it is unable to evaluate whether Dr. Obianwu had the opportunity to review the records of all of appellant's claims. The August 24, 2014 decision of the hearing representative specifically ordered that the second opinion physician review appellant's claims, including the two previously accepted traumatic injury claims for right ankle fracture and sprain of the right knee and leg.

The Board finds that the opinion of Dr. Obianwu lacks probative value because the physician's examination, findings, and opinions rested on a misunderstanding of the questions posed in the SOAF provided by OWCP in its referral letter. Dr. Obianwu noted that he believed he was to address the status of appellant's November 13, 2014 traumatic injury, but not her occupational disease claim, because the occupational disease claim was in denied status. He drafted a December 17, 2014 supplemental report, but his opinions were undermined by his admission that he had not carefully examined appellant's feet because he did not realize that he was to do so. Dr. Obianwu's medical opinion set forth in his supplemental report is questionable as the record is unclear that he was fully informed and understood the medical issues in the present claim and whether he actually performed a complete examination of appellant's feet. The credibility of a physician's opinion is based on the quality of the examination.<sup>9</sup>

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<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *A.D.*, 58 ECAB 149 (2006).

<sup>8</sup> *Duane B. Harris*, 49 ECAB 170 (1997).

<sup>9</sup> *M.D.*, 59 ECAB 211 (2007).

Furthermore, the Board notes that OWCP should have followed up on Dr. Obianwu's findings that appellant's right ankle condition might have worsened and that her restrictions should be reviewed to account for any change in her condition.

When OWCP undertakes to develop the evidence in a claim, it must see that justice is done. Where it referred appellant to a second opinion physician and the report did not adequately address the relevant issues, OWCP should secure a report on the relevant issues.<sup>10</sup>

On remand OWCP should combine File Nos. xxxxxx886 and xxxxxx401 with File No. xxxxxx658 (the file in this case). It shall then obtain a new second opinion evaluation as to whether appellant's duties as a letter carrier caused or aggravated her bilateral, knee, foot, leg, or back conditions. After any necessary further development consistent with this decision, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 16, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further development consistent with this decision and order of the Board.

Issued: April 22, 2016  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>10</sup> *Robert Kirby*, 51 ECAB 474 (2000).