

FACTUAL HISTORY

OWCP accepted that on May 23, 1991 appellant sustained a right knee sprain while in the performance of duty as a carrier. It assigned the claim OWCP File No. xxxxxx082. Appellant returned to work on November 18, 1991 in a "limited-duty" capacity, a position he continued to perform until January 22, 2012.

On January 21, 2012 appellant, then a 62-year-old mail carrier, filed a traumatic injury claim (Form CA-1) assigned OWCP File No. xxxxxx499, alleging that on that date he suffered a swollen and painful right knee while walking his route.

In a February 13, 2012 report, Dr. Teofilo A. Dauhajre, appellant's treating Board-certified orthopedic surgeon, noted that appellant was initially seen at his office on January 30, 2012. He noted that appellant was a mail carrier in his usual state of health until January 21, 2012 when he developed increasing pain in his right knee. Dr. Dauhajre noted that appellant was initially evaluated by his private internist, who placed him on two weeks of disability and prescribed an analgesic. He noted that his initial impression was internal derangement of the right knee. Dr. Dauhajre noted that the clinical examination of the right knee is supportive of pathology localized to the posteromedial joint line of the right knee. He referred appellant for x-rays and indicated that he was provided total disability from returning back to work from "January 30 through February 30, 2012" [sic]. Dr. Dauhajre further noted that appellant was reevaluated on February 6, 2012 and that the x-rays of his right knee on February 6, 2012 demonstrated moderate tricompartmental knee osteoarthritis with spurring of the tibial spine and narrowing of the intercondylar notch region, one centimeter loose body in the posterior joint space, small knee joint effusion, no fractures, or dislocations. His impressions from this visit were internal derangement of the right knee. Dr. Dauhajre noted that the clinical examination was supportive of pathology localized to the medial joint line that can be as a result of his degenerative changes to the medial joint line versus a tear of the posterior horn of the medial meniscus of the right knee.

In a February 20, 2012 report, Dr. Dauhajre found that appellant was totally disabled from returning back to work until further notice. Appellant also submitted supporting disability certificates and duty status reports from Dr. Dauhajre. In a January 30, 2012 disability certificate, Dr. Dauhajre found that appellant was totally incapacitated from January 30 through "February 30, 2012" [sic]. In a disability status report of the same date, he listed his clinical findings as internal derangement of the right knee, questionable tear of the medial meniscus. Dr. Dauhajre noted that this was due to a January 21, 2012 injury and that appellant was totally disabled for the aforementioned dates.

In a February 17, 2012 duty status report, received February 28, 2012, Dr. Dauhajre found that appellant was totally disabled from January 30 through March 30, 2012. In a February 17, 2012 disability certificate, he noted that appellant's diagnosis was internal derangement of knee and tear of medial meniscus of the knee, and that he was totally incapacitated.

Appellant also submitted notes from his physical therapy sessions with Joseph Banda at Sports Care of America, PC, dated February 6 and 10, 2012.

By decision dated March 12, 2012, OWCP denied appellant's traumatic injury claim in File No. xxxxxx499 as the medical evidence did not demonstrate that the claimed medical condition was related to the established employment-related events of January 21, 2012.

On April 5, 2012 appellant requested reconsideration. In a March 5, 2012 report, Dr. Dauhajre noted continued treatment of appellant for internal derangement of the right knee, noting that the clinical examination was consistent with chondromalacia of the medial femoral condyle, and pathology of the medial joint line of the right knee. In an attending physician's report of that date, he opined that appellant's internal derangement of the right knee was causally related to the employment activity, as appellant was a letter carrier and that required use of his right knee.

In a March 12, 2012 report, Dr. Dauhajre noted that appellant underwent a magnetic resonance imaging (MRI) scan of the right knee on March 8, 2012 which demonstrated chronic anterior cruciate ligament tear; degeneration and tear of posterior horn of the lateral meniscus; and small joint effusion with slightly complex fluid, tear of the posterior horn of the medial meniscus adjacent to the meniscal root and probable meniscal ossicle. He also noted that the MRI scan showed moderate-to-severe cartilage loss in the medial femoral condyle and central portion of the posterolateral femoral condyle, and that degenerative cartilage loss of the patellofemoral joint was also present. Dr. Dauhajre listed his impression as internal derangement of the right knee, probable tear of the posterior horn of the lateral meniscus of the right knee, and moderate degenerative joint disease of the right knee. In a March 12, 2012 duty status report, he indicated that appellant was totally disabled from January 30 through April 30, 2012 due to internal derangement of the right knee and tear of the medial meniscus of the right knee.

The record also contains follow-up reports by Dr. Dauhajre. In a March 24, 2012 report, Dr. Dauhajre noted that in addition to the prior diagnoses, appellant sustained aggravation of preexisting degenerative joint disease of the right knee that was asymptomatic prior to the employment-related injury of January 21, 2012. He then opined, within a reasonable degree of medical probability, that the above impressions were causally related to appellant's work-related activities as a mail carrier that aggravated his preexistent right knee condition that was asymptomatic prior to January 21, 2012. Dr. Dauhajre concluded, within a reasonable degree of medical probability, that appellant's job requirements as a mail carrier, requiring ambulation approximately five miles per day with weights and climbing up and down hills, was the competent cause in aggravation of his preexisting right knee condition which had been asymptomatic until January 21, 2012. He also noted that it was within a reasonable degree of medical probability, that appellant's employment-related activities aggravated his preexistent right knee condition due to having a preexisting anterior cruciate ligament (ACL) tear causing deficiency in the right knee resulting in progressive degenerative joint disease of the right knee that was asymptomatic prior to the recent onset at work on January 21, 2012.

In April 2 and 30, 2012 reports, Dr. Dauhajre noted that appellant elected to undergo an arthroscopy of the right knee. In a June 4, 2012 report, he indicated that appellant was totally disabled from returning to his regular duties until further notice.

Appellant continued to submit treatment notes from his physical therapist at SportsCare. He also submitted medical reports from the May 23, 1991 employment injury, which included an operative report from a September 13, 1991 arthroscopic partial medial meniscectomy.

By decision dated July 6, 2012, OWCP denied modification of its March 12, 2012 decision in File No. xxxxxx499.

On October 1, 2012 appellant, through counsel, requested reconsideration. In support of his reconsideration request, appellant's counsel submitted a September 4, 2012 medical report wherein Dr. Leonard Jaffe, an orthopedic surgeon, opined, based on review of his records, appellant had an aggravation of a preexisting condition resulting from the employment incident of January 21, 2012. He noted that it was clear that with the aggravation of the preexisting condition appellant was going to continue to develop progressive degenerative arthritis and in the future require the need for a total knee replacement. Appellant's counsel noted that appellant was originally injured on May 23, 1991 assigned File No. xxxxxx082 and that his doctor at that time was Dr. Jaffe.

In a December 19, 2012 decision, OWCP denied modification of its July 6, 2012 decision in File No. xxxxxx499.

Appellant again requested reconsideration. In a January 7, 2013 report, Dr. Jaffe noted that it was common that an ACL injury will lead to early degeneration and post-traumatic arthritis. He further noted that in the event appellant has ongoing symptoms and changes in the symptoms in the form of aggravation of the preexisting injury, appellant may require an arthroscopic procedure. In a January 22, 2013 note, Dr. Jaffe noted that appellant had been under his care for many years and was involved in an injury in May 1991 that he sustained at work. He noted that appellant returned to be evaluated by him on July 26, 2012 after seeing another orthopedist for problems with his knee after he sustained an employment-related injury in January 2012. Dr. Jaffe noted that he reevaluated appellant on January 22, 2013. He opined that as a result of appellant's walking in the snow in January 2012, he aggravated a preexisting right knee injury that occurred on May 23, 1991. Dr. Jaffe opined that considering appellant was doing fairly well until he began walking his route, his prior history of injury, which was of significant enough magnitude to be severe, resulted in an aggravation of a preexisting condition and appellant required arthroscopic surgery.

On February 27, 2013 appellant filed a Form CA-2a claim for a recurrence of the May 23, 1991 employment injury in OWCP File No. xxxxxx082 on January 21, 2012. He alleged that for the last several years he was driving a truck and on January 21, 2012 the employing establishment made him deliver mail and his knee swelled up.

By letter dated March 4, 2013, the employing establishment controverted appellant's claim for a recurrence in File No. xxxxxx082. It indicated that on January 18, 2012 he was in his second motor vehicle accident, that his license was revoked until he had remedial training, and that he was afforded the opportunity to deliver mail since he could not drive pending training. The employing establishment noted that appellant worked on January 20 and 21, 2012. The employing establishment noted that his claim in File No. xxxxxx499 was denied by OWCP.

In an April 29, 2013 decision, OWCP denied modification of its December 19, 2012 decision in File No. xxxxxx499.

By decision dated May 31, 2013, in File No. xxxxxx082, OWCP denied appellant's claim for a recurrence of disability because he had not established that he was further disabled due to a material change or worsening of his accepted work condition.

On June 29, 2013 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative with regard to his recurrence claim in File No. xxxxxx082. At the hearing held on September 11, 2013, he discussed his prior injury of May 23, 1991, indicated that his doctor told him at that time that he could expect problems in the future, and stated that after the initial injury and surgery his knee had some pain in the side and a little instability while walking, but that with medication he was able to live with pain. Appellant noted that he was apprehensive to walk at his job because of the condition with his knees and that on January 21, 2012 his knee swelled. Appellant's counsel argued that if appellant had not delivered mail on those two days in January 2012 he would still be working because he was functioning in the other position. He also asked that appellant's cases be consolidated.

By letter dated September 30, 2013, counsel requested reconsideration of the April 29, 2013 OWCP decision in File No. xxxxxx499. In a statement dated October 4, 2013, appellant noted that he had a bad injury to his right knee on May 23, 1991, that he underwent surgery by Dr. Jaffe on September 13, 1991 for a torn meniscus, and that Dr. Jaffe also noted that he had a torn anterior cruciate ligament. He noted that for the past several years he had been working as a truck driver for the employing establishment, but was involved in an accident and the employing establishment indicated that he must deliver mail, that he delivered mail for only two days (January 20 and 21, 2012), and that when he returned from his route on January 21, 2012 his right knee was very swollen. Appellant noted that on January 21, 2012 he was going up and down stairs and stepping through snow while on his route. He attached a supervisor's report from the accident.

Appellant also submitted an October 7, 2013 report wherein Dr. Dauhajre continued to note that appellant was totally disabled. Dr. Dauhajre noted that he reviewed the operative report of September 13, 1991 and other medical evidence and that within a reasonable degree of medical probability appellant's current right knee condition was causally related to his job-related activities as a letter carrier for the employing establishment. He noted that according to appellant, his job description required excessive ambulation of 5 to 6 hours a day, climbing up and down stairs of approximately 35 to 45 minutes per 8-hour shift, repetitive squatting and kneeling on the right lower extremity, and carrying objects greater than 50 pounds. Dr. Dauhajre also noted that appellant's prior full anterior cruciate ligament tear and medical necessity for a partial medial meniscectomy of the right knee on September 13, 1991 predisposed him to progressive degenerative joint disease on the right knee that made his knee more vulnerable to aggravation and reinjuries to his right knee with his activities of employment. He concluded that, within a reasonable degree of medical probability, appellant's current right knee condition is causally related to his employment-related activity, as the activity resulted in an aggravation of his preexisting degenerative joint disease of the right knee which had been asymptomatic prior to the employment-related injury of January 21, 2012. The activity resulted in a probable tear of

the medial meniscus of the right knee that is noted by clinical examination and by MRI scan of the right knee on March 8, 2012.

In a November 25, 2013 report, Dr. Dauhajre opined that appellant's right knee injury originated on May 23, 1991 and that he currently aggravated his right knee by his job duties of January 21, 2012. Appellant noted that his employment duties on that date resulted in severe swelling and aggravation of his right knee condition, as well as a tear of the medial meniscus that was noted on clinical examination by MRI scan of the right knee on March 8, 2012.

By decision dated December 4, 2013, the hearing representative affirmed OWCP's May 31, 2013 decision denying a recurrence of disability in File No. xxxxxx082. The hearing representative also noted that OWCP should consider combining appellant's files in xxxxxx499 and xxxxxx082.

In a December 31, 2013 decision, OWCP denied modification of its April 29, 2013 decision in File No. xxxxxx499.

On March 27, 2014 OWCP combined File Nos. xxxxxx499 and xxxxxx082 with File No. xxxxxx082 as the Master File.

On July 31, 2014 appellant, through counsel, requested reconsideration of the December 4, 2013 decision in File No. xxxxxx082 and of the December 31, 2013 decision in File No. xxxxxx499. Counsel requested that the alleged January 21, 2012 employment incident be approved as an aggravation and that the recurrence of the May 23, 1991 employment injury be approved. In support thereof, appellant's counsel submitted new medical evidence.

In a March 13, 2014 operative report, Dr. Jaffe noted that he performed chondroplasty, significant fibrosis resection, medial, and lateral meniscectomy on appellant.

In a September 10, 2013 report, Dr. Svetlana Salerno, a family practitioner, urged approval of a right knee arthroscopic surgery which she opined would greatly improve appellant's chronic pain and debilitation. She noted that he had an ongoing condition which caused constant medial and lateral joint line pain, recurrent effusions, and locking and giving out of the knee. Dr. Salerno noted that appellant is in pain when ambulating, squatting, kneeling, and climbing, and that he continued to be disabled due to chronic pain.

By decision dated August 15, 2014, OWCP denied modification of its December 31, 2013 decision issued in File No. xxxxxx499, finding that appellant did not establish an injury resulting from the January 21, 2012 employment incident. It also noted that this case had been combined with File No. xxxxxx082. OWCP did not provide findings regarding appellant's reconsideration request of the December 4, 2013 decision, which affirmed the denial of appellant's recurrence claim in File No. xxxxxx082.

On August 21, 2014 OWCP reissued the August 15, 2014 decision, but instead noted File No. xxxxxx082, which is the master file for both claims.

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 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. 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.²

In order to determine whether an employee actually sustained an 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, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁴

Under FECA, when employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation.⁵ Where the medical evidence supports an aggravation or acceleration of an underlying condition precipitated by working conditions or injuries, such disability is compensable.⁶ However, the normal progression of untreated disease cannot be stated to constitute aggravation of a condition merely because the performance of normal work duties reveals the underlying condition.⁷ For the conditions of employment to bring about an aggravation of preexisting disease, the employment must cause acceleration of the disease or precipitate disability. When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.⁸

OWCP's definition of a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure. The term also means the inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related

² *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

⁴ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁵ *Raymond W. Behrens*, 50 ECAB 221 (1999); *James L. Hearn*, 29 ECAB 278 (1978).

⁶ A.S., Docket No. 16-614 (issued June 25, 2015).

⁷ *Glenn C. Chasteen*, 42 ECAB 493 (1991).

⁸ *Raymond W. Behrens*, *supra* note 6.

injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁹

ANALYSIS

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

The Board finds that OWCP failed to address all relevant issues in its August 21, 2014 merit decision. Appellant filed a claim for a January 21, 2012 traumatic injury. This claim was assigned OWCP File No. xxxxxx499. By decision dated March 12, 2012, OWCP denied this claim. It denied modification of this decision in decisions dated July 6 and December 19, 2012, and April 29 and December 31, 2013. Meanwhile, on February 27, 2013 appellant filed a claim for recurrence of a May 23, 1991 injury on January 22, 2012. This file had previously been assigned OWCP File No. xxxxxx082. This claim for a recurrence was denied on May 31, 2013. By decision dated December 4, 2013, the hearing representative affirmed the May 31, 2013 decision. At that time the hearing representative also noted that OWCP should consider combining appellant's files in File Nos. xxxxxx499 and xxxxxx082. On March 27, 2014 OWCP combined these two files, with File No. xxxxxx082 serving as the Master File. On July 31, 2014 counsel requested reconsideration of the December 31, 2013 decision concerning appellant's claim for a new injury on January 21, 2012 (xxxxxx499) and the December 4, 2013 decision on the claim that appellant sustained a recurrence of a May 23, 1991 injury on January 22, 2012 (xxxxxx082). However, in its August 21, 2014 decision, OWCP only addressed appellant's appeal in OWCP File No. xxxxxx499, the claim for a new injury on January 21, 2012, despite the fact that appellant also appealed the December 4, 2013 decision regarding his recurrence claim, OWCP failed to address this issue.

Furthermore, the Board finds that OWCP failed to adequately discuss the facts of the case and failed to provide a detailed analysis of the issues. An OWCP decision must contain adequate findings of fact and a statement of reasons.¹⁰ In the instant case, OWCP failed to adequately discuss the medical evidence that was submitted prior to the December 31, 2013 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision.¹¹ As the Board's decisions are final with regard to the subject matter appealed, it is crucial that all relevant evidence be addressed by OWCP.¹² OWCP did not provide an adequate statement of reasons for its findings in light of the medical evidence of record. The August 21, 2014 OWCP decision provided only a cursory discussion addressing appellant's claim for a new injury on January 21, 2012. The rationale for the denial is conclusory and is insufficiently detailed. Accordingly, the matter shall be returned to OWCP to provide a comprehensive, supported analysis of appellant's claims.

⁹ See *John I. Echols*, 53 ECAB 481 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹⁰ 20 C.F.R. § 10.126.

¹¹ *Id.* at § 501.2(c)(1) (2010).

¹² *Id.* at § 501.6(d); see *William A. Couch*, 41 ECAB 548, 553 (1990).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 21, 2014 is set aside, and the case is remanded for further consideration pursuant to this decision.¹³

Issued: January 20, 2016
Washington, DC

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

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

¹³ James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.