

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

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N.O., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Quincy, IL, Employer )

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**Docket No. 15-1844  
Issued: January 21, 2016**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 9, 2015 appellant, through counsel, filed a timely appeal of an April 17, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish bilateral knee injuries due to factors of her employment.

**FACTUAL HISTORY**

This case has previously been before the Board on appeal. On October 19, 2012 appellant, then a 52-year-old city carrier, filed an occupational disease claim (Form CA-2) noting that on July 5, 2012 she first realized the work-related nature of an October 18, 2010 injury

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

incurred while walking with a heavy mailbag on uneven surfaces. The claim form also noted that this claim was originally sent to OWCP as a recurrence from an injury sustained in May 2012.

In support of her claim, appellant submitted a report dated July 5, 2012, from Dr. David Bingham, an osteopath. Dr. Bingham reported appellant's bilateral knee pain of four to five years was worsened by carrying her mailbag while walking on uneven surfaces and traversing stairs. He found that she walked with a limp on the right and had limited range of motion in her right knee with normal strength. Dr. Bingham reported significant patellar crepitus bilaterally and strongly positive patellar grind test on the right. He reviewed x-rays and diagnosed tricompartmental osteoarthritis with full-thickness joint loss in the right knee and on the left less loss of cartilage height. Dr. Bingham diagnosed bilateral knee osteoarthritis. He concluded, "This patient has pretty advanced osteoarthritis of her knees for someone her age. Given her lack of history of major trauma, I think it is reasonable to assume that a significant component is wear, it has to do with her carrying a heavy load for over two decades for the [employing establishment]."

Appellant asserted that she had worked for the employing establishment for 31 years and had been a letter carrier for 28 years. She alleged that she was required to walk on uneven ground, up and down steps and through ice and snow. Appellant noted that she was required to carry a mailbag and attributed her knee conditions to these activities.

In a letter dated November 16, 2012, OWCP requested additional factual and medical evidence in support of appellant's claim. Appellant submitted an additional statement describing her job duties on July 4, 2012 including carrying a mailbag weighing up to 30 pounds for six hours a day while walking 6 to 10 miles. She noted that walking through snow and ice, on uneven ground, climbing steps, stooping and bending were hard for her and contributed to her knee condition.

Dr. Bingham completed a note on August 23, 2012 and diagnosed bilateral knee osteoarthritis.

In a report dated December 10, 2012, Dr. Bingham noted that he first examined appellant on July 5, 2012 due to her bilateral knee conditions. He described appellant's employment duties as a mail carrier of 20 years including carrying a heavy bag up and down stairs and while long distance walking. Dr. Bingham found severely limited range of motion in appellant's right knee with prominent patellar crepitus on active and passive range of motion of both knees. He reviewed x-rays which demonstrated severe tricompartmental arthritis especially in the patellofemoral compartment of both knees with considerable loss of joint space. Dr. Bingham diagnosed severe osteoarthritis of bilateral knees worse on the right. He concluded:

"As for the cause of this disease, lacking significant history of trauma and severity of the arthritis, certainly a long history of load bearing is likely a considerable contributing factor to this. It is certainly unusual to have arthritis this severe in a patient this young and fit with no significant history of knee injury. I suspect that especially the need to carry heavy loads up and down stairs is a significant

contributing factor to her arthritis and certainly her need to continue doing so is her major exacerbating factor at this time.”

OWCP denied appellant’s claim by decision dated January 24, 2013. It found that Dr. Bingham’s reports addressing a causal relationship between appellant’s duties and her condition were speculative and equivocal.

Counsel requested an oral hearing before an OWCP hearing representative on February 1, 2013. Dr. Bingham submitted a report dated March 26, 2013 and contended that he was unable to provide a specific cause or relationship of her osteoarthritis. He opined that there was a possibility that appellant’s mail carrying was a contributing factor, but that he could not confirm that this was the only or even dominant factor given the many possible causes of osteoarthritis and the fact that it was a degenerative disease.

Appellant testified at the oral hearing on May 17, 2013 that she had undergone knee replacement surgery on the left on March 27, 2013 and on the right on April 18, 2013. She also submitted a newspaper article regarding her knee replacements.

By decision dated August 1, 2013, an OWCP hearing representative found that Dr. Bingham’s reports were insufficient to establish a causal relationship between appellant’s diagnosed condition and her employment. The Board reviewed this decision on February 18, 2014<sup>2</sup> and found that Dr. Bingham’s reports were equivocal on the relationship between appellant’s diagnosed condition and her employment. The Board determined that these reports were not sufficient to meet appellant’s burden of proof.

Following the Board’s February 18, 2014 decision, counsel requested reconsideration through a letter dated and received by OWCP on November 19, 2014. He submitted an additional report from Dr. Bingham dated May 20, 2014. Counsel again noted that as a mail carrier appellant walked long distances carrying heavy packages which resulted in an abnormal increased strain across her knees and left her very susceptible to increased wear. Dr. Bingham also reported that appellant believed that her work caused her knee damage. He diagnosed severe tricompartmental osteoarthritis of both knees with near complete loss of joint space, periarticular osteophytes and subchondral sclerosis in all three compartments based on x-ray. Dr. Bingham reported, “While I cannot definitively pinpoint a definitive cause of the beginning of arthritis, certainly the speed of her progress and the severity of her presentation at 52 years old is abnormal for her age. In my medical opinion, the nature of her work is a significant contributing factor to the progression of her osteoarthritis.”

By decision dated April 17, 2015, OWCP reviewed the merits of appellant’s claim and denied modification of the prior decisions. It found that Dr. Bingham’s report was insufficiently detailed, did not contain supportive medical documents, such as x-rays, and did not explain how appellant’s arthritis differed from the natural course and how the work activities would alter or accelerate the natural process.

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<sup>2</sup> Docket No. 13-2117 (issued February 18, 2014).

## LEGAL PRECEDENT

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."<sup>3</sup> 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) 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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.<sup>4</sup>

## ANALYSIS

The Board finds that appellant has not submitted the necessary rationalized medical opinion evidence to establish a causal relationship between her diagnosed bilateral knee arthritis and her accepted employment duties.

As noted previously, the Board reviewed Dr. Bingham's reports through March 26, 2013 and found that these reports were not sufficiently detailed and well-reasoned to meet appellant's burden of proof in her occupational disease claim. On reconsideration from OWCP, appellant submitted an additional report dated May 20, 2014. Dr. Bingham described appellant's implicated job duties of walking long distances carrying heavy packages. He opined that this resulted in an abnormal increased strain across her knees and left her very susceptible to increased wear. Dr. Bingham again diagnosed bilateral knee osteoarthritis based on x-rays. He noted that the speed of the progress and the severity of her bilateral knee arthritis presentation was abnormal for her age of 52. Dr. Bingham again concluded, "In my medical opinion, the nature of her work is a significant contributing factor to the progression of her osteoarthritis." However, he again does not explain how or why her specific work duties have contributed to the progression of her osteoarthritis.

The Board finds that this additional report is essentially cumulative of the previous reports submitted by Dr. Bingham. In his December 10, 2012 report previously reviewed by the Board, Dr. Bingham made essentially the same findings and conclusions as in the May 20, 2014 report. The Board finds that this report has the same deficiencies as Dr. Bingham's previous reports and is therefore insufficient to meet appellant's burden of proof to establish her occupational disease claim as it lacks the necessary medical reasoning.

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<sup>3</sup> 20 C.F.R. § 10.5(q).

<sup>4</sup> *Lourdes Harris*, 45 ECAB 545, 547 (1994).

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 her burden of proof to establish bilateral knee injuries due to factors of her employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 17, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 21, 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