United States Department of Labor
Employees' Compensation Appeals Board

A.K., Appellant	)	
and	)	**Docket No. 16-1085**
	)	**Issued: October 18, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Yonkers, NY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 25, 2016 appellant, through counsel, filed a timely appeal from a March 30, 2016 merit decision of an Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 met his burden of proof to establish an occupational disease causally related to factors of his federal employment.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 23, 2015 appellant, then a 54-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that factors of his employment caused osteoarthritis of the left knee and lower leg. He alleged that he became aware of his condition on February 1, 2013 and its relation to his federal employment on October 14, 2014. Appellant attributed his osteoarthritis to working 30 years as a letter carrier. He stopped work on October 14, 2014.

Appellant provided evidence from Dr. Patrick McMahon, a Board-certified orthopedic surgeon. In a February 15, 2013 report, Dr. McMahon advised that appellant complained of left knee pain and discomfort that began approximately three weeks prior. On examination he noted patellofemoral crepitation, tenderness of the left knee, full extension and flexion to approximately 120 degrees, no instability, and good range of motion. Dr. McMahon noted that appellant related that some days he could walk three miles, while other days he could walk no more than 20 feet. On February 20, 2015 he advised that appellant was under his care for bilateral knee injuries. Dr. McMahon diagnosed bilateral severe degenerative joint disease and opined that his condition was related to his career as a mail carrier. He explained that walking long distances, going up and down stairs, and carrying heavy mailbags caused excessive wear and tear.

On March 1, 2013 Dr. McMahon advised that the magnetic resonance imaging (MRI) scan revealed a medial meniscal tear and arthritis of the left knee. He recommended that appellant continue to ice his knee, rest, and work on a range of motion program. Dr. McMahon also advised that appellant was treated with a left knee injection. In a March 7, 2014 report, he advised that appellant complained of left knee pain that began three years earlier. Dr. McMahon noted that there was no injury and that pain was aggravated by bending, climbing stairs, walking, and standing. On examination he noted joint tenderness, limping, and swelling. On April 4, 2014 Dr. McMahon noted continued left knee pain, that an injection temporarily reduced his pain, but that the pain had returned. He advised that appellant would be out of work until April 15, 2013.

In an undated statement, appellant attributed his chronic knee pain and degenerative left knee arthritis to carrying mail, climbing steps, and carrying loads exceeding 40 pounds for 30 years. He noted that in October 2014 he was informed that there was no additional treatment available to him to relieve his chronic knee pain and that he should apply for medical disability. Appellant submitted several statements from his coworkers advising that he had left knee problems for the past several years.

By letter dated April 14, 2015, OWCP advised appellant of the type of evidence needed to establish his claim. In another April 14, 2015 letter, it requested a statement from the employing establishment regarding appellant's work duties.

In an April 21, 2015 statement, the employing establishment advised that appellant's duties included lifting up to 40 pounds, walking, bending, stooping, twisting, and climbing stairs. It noted that he worked at the employing establishment for the past 30 years.

In response to OWCP's questionnaire, appellant attributed his condition to carrying mail, climbing stairs, and carrying over 40 pounds. He noted that his activities outside of his federal employment included normal house chores, walking the dog, and doing yard work.

In a September 19, 2014 report, Dr. McMahon advised that appellant presented with left knee pain and stiffness, that his symptoms began as a result of walking, and that they were aggravated by walking and squatting. On October 30, 2014 he advised that appellant presented with pain, stiffness, and swelling. Dr. McMahon noted that appellant believed that the injury occurred at work and that he was on workers' compensation. In an accompanying disability status report, he advised that appellant was under his care for severe left knee arthritis and was unable to return to work until further notice.

Dr. McMahon, in an April 9, 2015 report, advised that appellant was under his care for bilateral knee injuries and severe degenerative joint disease. He opined that appellant's condition was related to his career and that he should cease working. Dr. McMahon explained that walking long distances, going up and down steps, and carrying heavy bags caused additional wear and tear on his joints. He advised that appellant was disabled and unable to work as of October 30, 2014. In an April 21, 2015 attending physician's report Form (CA-20), Dr. McMahon advised that appellant was experiencing pain, swelling, and stiffness. He diagnosed left knee arthritis and checked the box marked "yes" to indicate that appellant's condition was caused or aggravated by his employment. Dr. McMahon noted that appellant was unable to work and recommended a total knee replacement.

In an April 28, 2015 report, Dr. McMahon advised that appellant complained of left knee pain. On examination he noted pain, crepitus, swelling, and stiffness. Dr. McMahon noted that appellant's symptoms were aggravated by ascending stairs, descending stairs, squatting, standing, walking, weather changes, and work activities.[3] In an April 30, 2015 report, he advised that appellant was unable to continue his work duties as it would worsen his condition.

By decision dated May 22, 2015, OWCP denied appellant's claim because evidence was insufficient to establish a medical condition causally related to the accepted factors of his federal employment.

By letter dated June 3, 2015, appellant, through his attorney, requested an oral telephone hearing with an OWCP hearing representative. On January 14, 2016 an oral telephone hearing took place. Appellant advised that he walked approximately three miles a day and was on foot constantly delivering to residential homes with many stairs. He noted that in addition to his regular hours he also worked overtime to assist other carriers in finishing their deliveries. Appellant also noted that he had a preexisting work-related left knee injury.

In a February 9, 2016 report entitled "Rationalized Medical Opinion Form to establish Causal Relationship," Dr. McMahon advised that appellant had difficulty with stair climbing,

[3] In an accompanying report, Dr. Jonathan Kazam, a Board-certified diagnostic radiologist, advised that a left knee MRI scan revealed unchanged medial femorotibial and patellofemoral compartment osteoarthritis manifested by multifocal cartilage wear and a complex tear of the medial meniscus as compared to a February 22, 2013 MRI scan.

prolonged standing, bending at the knee, left knee pain, and decreased mobility. He diagnosed left knee pain and arthritis as a result of falling onto his left knee while working at the employing establishment and signed the following preprinted statement:

> "In my medical opinion, the facts of injury are the direct and proximate cause of the diagnosis that I cited above. This is based on reasonable medical probability. There may be other causes for this medical problem, but one of the causes is clearly the activities of work described [by] the patient and described above."

By decision dated March 30, 2016, an OWCP hearing representative affirmed the May 22, 2015 decision.

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 of FECA, that the claim was timely filed within the applicable time limitation, that an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions 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 upon a traumatic injury or an occupational disease.[5]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[6]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.[7] The weight of medical evidence is determined by its reliability, its probative value, its

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[6] *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[7] *I.J.*, 59 ECAB 408 (2008); *supra* note 5.

convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[8]

ANALYSIS

It is not disputed that appellant's job entailed carrying mail and climbing steps. However, the Board finds that the medical evidence of record is insufficient to establish that appellant's condition was caused by factors of his federal employment.

Appellant submitted several reports from Dr. McMahon. In his April 9, 2015 report, Dr. McMahon noted treating appellant for bilateral knee injuries and severe degenerative joint disease. He opined that appellant's condition was related to his career and that he should stop working immediately. Dr. McMahon explained that walking long distances and going up and down steps and carrying heavy bags caused additional wear and tear on his joints. On February 20, 2015 he diagnosed bilateral severe degenerative joint disease and reiterated that his condition was work related due to these same work factors. Likewise, in his March 7, April 28, and September 19, 2014 reports, Dr. McMahon again attributed appellant's condition to work duties, noting that appellant's condition was aggravated by bending, climbing stairs, walking, and standing. He indicates that appellant's work duties aggravated his symptoms, but he fails to provide adequate rationale to explain how and why these duties actually caused or contributed to his degenerative left knee arthritis. As a result, these reports are insufficient to discharge appellant's burden of proof. The Board has long held that medical opinions not containing rationale on causal relation are of diminished probative value and are generally insufficient to meet appellant's burden of proof.[9]

In his April 21, 2015 attending physician's report, Dr. McMahon checked a box marked "yes" to indicate that appellant's condition was caused or aggravated by his employment. The Board has held that an opinion on causal relationship that consists only of a physician checking "yes" to a medical form question on whether the claimant's condition was related to the history given, without more by way of rationale, is of little probative value.[10] Dr. McMahon also completed a form entitled "Rationalized Medical Opinion Form to establish Causal Relationship." This form is also insufficient to establish the claim. The preprinted language at the bottom of the form is nonspecific. It is not specific to appellant, his work duties, or diagnosis in this case. It does not provide the medical rationale necessary to establish that appellant's particular medical condition is causally related to the accepted factors of his employment. Furthermore the previous section of the report attributes appellant's condition to falling onto his left knee while working at the employing establishment. This is inconsistent with the mechanism of injury as related by appellant. The Board has held that medical opinions based on

[8] *James Mack*, 43 ECAB 321 (1991).

[9] *Carolyn F. Allen*, 47 ECAB 240 (1995).

[10] *Deborah L. Beatty*, 54 ECAB 334 (2003) (the checking of a box yes in a form report, without additional explanation or rationale, is insufficient to establish causal relationship).

an incomplete or inaccurate history, such as that of Dr. McMahon, are of diminished probative value.[11] As a result, his report is insufficient to discharge appellant's burden of proof.

In his October 30, 2014 report, Dr. McMahon advised that appellant indicated that the injury occurred at work and that he was receiving workers' compensation. Although he notes that appellant attributed his condition to his work duties he fails to offer his own opinion on the cause of appellant's left knee arthritis. The Board has held that a report without an opinion as to causal relationship is of little probative value.[12] Likewise other medical reports of record are also insufficient to discharge appellant's burden of proof as they do not address causal relationship.[13]

Consequently, appellant has submitted insufficient medical evidence to establish his claim. As noted, causal relationship is a medical question that must be established by probative medical opinion from a physician.[14] The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated his condition.[15]

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 did not meet his burden of proof to establish an occupational disease causally related to factors of his federal employment.

[11] *L.G.*, Docket No. 09-1692 (issued August 11, 2010).

[12] *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[13] *Id*.

[14] *See supra* note 4.

[15] *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 18, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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