

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

T.R., Appellant

and

**U.S. POSTAL SERVICE, AVENT FERRY
STATION, Raleigh, NC, Employer**

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**Docket No. 17-0239
Issued: April 12, 2017**

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

JURISDICTION

On November 11, 2016 appellant, through counsel, filed a timely appeal from a September 14, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 a left knee condition 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 August 28, 2015 appellant, then a 61-year-old letter carrier, filed an occupational disease claim (Form CA-2) under File No. xxxxxx697 alleging that medial and lateral meniscus tears, chondromalacia patella, small joint effusion, patella tendinopathy, and fragmentation of the tibial tuberosity insertion region of both knees were caused or aggravated by walking up and down stairs, climbing in and out of a side front door, and pressing on a brake at work. He became aware of conditions and realized their relationship to his federal employment on February 5, 2015. Appellant was off work through November 9, 2015.

In an August 20, 2015 narrative statement, appellant again contended that his claimed conditions occurred while he was performing his work duties. He sought medical treatment and underwent diagnostic testing. Appellant noted that his first right knee injury occurred on July 24, 2012.³

Appellant submitted an August 2, 2015 progress note from Scott B. Webster, a physician assistant. Mr. Webster reviewed medical records, examined appellant, and offered impressions

Appellant also submitted a July 31, 2015 operative report and August 5, 2015 letter from Dr. Glenn B. Perry, a Board-certified orthopedic surgeon, describing his authorized right knee surgery under File No. xxxxxx004 and addressing his disability for work through November 9, 2015 due to his surgery.

By letter dated September 14, 2015, OWCP informed appellant of the deficiencies of his claim and requested that he submit additional medical evidence and respond to its inquiries. It also requested that the employing establishment respond to his allegations and submit treatment notes if he was treated at an employing establishment medical facility.

In a June 2, 2015 progress note, Dr. Perry reported appellant's complaint of bilateral knee pain, reviewed MRI scan results, and provided findings on physical examination. He provided an impression of right knee degenerative change, possible mild arthrofibrosis, and possible loose bodies. Dr. Perry also provided an impression of left knee medial and lateral meniscus tears and degenerative changes. He opined that appellant's left knee deterioration and eventual need for surgery were related to a prior right knee injury since additional strain had been placed on his left knee. Dr. Perry discussed left knee arthroscopy with possible partial medial and lateral meniscectomies and debridement/chondroplasty and possible right knee arthroscopic debridement/chondroplasty with appellant. Appellant also provided a September 16, 2015 progress note from Mr. Webster.

³ Prior to the instant claim, appellant filed an occupational disease claim (Form CA-2) under File No. xxxxxx004 alleging that on July 24, 2012 he realized that he had right knee conditions caused or aggravated by his federal employment based on a magnetic resonance imaging (MRI) scan. OWCP accepted the claim for right quadriceps tendon rupture, derangement of the posterior horn of the medial meniscus, and traumatic arthropathy of the right lower leg. It authorized surgical repair of the right quadriceps tendon rupture and right medial meniscus tear which was performed on August 28, 2012, right knee arthroscopy for degeneration of the right knee joint which was performed on July 31, 2015, and right total knee arthroplasty which was performed on April 4, 2016.

By decision dated November 27, 2015, OWCP denied appellant's occupational disease claim. It found that the medical evidence of record was insufficient to establish a left knee condition causally related to the accepted employment factors.

In a December 22, 2015 letter, appellant, through counsel, requested a telephone hearing with an OWCP hearing representative.

In progress notes received on July 11, 2016 and dated August 28, 2014, February 25 and November, 5, 2015, and October 5, 2016, Dr. Perry noted appellant's bilateral knee complaints and findings on physical and x-ray examination. He provided an impression of right knee pain most consistent with moderate-to-severe advanced patellofemoral osteoarthritis with a notable patella baja which could be contributing to appellant's decreased range of motion and advanced arthritis. Dr. Perry assessed left knee pain and noted that appellant had medial and lateral tears with degenerative joint disease of the left knee. He also assessed left knee pain likely secondary to medial and lateral meniscal tears in the evidence of advanced medial patellofemoral compartment osteoarthritis. Dr. Perry recommended that appellant consult with a joint replacement specialist to discuss right total knee arthroplasty. In an addendum to the February 25, 2015 progress note, he advised that appellant had 10 percent permanent impairment of the right knee. Dr. Perry noted that appellant commuted three hours each way to his job on a daily basis which would likely aggravate his current symptoms given the prolonged period in which the patella would be compressed in the patellofemoral joint space.

In progress notes dated May 7, 2015 to March 7, 2016, Jason A. Diehl, a physician assistant, reported appellant's history, listed findings, and offered impressions. Appellant also provided physical therapy reports.

During the August 1, 2016 telephonic hearing, counsel contended that the medical evidence of record was sufficient to establish that appellant sustained a left knee condition as a consequence of his accepted employment-related right knee condition.

By decision dated September 14, 2016, an OWCP hearing representative affirmed the November 27, 2015 decision. She found that the medical evidence of record was insufficient to establish that appellant sustained a left knee condition causally related to the accepted employment factors. The hearing representative doubled the claim files and noted that, if he believed that he had a consequential injury due to his accepted right knee condition, he should file a claim under File No. xxxxxx004, the master file.

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 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

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 medical evidence required to establish a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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 employee.⁶

ANALYSIS

OWCP accepted as factual that appellant performed the work duties of a letter carrier, which involved walking up and down stairs, climbing in and out of a side front door, and pressing a brake. The Board finds, however, that the medical evidence of record is insufficient to establish that he sustained a left knee condition caused or aggravated by the accepted work factors.

Dr. Perry's June 2, 2015 progress note found that appellant had left knee medial and lateral meniscus tears and degenerative changes. He opined that his left knee condition and need to undergo surgery were due to his prior accepted employment-related right knee injury because this injury had placed additional strain on the left knee. While Dr. Perry provided a general opinion on causal relationship, he did not sufficiently explain how the accepted right knee injury could cause the diagnosed left knee conditions and need for surgery. Medical reports without adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.⁷ Dr. Perry's remaining reports and progress notes addressed appellant's right and left knee conditions, July 31, 2015 right knee surgery, and resultant permanent impairment and disability for work, but did not offer an opinion addressing whether the diagnosed knee conditions and any resultant disability were causally related to the established employment factors. Medical evidence that does not offer an opinion regarding the

⁴ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams, id.*

⁷ *T.C.*, Docket No. 15-1534 (issued March 1, 2016); *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸

Appellant also submitted reports and progress notes from a series of physician assistants and physical therapists. However, the reports of physician assistants and physical therapists are of no probative value as physician assistants and physical therapists are not considered physicians under FECA.⁹

Appellant's belief that, factors of employment caused or aggravated his condition is insufficient, by itself, to establish causal relationship.¹⁰ The issue of causal relationship is a medical one and must be resolved by probative medical opinion from a physician. The Board finds that there is insufficient medical evidence of record to establish that appellant's left knee condition was caused or aggravated by the established employment factors. Appellant, therefore, did not meet his burden of proof.

On appeal, counsel contends that once appellant's claims under OWCP File Nos. xxxxxx697 and xxxxxx004 were doubled, he should have been allowed to proceed under either claim and that OWCP's decision "whipsaws" him such characterization is without merit as the hearing representative doubled the files and clearly explained that, if he wished, appellant could pursue a claim for a consequential injury under File No. xxxxxx004.

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 failed to meet his burden of proof to establish a left knee condition causally related to factors of his federal employment.

⁸ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

⁹ 5 U.S.C. § 8101(2) provides that a physician includes, surgeons, podiatrists, dentists, clinical psychologist, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *V.C.*, Docket No. 16-0642 (issued April 19, 2016); *Allen C. Hundley*, 53 ECAB 551 (2002). *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawcuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

¹⁰ 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

ORDER

IT IS HEREBY ORDERED THAT the September 14, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2017
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