

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

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**D.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Montclair, NJ, Employer**

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**Docket No. 17-1333  
Issued: December 6, 2017**

*Appearances:*

*James D. Muirhead, Esq., for the appellant<sup>1</sup>*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge

ALEC J. KOROMILAS, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 31, 2017 appellant, through counsel, filed a timely appeal from a March 24, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish arthritis of the knees causally related to the accepted factors of her federal employment.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On February 11, 2014 appellant, then a 46-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed arthritis of both knees as a result of performing repetitive duties required in her job. She initially became aware of her condition on November 1, 2011. Appellant stopped work on December 17, 2013. She realized that it was causally related to factors of her federal employment on February 11, 2014.

In a statement dated February 11, 2014, appellant indicated that she was a letter carrier and was required to walk up and down hills and stairs and carry a heavy mailbag. She noted working on her feet all day, casing mail on a concrete floor for one to two hours a day, and walking eight miles a day. Appellant further indicated that, because she was overweight, it was difficult for her to deliver mail. She was instructed to walk faster on an extended mail route and she was unable to rest. Appellant noted previously filing a claim for her knees.<sup>3</sup> She continued to work and the pain in her knees worsened.

Appellant was treated by Dr. Richard A. Boiardo, a Board-certified orthopedist, on December 22, 2014 for severe pain and restricted range of motion of both knees. Dr. Boiardo noted that appellant had a long history of discomfort in the knees exacerbated by her work. He saw appellant throughout 2013 and 2014 and managed her conservatively with occasional intra-articular injections, anti-inflammatory medication, and physical therapy. Dr. Boiardo noted that on January 2, 2014 she underwent a left total knee replacement arthroplasty and progressed well postoperatively. Appellant was treated on December 19, 2014 and complained of right knee pain. Dr. Boiardo opined that appellant had preexisting arthritic changes of both knees, which were directly caused by the demands of her occupation and she developed severe decompensation of a previously well compensated arthritic knee. He noted that, as a result of decompensation, appellant had to undergo a total knee replacement in January 2014. Dr. Boiardo opined that the work-related stressors culminated in a knee replacement and disability. He noted reviewing the job description for a letter carrier which required standing eight hours a day, casing mail for approximately two-and-a-half hours per day, and delivering mail for five and a half hours to six hours a day. Dr. Boiardo opined that appellant had a propensity for preexisting osteoarthritic change in both knees, but the arthritis that she ultimately realized in both knees, and which caused the left knee to be replaced, was due to her occupation. He opined that the work-related occupational stresses placed on both knees directly exacerbated the preexisting arthritic change and necessitated her left total knee replacement.

On February 17, 2015 OWCP advised appellant of the evidence needed to establish her claim, particularly a physician's reasoned opinion addressing the relationship between her claimed condition and specific work factors.

In a statement dated March 2, 2015, appellant noted first having problems with her knees in November 2011, but she continued to work. She indicated that her knees worsened and she stopped work in December 2013. Appellant noted that as a letter carrier she was on her feet all day delivering mail, carrying a mailbag weighing between 10 and 40 pounds, and walking about

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<sup>3</sup> No other claims are before the Board on the present appeal.

eight miles a day. She indicated that, prior to 2011, her knees were in good shape and she was able to perform her job. Appellant was not engaged in any sports.

In an April 2, 2015 decision, OWCP denied appellant's claim for compensation because she failed to submit sufficient medical evidence to establish that the medical condition was causally related to the accepted work factors.

On April 8, 2015 appellant requested a telephonic oral hearing, which was held before an OWCP hearing representative on November 3, 2015. At the oral hearing, she described her work duties and reasserted that in 2011 the employing establishment made her route longer so that she had increased walking.

In a decision dated January 19, 2016, an OWCP hearing representative affirmed the April 8, 2015 decision.

On August 26, 2016 appellant requested reconsideration. She submitted an August 10, 2016 report from Dr. Boiardo who noted that appellant had preexisting arthritic changes to both knees directly caused by her occupation and developed severe decompensation of her previously well-compensated arthritic knees. Dr. Boiardo noted conservative treatment failed and on January 2, 2014 she had a left total knee replacement. He noted that the letter carrier job required standing eight hours a day, casing mail for two and a half hours per day, and delivering mail for five and a half to six hours a day. Dr. Boiardo indicated that for each step taken the bodyweight load was two and a half times the bodyweight. He concluded that, from a pathophysiologic/biomechanical perspective, appellant loaded two and a half times her bodyweight through both arthritic knees eight hours a day for five days a week. Dr. Boiardo opined that, as a direct cause and result of her job demands, her preexisting arthritis was exacerbated causing compromise of the articular cartilage, a knee replacement, and disability. He advised that appellant also had a history of tendinitis to both wrists, low back disc herniation, and high blood pressure, which precluded her from complying with the requirements of the letter carrier job after her knee replacement. Dr. Boiardo opined that, as a direct cause and result of the work-related occupational disease as set forth in the job description, appellant sustained an exacerbation of preexisting arthritic change to both knees and necessitated her left total knee replacement. He indicated that the occupational disease and exposure did not cause the arthritic change in both knees, but it certainly exacerbated any preexisting arthritic change and culminated in left total knee replacement. Dr. Boiardo noted that appellant would require a right total knee replacement in the future. He advised that appellant was permanently disabled as a direct cause of the left total knee replacement, severe osteoarthritis of the right knee, tendinitis of both wrists, and herniated disc in the low back.

In a decision dated March 24, 2017, OWCP denied modification of the January 19, 2016 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, the employee must submit sufficient evidence to establish that

he experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. Appellant must also establish that such event, incident, or exposure caused an injury.<sup>4</sup>

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.<sup>5</sup> To establish fact of injury in 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.<sup>6</sup>

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which 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 of the physician 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 specific employment factors identified by the claimant.<sup>7</sup>

### ANALYSIS

It is undisputed that appellant's duties as a letter carrier included walking up and down hills and stairs, carrying a mailbag, casing mail on a concrete floor, and prolonged walking. However, the Board finds that the case is not in posture for decision as to whether the diagnosed medical condition is causally related to the accepted factors of federal employment.

OWCP had denied appellant's claim for compensation because she failed to submit sufficient medical evidence to establish that the medical condition was causally related to the accepted work factors. However, the Board finds that the medical evidence submitted by appellant generally supports that repetitive duties required in her job caused or exacerbated her bilateral knee condition.

Dr. Boiardo began treating appellant's knees in 2013 and he consistently supported causal relationship. In particular, his August 10, 2016 report, noted that appellant had preexisting arthritic changes to both knees and that her employment exacerbated her condition. Dr. Boiardo advised that, due to her work duties, appellant developed severe decompensation of

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<sup>4</sup> See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *S.P.*, 59 ECAB 184, 188 (2007).

<sup>6</sup> *R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

<sup>7</sup> *Solomon Polen*, 51 ECAB 341 (2000).

her previously well-compensated arthritic knees. He described appellant's work duties and noted her history.

Dr. Boiardo opined that, as a result of her job demands, her preexisting arthritis was exacerbated and necessitated her left total knee replacement and would require a future right knee replacement. He explained that the occupational disease and exposure did not cause the arthritis in both knees, but it exacerbated the preexisting arthritic change and culminated in total left knee replacement. Dr. Boiardo advised that appellant was permanently disabled due to her knee conditions as well as other conditions. Although his opinion is not sufficiently rationalized to carry appellant's burden of proof in establishing her claim, it is sufficient to require further development of the case by OWCP.<sup>8</sup>

Proceedings under FECA are not adversary in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>9</sup>

Therefore, the Board finds that the case must be remanded to OWCP for preparation of a statement of accepted facts concerning appellant's working conditions and referral of the matter to an appropriate medical specialist, consistent with OWCP procedures, to determine whether appellant's employment duties caused or aggravated the arthritis of both knees. Following this, and any other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

### **CONCLUSION**

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

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<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>9</sup> *John W. Butler*, 39 ECAB 852 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office dated March 24, 2017 is set aside and the case is remanded for further development in accordance with this decision of the Board.

Issued: December 6, 2017  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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