

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

E.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Memphis, TN, Employer**

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**Docket No. 17-0808
Issued: July 7, 2017**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 1, 2017 appellant, through counsel, filed a timely appeal from a November 17, 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 her burden of proof to establish a bilateral knee condition with left meniscal tear causally related to factors of her 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 January 22, 2016 appellant, then a 52-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that, on or before November 25, 2014, while on limited duty, she suffered chondromalacia and an effusion of the right knee, left meniscal tear, patellar tendinitis, and osteoarthritis of both knees due to prolonged walking, standing, and climbing while casing and delivering mail. She stopped work on or about August 8, 2014 and did not return.

In a February 4, 2016 letter, OWCP notified appellant of the additional evidence needed to establish her occupational disease claim, including a detailed description of the work factors alleged to have caused or contributed to the claimed conditions, and a medical report from her attending physician explaining how and why those factors would cause bilateral knee conditions. It afforded her 30 days to submit additional evidence.

In response, appellant provided a February 4, 2015 report from Dr. Marilyn Watts, an attending retired Board-certified pediatrician practicing Ayurvedic medicine, related appellant's account of prolonged walking and standing while casing and delivering mail while on duty. Dr. Watts noted that November 25, 2014 magnetic resonance imaging scans of appellant's knees showed "osteoarthritic changes of the medial compartment of the left knee and a tear of the left medial meniscus, and chondromalacia and degenerative arthritis of the lateral compartment of the right knee with patellar tendinosis of the right knee" and a small joint effusion. She opined that "prolonged standing and prolonged walking as well as the necessary climbing, has further aggravated the knees bilaterally."

By decision dated March 17, 2016, OWCP accepted that appellant performed prolonged standing, walking, and climbing in the performance of duty as alleged, but denied the claim as causal relationship was not established. It found that the medical evidence did not explain how the accepted work events would cause the claimed conditions.

On September 12 and October 14, 2016 appellant requested reconsideration. She also submitted additional evidence. Dr. Watts provided reports dated April 14, May 12, and June 14, 2016, noting a history of July 24, 2013 "bilateral knee surgery (torn menisci)." She related appellant's account of an increase in bilateral knee symptoms on August 7, 2014 due to "excessive repetitive activities." Dr. Watts diagnosed knee sprains and sprains, and a torn left medial meniscus.

On October 19, 2016 appellant filed claims for compensation (Forms CA-7) for the period August 8, 2014 through October 15, 2016. She submitted employing establishment time keeping forms showing that she was "off work due to injury" from July 12, 2014 to April 22, 2016.

By decision dated November 17, 2016, OWCP denied modification of its March 17, 2016 decision, finding that the medical evidence of record failed to meet appellant's burden of proof in establishing causal relationship. It found that her physicians did not differentiate between work-related and preexisting conditions, and provided insufficient medical rationale explaining how and why the accepted work factors would cause the claimed knee conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.⁶ 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) 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.⁷

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 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.⁸

ANALYSIS

Appellant claimed that she sustained bilateral knee conditions and a torn left medial meniscus due to prolonged walking, standing, and climbing while casing and delivering mail on or before November 25, 2014. OWCP accepted that these events occurred at the time, place, and in the manner alleged, but denied the claim as the medical evidence of record was insufficient to establish causal relationship.

³ *Id.*

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ 20 C.F.R. § 10.5(q).

⁷ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *Solomon Polen*, 51 ECAB 341 (2000).

In support of her claim, appellant provided reports from Dr. Watts dated from February 4, 2015 through June 14, 2016. Dr. Watts related appellant's account of prolonged standing walking, and climbing in the performance of duty. She opined that these activities "further aggravated the knees bilaterally," with a marked increase in symptoms on August 7, 2014. However, Dr. Watts failed to explain how and why the accepted work factors would cause the claimed bilateral knee conditions. In the absence of a clear presentation of the pathophysiologic basis for supporting a causal connection between appellant's duties and the claimed degenerative arthritis, chondromalacia, and left meniscal tear, Dr. Watts' opinion is insufficient to meet appellant's burden of proof.⁹

On appeal counsel contends that OWCP's November 17, 2016 decision was "contrary to law and fact." As set forth above, the medical evidence of record is insufficiently rationalized to meet appellant's burden of proof to establish causal relationship.

Appellant may submit additional 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 a bilateral knee condition with left meniscal tear causally related to factors of her federal employment.

⁹ *Deborah L. Beatty*, 54 ECAB 340 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 17, 2016 is affirmed.

Issued: July 7, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy 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