United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	**Docket No. 16-0346**
	)	**Issued: June 15, 2017**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION FACILITY, North Charleston, SC, Employer	)	

Appearances:
Thomas R. Uliase, Esq. for the appellant[1]
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 December 15, 2015 appellant, through counsel, filed a timely appeal from a September 25, 2015 merit decision of the 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.[3]

[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.*

[3] Although OWCP identified its September 25, 2015 decision as a nonmerit decision, as discussed *infra,* the Board finds that OWCP in fact reviewed the merits of appellant's claim.

ISSUE

The issue is whether appellant met his burden of proof to establish that his right knee condition was causally related to factors of his federal employment.

FACTUAL HISTORY

On August 12, 2013 appellant, then a 55-year-old modified mail handler, filed an occupational disease claim (Form CA-2) for a torn right medial meniscus that he attributed to employment factors, such as standing and walking on concrete floors, as well as bending and stooping.[4] He indicated that he first became aware of his right knee condition and related it to factors of his federal employment on July 20, 2013. Appellant stopped work on August 7, 2013.

OWCP received an August 2, 2013 right knee magnetic resonance imaging (MRI) scan, which showed a medial meniscus tear, high-grade chondromalacia in the medial compartment, a mild sprain of the medial collateral ligament, and a large joint effusion. It also received an August 10, 2013 emergency room report, which contained a diagnosis of knee effusion and an August 21, 2103 note from Dr. Anthony N. Glaser, a family practitioner, which excused appellant from work for the period August 18 to September 2, 2013.

In an August 26, 2013 report, Dr. Robert H. Bowles, a Board-certified orthopedic surgeon, noted that appellant stood and walked frequently on concrete at work. He indicated that appellant's right knee pain developed over the last month. The x-rays showed some arthritic changes and the MRI scan showed a torn meniscus and degenerative changes. Dr. Bowles stated that the examination was consistent with a possible torn meniscus with synovitis. In his September 9, 2013 report, he noted that the follow-up studies demonstrated bilateral medial compartment osteoarthritis and the MRI scan of the right knee demonstrated medial meniscal pathology. Dr. Bowles stated, "[i]t is important to note that onset of this painful flexion of the right knee was a spontaneous onset, no antecedent trauma, just with his activities of having to walk around the [the employing establishment] almost in his entire shift, he has developed a painful catching in the knee with swelling and stiffness developing."

On September 27, 2013 Dr. Bowles performed a right knee arthroscopic partial medial meniscectomy and synovectomy.

By decision dated November 1, 2013, OWCP denied the claim as the medical evidence failed to demonstrate that appellant's diagnosed right knee condition was causally related to the established employment factors.

On November 14, 2013 appellant requested a telephonic hearing before an OWCP hearing representative, which was held on May 13, 2014.

[4] Beginning December 18, 2012, appellant worked full-time, limited-duty as a result of a December 22, 2011 employment injury under OWCP File No. xxxxxx843, which OWCP had accepted right shoulder scapholunate ligament tear. The employing establishment represented that on or after January 11, 2013 it also accommodated appellant's restrictions associated with his nonjob-related severe chronic leg lymphedema.

Additional reports from Dr. Bowles noted appellant's progress and disability following his September 27, 2013 surgery. In an October 29, 2013 report, Dr. Bowles opined that the onset of appellant's right knee condition was associated with work-related activities and that it was an employment-related injury. He held appellant off work.

In a November 8, 2013 letter, Dr. Bowles indicated that on July 20, 2013 appellant was performing his usual activities and had a spontaneous, with no antecedent trauma, onset of a sharp pain involving the right knee, which caused the knee to give way, swell, and be stiff. The MRI scan showed a meniscal tear along with high grade chondromalacia. X-rays showed preexisting arthritis of the medial compartment of both knees. Dr. Bowles indicated that, before the employment injury of July 2013, appellant had been basically asymptomatic and did not require treatment. After the date of that injury, he had persistent swelling and on at least one occasion, required arthrocentesis. Conservative treatment was ineffective and on September 27, 2013 appellant had arthroscopic surgery to the right knee. He was found to have a tear of the posterior segment of the medial meniscus of the right knee associated with chondromalacic injury to the medial compartment of the right knee. Dr. Bowles opined that causal relationship was clearly established as appellant was basically asymptomatic with normal activities of his work and the meniscal injury to the right knee occurred on a fairly acute basis while working, which necessitated the eventual treatment.

In a December 30, 2013 report, Dr. Bowles indicated that, at the time of surgery, appellant was found to have pyogenic arthritis of the knee and degenerative changes noted mainly in the lateral compartment of the knee. Prior to the arthroscopic procedure, appellant had degenerative arthritic changes affecting the medial compartment of the knee with no significant change. Dr. Bowles opined that appellant had degenerative-type tear of the medial meniscus sustained while working. This was associated or preceded by obvious degenerative arthritis of the knee, particularly the medial compartment and represented an aggravation of preexisting condition, which was worsened by employment activities such as standing, walking, stooping, turning, and kneeling on concrete floors over a period of years. Dr. Bowles indicated that the present problem was prominent aggravation, which had a component of acceleration or aggravation as a sequelae associated with the surgical treatment required for the work-related injury.

In a May 8, 2014 report, Dr. Bowles indicated that appellant was treated on August 26, 2013 for a painful right knee aggravated by weight bearing and heavy lifting at work. About two months prior to the initial visit, appellant developed a traumatic onset of right knee pain. Evaluation, including x-rays of both knees and an MRI scan of the right knee, indicated bilateral medial compartment osteoarthritis and a degenerative tear of the medial meniscus of the right knee. Dr. Bowles noted that after surgery appellant developed pyogenic arthritis, which required a second surgery, antibiotics and prolonged physical therapy. He opined that appellant had not returned to work and would not likely be able to resume work because of the permanent aggravation of his pre-existing arthritis of the knees. Dr. Bowles opined that there was a causal relationship between appellant's employment duties which required heavy lifting and ambulatory activity, and the bilateral osteoarthritis of his knees, which then led to the tear of the medial meniscus of the right knee and all subsequent sequelae.

In a June 4, 2014 report, Dr. Bowles noted that appellant was a modified mail handler at the time of filing his claim. He noted that the position required extensive walking, standing, bending, pushing, kneeling, and twisting and that his earlier note, which indicated that he was a mail carrier at that time, was in error. Dr. Bowles indicated that both jobs require a great deal of walking, but the modified mail handler job required more exertion. He opined that this activity had caused aggravation of what is now a permanent injury to appellant's right knee.

By decision dated July 31, 2014, an OWCP hearing representative affirmed OWCP's November 1, 2013 decision. She found that none of the medical evidence of record contained a reasoned opinion based upon an accurate factual and medical history that established causal relationship. The hearing representative noted that there was no evidence that Dr. Bowles knew that appellant was working limited duty with restrictions when he provided his opinion regarding causal relationship. In addition, Dr. Bowles provided no explanation as to why appellant felt knee pain while merely walking in the workplace, which he subsequently diagnosed as a meniscal tear. The hearing representative found that there was no reasoned medical opinion as to how walking in the workplace caused, aggravated, precipitated, or accelerated a meniscal tear. Further, evidence suggested that appellant had lymphedema in the leg and preexisting degenerative joint disease.

On September 23, 2014appellant requested reconsideration of the hearing representative's July 31, 2014 decision.

In a September 11, 2014 report, Dr. Bowles advised that appellant had initially been seen on August 25, 2013 for evaluation and treatment of an injury to his right knee sustained at work on July 20, 2013. He noted that the MRI scan indicated evidence of preexisting degenerative arthritis in the knee and an acute meniscal tear, particularly the medial meniscus of the knee. Dr. Bowles noted that appellant had arthroscopic surgery to the right knee on September 27, 2013 and a second arthroscopic procedure on December 20, 2013 due to pyogenic arthritis. He indicated that appellant's present diagnosis was status post pyogenic arthritis right knee following a surgical procedure. Dr. Bowles opined that appellant would not be able to resume his vocational activities either as a mail handler or modified mail handler as there was evidence of progression of right knee degenerative arthritis. He provided work restrictions when and if he resumed other work.

On reconsideration appellant's counsel argued that Dr. Bowles' September 11, 2014 report should be read in conjunction with his previous reports, particularly his December 30, 2013 report wherein he established causal relationship between appellant's right knee condition and his "standing, walking, stooping, turning, and kneeling on concrete floors over a period of years" while in the course of his federal employment.

By decision dated September 26, 2014, OWCP denied reconsideration without reviewing the merits of the case. It found that Dr. Bowles' September 11, 2014 report did not amplify or clarify his previous opinion that appellant's condition was work related. Therefore, OWCP considered the newly submitted evidence to be cumulative and substantially similar to evidence already on file.

On February 6, 2015 appellant's counsel requested reconsideration of the hearing representative's July 31, 2014 decision and submitted new medical evidence.

In a January 22, 2015 report, Dr. Bowles responded to the hearing representative's suggestion that he had not been aware of the restrictions resulting from an earlier, unrelated upper extremity injury. He advised that the restrictions for the earlier injury did not significantly restrict ambulation. Dr. Bowles noted that the knee condition in question could occur from simply walking. He also noted that that the preexisting osteoarthritis of that knee was identified on preoperative x-rays, and would almost invariably be associated to some degenerative changes within the menisci of that knee. Thus, normal ambulatory activity and the preexisting condition would predispose appellant to the meniscal tear observed at surgery. Accordingly, a cause and effect relationship of a preexisting chronic condition and normal ambulatory activities at work explained the development of the meniscal tear in appellant's right knee.

On June 19, 2015 counsel inquired about the status of his February 6, 2015 request for reconsideration. And on July 6, 2015, counsel reiterated that he was seeking review of the hearing representative's July 31, 2014 merit decision.

In an August 3, 2015 report, Dr. Bowles reiterated his previous response from his January 22, 2015 report. He noted, in an addendum report, that he had again reviewed appellant's statement and explained in his previous response that simply walking could aggravate and cause a meniscus tear.

In an August 18, 2015 letter, counsel indicated that Dr. Bowles' August 3, 2015 report established a *prima facie* case. A copy of the August 18, 2015 letter was resubmitted on August 25, 2015.

By decision dated September 25, 2015, OWCP denied modification finding that the evidence submitted was insufficient to establish an employment injury. Upon reviewing Dr. Bowles' report it concluded, "However, it appears from this recent medical evidence that normal 'ambulatory activities' would have led to the development of a meniscal condition regardless of whether or not you were employed by the [employing establishment] or not."

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[5]

[5] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 diagnosed condition is causally related to the identified employment factors.[6]

ANALYSIS

Appellant alleged that his torn right medial meniscus was caused or aggravated by his employment duties of standing and walking on concrete floors, as well as bending and stooping. The evidence supports that appellant worked in a modified position since December 2012 in which he engaged in the above activities on concrete floors. However, he has submitted insufficient medical evidence to establish that his right knee conditions were caused or aggravated by these work duties or any other specific factors of his federal employment.

A series of reports were received from Dr. Bowles. In his August 26, 2013 report, Dr. Bowles indicated that appellant stood and walked frequently on concrete at work and that his right knee pain developed over the last month. While he stated the examination was consistent with a possible torn meniscus with synovit Dr. Bowles did not provide a firm diagnosis. He also failed to mention the August 2, 2013 MRI report, which had reflected a medial meniscus tear, high grade chondromalacia in the medial compartment, and a mild sprain of the MCL. In his September 9, 2013 report, Dr. Bowles stated that the MRI scan of the right knee demonstrated medial meniscal pathology and medial compartment osteoarthritis. He did not provide a diagnosis; rather, Dr. Bowles noted that appellant developed pain and catching of the knee with a spontaneous onset during his work activities. These reports fail to provide a firm diagnosis and do not contain a narrative opinion on causal relationship between the diagnosed conditions and the accepted employment incident.[7]

In his October 29, 2013 report, Dr. Bowles opined that the onset of appellant's right knee condition was associated with work-related activities and, thus, it was an employment-related injury. Again, he failed to provide any discussion relative to causal relationship.[8] In his November 8, 2013 letter, Dr. Bowles indicated that appellant was performing his usual activities and had a spontaneous onset of sharp pain involving the right knee. He noted arthroscopic surgery results to the right knee and opined that a causal relationship was established as appellant was asymptomatic before the alleged employment injury, which occurred on a fairly acute basis while working. However, Dr. Bowles failed to address earlier evidence which showed appellant had lymphedema in the leg and a preexisting degenerative joint disease condition. Furthermore, there was no evidence that Dr. Bowles was aware at that time that appellant was working limited duty or why he felt knee pain while walking. The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative

[6] *Victor J. Woodhams*, *id*.

[7] *A.T.*, Docket No. 15-632 (issued June 9, 2015).

[8] *Id.*

evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.[9] Without explaining how the employment factors caused or contributed to the diagnosed conditions, Dr. Bowles opinion is of limited probative value and is insufficient to meet appellant's burden of proof.[10] Additionally, the Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.[11]

In his December 30, 2013 report, Dr. Bowles opined that appellant had a degenerative-type tear of the medial meniscus sustained while working. He stated that appellant had an aggravation or acceleration of a preexisting condition, which was worsened by employment activities such as standing, walking, stooping, turning and kneeling on concrete floors over a period of years. However, Dr. Bowles' opinion on causal relationship is conclusory in nature without any additional explanation as to how appellant's work activities caused, precipitated or aggravated the diagnosed meniscus tear.[12] A well-rationalized opinion is particularly warranted when there is a history of preexisting condition.[13]

In his May 8, 2014 report, Dr. Bowles opined that there was a causal relationship between appellant's employment duties of heavy lifting and ambulatory activity and his bilateral osteoarthritis of his knees, which led to a medial meniscus tear of the right knee and subsequent sequelae of pyogenic arthritis after surgery. However, he offered no additional explanation as to how appellant's work activities caused, precipitated or aggravated the diagnosed meniscus tear.[14] Dr. Bowles subsequently indicated in his June 4, 2014 report that appellant's jobs of a mail carrier and modified mail handler required a great deal of walking, but the modified mail handler job required more exertion. He opined, without providing a fully rationalized explanation, that this activity had caused aggravation of what was now a permanent injury to appellant's right knee.[15]

In his September 11, 2014 report, Dr. Bowles indicated that appellant was disabled from performing either mail handler or modified mail handler duties as there was evidence of progression of right knee degenerative arthritis. He also listed several diagnoses which resulted from the right knee injury sustained at work. However, Dr. Bowles failed to provide a

[9] *See Lee R. Haywood*, 48 ECAB 145 (1996).

[10] *See L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

[11] *M.R.*, Docket No. 14-11 (issued August 27, 2014); *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[12] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[13] *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, *supra* note 12.

[14] *See George Randolph Taylor*, *supra* note 13.

[15] *Id.*

rationalized opinion explaining why appellant was unable to perform his limited duty position despite surgical intervention. He further failed to specifically address causal relationship. The Board has held that a physician's opinion which does not address causal relationship is of diminished probative value.[16]

In his January 22 and August 3, 2015 reports, Dr. Bowles stated that the knee condition in question could occur from simply walking. He explained that the preexisting osteoarthritis of that knee would almost invariably be associated with some degenerative changes within the menisci of the knee. Dr. Bowles indicated that a cause and effect relationship of normal ambulatory activity at work and the preexisting condition predisposed appellant to the meniscal tear observed at surgery and explained the development of the meniscal tear in the knee. However, this opinion is not rationalized as Dr. Bowles fails to explain how he attributed appellant's preexisting osteoarthritis of the knee and meniscal tear to normal activity at work and not every day walking activities. As noted, part of appellant's burden of proof includes the submission of rationalized medical opinion evidence addressing whether there is a causal relationship between the diagnosed condition and the implicated employment factors.

As there is no reasoned medical evidence explaining how appellant's employment duties either caused or aggravated a medical condition involving his knee, appellant has not met his burden of proof in establishing that he sustained a medical condition causally related to factors of his employment.

On appeal counsel alleged that OWCP abused its discretion in refusing to review Dr. Bowles' narrative reports as this evidence established a *prima facie* case of entitlement to FECA benefits. As noted, the Board assumed jurisdiction over the merits of the claim based on OWCP's September 25, 2015 merit review. Having reviewed the record in its entirety, the Board finds that there is no reasoned medical evidence explaining how appellant's employment duties either caused or aggravated a medical condition involving his right knee.

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.

[16] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his claimed right knee meniscus tear is causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2015 decision of the Office of Workers Compensation Programs is affirmed.

Issued: June 15, 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