United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
and	)	**Docket No. 16-1496**
	)	**Issued: May 3, 2017**
U.S. POSTAL SERVICE, POST OFFICE, City of Industry, CA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 14, 2016 appellant, through counsel, filed a timely appeal from a March 8, 2016 merit decision and a June 16, 2016 nonmerit 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.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish right shoulder, lower back, right hip, bilateral knee, and left ankle conditions causally related to factors of his

[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.*

federal employment; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 23, 2014 appellant, a 64-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he developed right shoulder, lower back, right hip, bilateral knee, and left ankle conditions as a result of repetitive pushing, pulling, and lifting heavy sacks and boxes of mail for 30 years in the performance of duty. He indicated that he first became aware of the condition and its relation to his federal employment on March 24, 2014. Appellant stopped work on April 11, 2014.

Appellant submitted two duty status reports (Form CA-17) dated April 7 and 21, 2014 from Dr. Hosea Brown, a Board-certified internist, who diagnosed a right rotator cuff injury and degenerative joint disease of the knees and provided work restrictions.

In a May 9, 2014 letter, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted an April 21, 2014 report from Dr. Brown who noted that appellant had worked for the employing establishment for 31 years and that his duties required pushing and pulling mail and heavy equipment and operating a four-wheel vehicle (Mule) and towing equipment from the dock to a designated area. He noted that appellant had a prior work injury to his left shoulder in 2006 and injured his left knee while in military service in Vietnam. Dr. Brown diagnosed right rotator cuff syndrome, right rotator cuff tear, right shoulder labral tear, lumbar intervertebral disc syndrome, lumbar facet arthropathy, right hip tenosynovitis, degenerative joint disease of the knees (permanent aggravation), right knee anterior cruciate ligament (ACL) tear, right knee medial meniscal tear, left knee complex tear of the medial meniscus, left ankle fracture, left ankle synovitis, left Achilles tendinitis, and lumbar radiculitis. Dr. Brown opined that after obtaining the history provided by appellant, performing pertinent physical examination, and analyzing all available diagnostic data, he concluded that appellant's extensive medical injuries occurred as a direct result of the performance of the duties of his federal employment.

Regarding his right shoulder, Dr. Brown opined that appellant repetitively pulled and pushed over-the-road containers (OTR) and bulk mail containers with his right shoulder and it was "a well-established medical fact that these heavy pieces of postal equipment can weigh up to 1,000 pounds or more." Appellant performed repetitive pushing and pulling of this heavy equipment on a daily basis for eight hours per day, five days per week for over 30 years. Dr. Brown opined that this repetitive pushing and pulling with the right shoulder increased the biomechanical load in this area and caused progressive desiccation, deterioration, irritation, and degeneration of the structures of the right shoulder including, but not limited to, the bursa, tendons, and bony structures. He opined that appellant developed a right rotator cuff syndrome, right shoulder synovitis, as well as a right rotator cuff tear and labral tear as documented on both physical examination and magnetic resonance imaging (MRI) scan studies.

Regarding appellant's back, Dr. Brown opined that repetitively pushing and pulling heavy OTRs on a daily basis throughout his career increased the biomechanical load to his lumbosacral spine, thereby causing progressive desiccation, deterioration, and degeneration of the lumbar vertebrae and intervertebral disc and caused what is commonly referred to as degenerative joint disease of the lumbosacral spine. He further opined that this process was clearly aggravated and accelerated by appellant's federal duties, and was not attributable to the aging process.

Regarding appellant's right hip, Dr. Brown emphasized the fact that appellant very often preferentially pulled the heavy equipment with his right shoulder and right hip, which placed an increased biomechanical load on his right hip when compared to the left.

Regarding appellant's knees, Dr. Brown noted that appellant repetitively crouched when connecting heavy equipment on a daily basis. He reported that this crouching occurred for several hours per day and noted that it was a well-known medical fact that prolonged crouching when performing such an employment-related duty such as connecting heavy forms of equipment would place an increased biomechanical load on appellant's knees with the result of accelerating, aggravating, and precipitating severe degenerative joint disease. Dr. Brown found that these findings were evident on appellant's physical examination which revealed decreased range of motion of both knees, as well as diffuse swelling of both knees with tricompartmental crepitation. Additionally, MRI scan studies were consistent with significant degenerative joint disease of both knees as well as meniscal tears, which were a direct result of appellant's employment activities.

Regarding appellant's left ankle, Dr. Brown opined that appellant repetitively depressed forcefully the starter pedal on his Mule for four to five hours per day and this placed an increased biomechanical load on his left ankle with the result of causing progressive inflammation, irritation, and degeneration of the structures of the left ankle including, but not limited to, the tendons and muscles. Additionally, when the starter pedal was defective, appellant was required to step even more forcefully on the pedal with his left foot, which caused left ankle tenosynovitis, left ankle fracture, and left Achilles tendinitis.

OWCP referred appellant to Dr. Steven M. Ma, a Board-certified orthopedic surgeon, for a second opinion examination to determine the nature and extent of his employment-related conditions. In his July 21, 2014 report, Dr. Ma reviewed a statement of accepted facts, appellant's medical history, and conducted a physical examination. He found that examination of appellant revealed a normal heel to toe gait. Appellant had difficulty walking on his toes and his heels. Examination of both shoulders and upper extremities revealed no obvious atrophy. No swelling was present. There were arthroscopic left shoulder scars present. There was a negative impingement sign and appellant pointed to both shoulders in general as the location of his symptoms. There was no evidence of any subluxation or dislocation about the shoulders. There was a negative apprehension sign. Range of motion of the shoulders was as follows: 160 degrees forward flexion; 40 degrees extension; 160 degrees abduction; 40 degrees adduction; 70 degrees internal rotation; and 70 degrees external rotation. Motor examination of appellant's upper extremities showed no obvious deficits except for that limited by his shoulder pain. Sensory examination was intact to light touch and pinprick. Two-point discrimination was measured at 5 millimeters for both upper extremities. Reflexes were two plus over the biceps,

triceps, and brachioradialis. Radial pulse was one plus bilaterally. There was no asymmetry about appellant's back and no scars were present. His pelvis was level and there was no spasm present about appellant's back. There was no area of point tenderness to palpation. Appellant pointed to the lower back as the location of his symptoms and was unable to bend forward and come to within one-foot of touching the ground with his fingertips. He was able to go down to a full-squatting position without any difficulty. Examination of appellant's knees revealed a long left knee medial parapatellar scar. There was effusion about both knees. There was no tenderness on compression of the patellofemoral joint bilaterally. Both knees went from full extension to 100 degrees of flexion. Lachman's testing was negative. Examination of both ankles and feet revealed pes planus of the left hind-foot and mid-foot.

Dr. Ma diagnosed generalized advanced arthritis about right shoulder, both knees, lower back, and left ankle. He noted that Dr. Brown failed to mention x-rays and MRI scans, which showed advanced arthritis and, in some areas like appellant's shoulders and knees, end-stage arthritis. Dr. Ma explained that appellant's arthritis had eaten away the ligaments, articular cartilage, and meniscus in his knees and migrated to articulating with the acromion, which meant that the rotator cuff had been eaten away by the arthritis and completely torn. He opined that appellant's conditions were caused by his preexisting arthritis condition, not a work-related injury. Dr. Ma concluded that appellant was not totally disabled from work due to an employment-related condition and was capable of light-duty work with restrictions.

By decision dated August 6, 2014, OWCP found that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and factors of his federal employment.

On October 14, 2014 appellant, through counsel, requested reconsideration and submitted reports dated September 22 and October 1, 2014 from Dr. Brown, who reiterated his diagnoses and opinions. He also submitted MRI scan studies dated April 1, 2014, which demonstrated a right rotator cuff tear, synovitis of the right hip, right knee medial meniscus tear, left knee tri-compartment osteoarthritis with complex tear of the medial meniscus, and Achilles tendinitis.

In a July 10, 2014 report, Dr. Domenic Signorelli, a podiatric surgeon, diagnosed posterior tibial dysfunction, pes planus deformity, and painful gait. He opined that appellant's conditions were caused by his work activities for 31 years, which included driving a Mule and stepping off the vehicle and landing on his left foot particularly.

By decision dated January 12, 2015, OWCP denied modification of its prior decision.

On March 16, 2015 appellant, through counsel, again requested reconsideration and submitted a March 2, 2015 report from Dr. Brown, who noted that he had reviewed Dr. Ma's second opinion report and disagreed with his assertions. He further submitted a position description and a November 20, 2014 report from Dr. Signorelli, who reiterated his diagnoses and opinions.

In a June 24, 2014 report, Dr. Charles Herring, a Board-certified orthopedic surgeon, diagnosed right shoulder rotator cuff tear, right shoulder impingement syndrome, right shoulder subacromial bursitis, right shoulder complex labral tear, right shoulder acromioclavicular joint

arthropathy, bilateral knee tri-compartmental osteoarthritis, bilateral knee medial meniscus tear, right knee ACL tear, and right hip trochanteric bursitis. He opined that appellant's degenerative changes were the result of his prolonged job duties, including ascending and descending stairs, squatting, stooping, kneeling, and lifting packages. On August 19, 2014 Dr. Herring recommended a total knee replacement.

On October 10, 2014 Dr. James T. Tran, a Board-certified neurosurgeon, diagnosed lumbosacral disc degeneration, lumbar radiculitis, lumbar spinal stenosis with neurogenic claudication, and trochanteric bursitis. He opined that repetitive bending, lifting, and pushing at work over time caused appellant's lumbar conditions.

OWCP found a conflict in medical opinion between Dr. Brown and Dr. Ma. It referred appellant to Dr. Daniel Gobaud, a Board-certified orthopedic surgeon, for an impartial medical examination. In a June 3, 2015 report, Dr. Gobaud reviewed the medical evidence and conducted a physical examination. He diagnosed osteoarthritis of the left ankle, degenerative joint disease of both knees, degenerative disc disease of the lumbar spine, osteoarthritis of the right shoulder, and normal orthopedic evaluation of the right hip. Dr. Gobaud opined that appellant's conditions were degenerative, progressive, and developmental, but not work related. After a complete and comprehensive physical examination, he found that appellant had a normal physical examination of his left ankle, right hip, and right shoulder. Appellant had full range of motion of both knees without grinding sensation and minimal amount of retro-patellar tenderness bilaterally. A physical examination of the lumbar spine showed a moderate amount of pain and tenderness on direct pressure. Dr. Gobaud found that appellant had osteoarthritis which affected his lower back and multiple joints. He opined that appellant suffered from a multifactorial condition which involved factors such as age, heredity, biochemical changes of the cartilage, and biomechanical condition of the spine and joints. Dr. Gobaud concluded that appellant's conditions were not caused by the activities of his federal employment. He noted that appellant had reached retirement age and had decided to retire.

By decision dated June 16, 2015, OWCP denied modification of its prior decision.

On August 3, 2015 appellant, through counsel, again requested reconsideration and submitted a July 20, 2015 report from Dr. Brown, who noted that he had reviewed Dr. Gobaud's referee report and disagreed with his assertions. He also submitted a March 12, 2015 report from Dr. Stephen C. Wan, a Board-certified podiatric surgeon, who diagnosed painful pes planovalgus deformity of the left foot.

In a December 30, 2015 supplemental report, Dr. Gobaud reviewed the medical evidence of record and reiterated his opinion that appellant's conditions were not causally related to factors of his federal employment.

By decision dated March 8, 2016, OWCP denied modification of its prior decision.

On May 2, 2016 appellant, through counsel, again requested reconsideration and submitted an April 13, 2016 report from Dr. Brown, who reiterated his disagreement with Dr. Gobaud's opinion regarding the nature and extent of appellant's conditions.

By decision dated June 16, 2016, OWCP denied appellant's request for reconsideration without conducting a merit review.

LEGAL PRECEDENT -- ISSUE 1

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 period of FECA, and that an injury[3] was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (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.[5]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[6]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish that he developed right shoulder, lower back, right hip, bilateral knee, and left ankle conditions in the performance of duty. The medical evidence appellant submitted fails to establish that federal employment factors caused or aggravated his conditions. He submitted a statement in which he identified the factors of employment that he believed caused the condition, including repetitive pushing, pulling, and lifting, which OWCP accepted as factual. However, in order to establish a claim that appellant sustained an employment-related injury, he must also submit rationalized

[3] OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

[4] *See O.W.*, Docket No. 09-2110 (issued April 22, 2010).

[5] *See D.R.*, Docket No. 09-1723 (issued May 20, 2010).

[6] *See supra* note 4.

medical evidence which explains how his medical condition was caused or aggravated by the implicated employment factors.[7]

OWCP found a conflict in medical opinion between Dr. Brown, appellant's treating physician, who opined that appellant's conditions were caused by the accepted employment factors and the second opinion physician, Dr. Ma, who opined that appellant's conditions were not caused or aggravated by the accepted employment factors. The Board finds that OWCP properly referred appellant to Dr. Gobaud, a Board-certified orthopedic surgeon, for an impartial medical examination, pursuant to 5 U.S.C. § 8123(a).

In his June 3, 2015 report, Dr. Gobaud reviewed the medical evidence and conducted a physical examination. He diagnosed osteoarthritis of the left ankle, degenerative joint disease of both knees, degenerative disc disease of the lumbar spine, osteoarthritis of the right shoulder, and normal orthopedic evaluation of the right hip. Dr. Gobaud opined that appellant's conditions were degenerative, progressive, and developmental, but not work related. After a complete and comprehensive physical examination, he found that appellant had a normal physical examination of his left ankle, right hip, and right shoulder. Appellant had full range of motion of both knees without grinding sensation and minimal amount of retro-patellar tenderness bilaterally. A physical examination of the lumbar spine showed a moderate amount of pain and tenderness on direct pressure. Dr. Gobaud found that appellant had osteoarthritis which had affected his lower back and multiple joints. He opined that appellant suffered from a multifactorial condition which involved factors such as age, heredity, biochemical changes of the cartilage, and biomechanical condition of the spine and joints. Dr. Gobaud concluded that appellant's conditions were not caused by the activities of his federal employment. In a December 30, 2015 supplemental report, he reviewed the medical evidence of record and reiterated his opinion.

The Board finds that Dr. Gobaud's reports represent the special weight of the medical evidence at the time OWCP denied the claim and OWCP properly relied on his reports in denying appellant's claim. The Board finds that he had full knowledge of the relevant facts and evaluated the course of appellant's condition. Dr. Gobaud is a specialist in the appropriate field. His opinion is based on proper factual and medical history and his reports contained a detailed summary of this history. Dr. Gobaud addressed the medical records to make his own examination findings to reach a reasoned conclusion regarding appellant's conditions.[8] At the time appellant's claim was denied, he found no basis on which to attribute any causal relationship between the diagnosed conditions and the accepted employment factors. Dr. Gobaud's opinion, as set forth in his June 3 and December 30, 2015 reports, are found to be probative evidence and reliable. The Board finds that his opinion constitutes the special weight of the medical evidence and is sufficient to justify OWCP's denial of appellant's claim for compensation.[9]

[7] *See A.C.*, Docket No. 08-1453 (issued November 18, 2008).

[8] *See Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

[9] *See also P.F.*, Docket No. 12-1711 (issued July 2, 2013).

The Board finds that Drs. Signorelli, Herring, and Tran did not provide sufficient medical rationale explaining how appellant's conditions were caused or aggravated by repetitive pushing, pulling, and lifting at work. The need for rationale is particularly important as the evidence indicates that appellant had a preexisting arthritic condition. Drs. Signorelli, Herring, and Tran did not provide a narrative setting forth a full and accurate history of appellant's arthritis and failed to provide an opinion adequately addressing how his history of arthritis issues, particularly his end-stage arthritis, contributed to the diagnosed conditions. The Board has held that medical opinions based on an inaccurate history have diminished probative value.[10] Therefore, the Board finds that the reports from Drs. Signorelli, Herring, and Tran are insufficient to establish causal relationship and insufficient to create a new conflict in medical opinion to overcome the special weight properly accorded to Dr. Gobaud.[11]

The March 12, 2015 report from Dr. Wan is of limited probative medical value as it does not specifically address whether factors of appellant's federal employment caused or contributed to the diagnosed conditions.[12]

Other medical evidence of record, including diagnostic test reports, is of limited probative value and insufficient to establish the claim as it does not specifically address whether appellant's diagnosed conditions are causally related to factors of his federal employment.[13]

On appeal, counsel contends that OWCP's decision is contrary to fact and law. Based on the findings and reasons stated above, the Board finds that his arguments are not substantiated. As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to the accepted employment factors, he failed to meet his burden of proof to establish a claim.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to a review of an OWCP decision as a matter of right; it vests OWCP with discretionary authority to determine whether it will review an award for or against compensation.[14] OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).[15]

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[10] *See Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value). *See also Douglas M. McQuaid*, 52 ECAB 382 (2001); *N.H.*, Docket No. 13-849 (issued July 17, 2013).

[11] *See J.M.*, Docket No. 11-1257 (issued January 18, 2012); *see also Dorothy Sidwell*, 41 ECAB 857 (1990).

[12] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[13] *Id.*

[14] *Supra* note 2. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application. 5 U.S.C. § 8128(a).

[15] *See Annette Louise*, 54 ECAB 783, 789-90 (2003).

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, OWCP regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.[16] To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.[17] When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.[18]

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record[19] and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.[20]

ANALYSIS -- ISSUE 2

In support of his May 2, 2016 reconsideration request, appellant submitted an April 13, 2016 report from Dr. Brown who reiterated his disagreement with Dr. Gobaud's opinion regarding the nature and extent of appellant's conditions. The Board finds that submission of this report did not require reopening appellant's case for merit review. As the Board denied his claim based on the lack of supportive medical evidence and this report repeats evidence already of record, it is cumulative and does not constitute relevant and pertinent new evidence. Therefore, it is insufficient to require OWCP to reopen the claim for consideration of the merits.

Appellant did not submit any evidence to show that OWCP erroneously applied or interpreted a specific point of law or advanced a relevant legal argument not previously considered by OWCP. Because he only submitted cumulative evidence with his request for reconsideration, he did not submit relevant and pertinent new evidence. Thus, the Board finds that appellant did not meet any of the necessary requirements and he is not entitled to further merit review.[21]

On appeal, counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds that his arguments are unsubstantiated.

[16] 20 C.F.R. § 10.606(b)(3).

[17] *Id.* at § 10.607(a).

[18] *Id*. at § 10.608(b).

[19] *See P.O.*, Docket No. 14-1675 (issued December 3, 2015). *See also Kenneth R. Mroczkowski*, 40 ECAB 855 (1989).

[20] *Id. See also Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[21] *See L.H.*, 59 ECAB 253 (2007).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish right shoulder, lower back, right hip, bilateral knee, and left ankle conditions causally related to factors of his federal employment. The Board further finds that OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the June 16 and March 8, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 3, 2017
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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