

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

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**M.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
San Francisco, CA, Employer**

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**Docket No. 16-1743  
Issued: May 18, 2017**

*Appearances:*  
*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On August 31, 2016 appellant, through counsel, filed a timely appeal from a July 20, 2016 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 the case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish aggravation of left knee arthritis causally related to 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 April 13, 2015 appellant, then a 60-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed left knee pain, swelling, weakness, and stiffness. She attributed her condition to lifting, pushing, pulling, standing, and walking while performing her job duties. Appellant first became aware of her left knee condition in November 2011 and first attributed this condition to her employment on October 16, 2012.

Appellant underwent a left knee magnetic resonance imaging (MRI) scan on October 16, 2012 which demonstrated extensive horizontal tearing of the lateral meniscus, advanced cartilage wear in the lateral compartment, joint effusion, and popliteal cyst.

In a letter dated April 30, 2015, OWCP requested additional factual and medical evidence from appellant in support of her occupational disease claim. It allowed her 30 days to respond.

By decision dated July 1, 2015, OWCP denied appellant's occupational disease claim, finding that she had failed to submit the necessary factual and medical evidence to establish her claim. It noted previously accepted conditions of lumbar sprain as well as thoracic or lumbar neuritis or radiculitis under OWCP File No. xxxxxx296.

On July 17, 2015 appellant requested reconsideration of the July 1, 2015 decision. She noted that she planned to submit additional medical evidence.

By decision dated October 8, 2015, OWCP denied appellant's request for reconsideration of the merits as she had failed to submit any additional new evidence or argument in support of her request for reconsideration.

On April 21, 2016 appellant, through counsel, requested reconsideration. In support of this request, he submitted a report dated April 12, 2016 from Dr. Michael E. Hebrard, a Board-certified physiatrist. Dr. Hebrard noted that OWCP had denied appellant's claims for right knee and bilateral hip conditions. He then indicated that for her accepted right knee condition<sup>3</sup> he reviewed x-rays dated September 5, 2014 which demonstrated severe medial joint line narrowing in the right knee, and moderate narrowing in the left knee. Dr. Hebrard noted that these x-rays suggested that there was a preexisting condition of appellant's knees. He also reviewed appellant's March 6, 2014 left knee MRI scan and noted the findings of tear of the lateral meniscus, cartilage wear in the lateral compartment, joint effusion and cyst, preexisting pathology of the left knee. Dr. Hebrard then described appellant's work duties of repetitive squatting, bending at the knees and hips, reaching, pushing, and pulling in order to sort mail. He opined that work-related repetitive squatting and bending at the knees increased the biomechanical stress along the arthritic knee joint, increasing inflammation, and overuse of the surrounding muscles to provide structural support. Dr. Hebrard noted that prolonged sitting increased pressure on the hip and knee joints and contributed to acceleration of the preexisting condition. He concluded, "It is my opinion with a reasonable degree of medical certainty ... that [appellant] had a preexisting condition involving the knees and hips; that this is causal relationship between her work duties over many years and her current condition; that the mechanical stresses on the hip and knee joints that were involved as part of her job, including

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<sup>3</sup> Dr. Hebrard referenced claim No. xxxxxx433. That claim is not presently before the Board.

standing, sitting, stooping, crouching, and bending through the day, accelerated the preexisting arthritic condition and contributed proximally to her ongoing functional impairment.” Dr. Hebrard found that appellant had sustained a permanent aggravation of her right knee and both hips.

By decision dated July 20, 2016, OWCP found that Dr. Hebrard’s April 12, 2016 report established a diagnosed condition, arthritis of the left knee. However, it determined that he had not provided rationalized medical opinion evidence describing how appellant’s left knee arthritis was caused or aggravated by her work duties.

### **LEGAL PRECEDENT**

OWCP’s regulations define an occupational disease as “a condition produced by the work environment over a period longer than a single workday or shift.”<sup>4</sup> 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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.<sup>5</sup>

### **ANALYSIS**

The Board finds that appellant has failed to meet her burden of proof to establish aggravation of left knee arthritis due to factors of her federal employment.

In support of her claim for an employment-related aggravation of her left knee arthritis, appellant submitted a report dated April 12, 2016 from Dr. Hebrard. Dr. Hebrard reviewed the diagnostic studies including MRI scans and x-rays. He diagnosed preexisting bilateral knee arthritis. Dr. Hebrard described appellant’s employment duties including squatting and bending at the knees while sorting mail. He explained that work-related repetitive squatting and bending at the knees increased the stress along appellant’s arthritis knee joint which increased inflammation as well as overuse of the surrounding muscles. Dr. Hebrard also explained that prolonged sitting increased pressure on the knee joints and contributed to acceleration of the preexisting condition. He concluded that appellant had a preexisting condition of her knees, that there was a causal relationship between her work duties and her current right knee condition due to mechanical stresses including standing, sitting, stooping, crouching, and bending. Dr. Hebrard

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<sup>4</sup> 20 C.F.R. § 10.5(q).

<sup>5</sup> *Lourdes Harris*, 45 ECAB 545, 547 (1994).

opined that appellant had a permanent aggravation of her right knee, but did not specifically address the left knee.

Appellant filed her Form CA-2 alleging a left knee injury due to factors of her federal employment. Rather than addressing the left knee, Dr. Hebrard's report focuses on appellant's right knee and bilateral hip condition. He does not describe how the left knee condition was caused or aggravated by appellant's federal employment. Therefore, the Board finds that this report is not relevant to the current issue of causation and is of limited probative value regarding this claim.<sup>6</sup>

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 her burden of proof to establish an aggravation of her left knee arthritis causally related to factors of her federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 20, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 2017  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>6</sup> See generally *D.R.*, Docket No. 16-0528 (issued August 24, 2016); *C.A.*, Docket No. 13-1364 (issued May 13, 2014).