

On appeal counsel alleges that there is no dispute of record regarding appellant's federal work duties and that he has established his claim.

FACTUAL HISTORY

On February 10, 2016 appellant, then a 57-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained cumulative trauma to both of his knees resulting in development/acceleration of osteoarthritis and degenerative joint disease. He initially became aware of his condition and of its relationship to his employment on February 2, 2015. Appellant explained that he waited a year to file his claim because he thought it was just a sore knee. He did not stop work. A supervisor noted that appellant had a previous claim for a knee injury.

In a report dated February 3, 2016, Dr. Joseph Arden Blough, a family practitioner, diagnosed cumulative trauma to both knees resulting in development/acceleration of osteoarthritis and degenerative joint disease. He noted that appellant had been employed by the employing establishment for the past 16 years, walking between 8 and 13 miles per day. Dr. Blough stated that, over time, the repetitive walking and climbing on hard concrete surfaces, uneven terrain, and stairs, had placed excess strain on the knees. He noted that appellant had previously undergone left leg surgery to the veins, and that appellant's radiographs demonstrated that his knees were "bone on bone." Dr. Blough stated, "It is the opinion of the undersigned that [appellant] has sustained cumulative trauma injuries to his ... knees as the result of occupational disease resulting from his cumulative work-related activities. In my opinion, these injuries arose out of, and are causally connected to the above-described occupational trauma within a reasonable degree of medical certainty." He explained at length the biomechanical development of osteoarthritis of the knee through cumulative trauma and expressed his opinion that appellant had undergone such cumulative trauma while performing his work duties, leading to his condition.

By letter dated February 16, 2016, OWCP advised appellant of the evidence needed to establish his claim. It advised him that he had not submitted sufficient evidence to establish his claim, and asked him to respond to its inquiries regarding the employment activities alleged to have caused his condition. OWCP afforded appellant 30 days to submit additional evidence and to respond to its inquiries. On the same date, it requested information from the employing establishment regarding the duties of his federal employment. Neither appellant nor the employing establishment responded to OWCP's queries within the allotted time.

By decision dated March 17, 2016, OWCP denied appellant's claim. It found that he had not established the factual component of fact of injury, because he had failed to respond to the questions in OWCP's development letter of February 16, 2016.

On April 13, 2016 appellant requested a review of the written record before an OWCP hearing representative. He described the physical requirements of his position as a letter carrier of lifting, sitting, standing, walking, climbing, kneeling, bending/stooping, twisting, pushing/pulling, simple grasping, fine manipulation, reaction above the shoulder, and driving a vehicle. Appellant noted that he had three different routes over the last three years, some of which included walking routes, some driving, and some a mix of both. He stated, "I believe this

is a direct result of being a letter carrier for 15 years. My job consists of grossly walking, driving, sorting mail, flexion extending arms and legs on a continuous basis.”

In a diagnostic report dated October 8, 2013, Dr. Clinton Williamson, a Board-certified diagnostic radiologist, examined x-rays of appellant’s bilateral knees. He stated his impression of bilateral medial compartment predominant osteoarthritis.

On December 23, 2015 Dr. Carlan Yates, a Board-certified orthopedic surgeon, diagnosed near end-stage degenerative joint disease of the right knee. He noted that appellant’s job involved entering and exiting trucks as well as ambulation throughout the day.

In a letter dated December 29, 2015, Dr. Yates noted that appellant had significant bilateral knee arthritis. She treated his right knee with an injection.

By decision dated October 13, 2016, a hearing representative affirmed OWCP’s March 17, 2016 decision. She found that, because appellant had not provided OWCP with a detailed description of the routes he has held over the years, including how long he performed each of them and the amount of time spent walking on each route, he had not submitted sufficient evidence to establish fact of injury and as such, opinions from physicians predicated on cumulative trauma could only be speculative.

LEGAL PRECEDENT

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.⁴

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.⁵

With respect to the first component of fact of injury, the employee has the burden of proof to establish the occurrence of an injury at the time, place, and in the manner alleged, by a

³ *Gary J. Watling*, 52 ECAB 278-79 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313, 315 (1999).

⁵ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

preponderance of the reliable, probative, and substantial evidence.⁶ An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁷ An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁸ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.⁹ However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹⁰

ANALYSIS

The Board finds that appellant has met his burden of proof to provide a factual statement identifying employment factors alleged to have caused or contributed to his claimed knee conditions.

Appellant did not initially provide a detailed description of the work factors alleged to have caused or aggravated his claimed bilateral knee conditions in response to OWCP's inquiries contained in the February 16, 2016 development letter. However, when requesting a review of the written record before an OWCP hearing representative, appellant provided a sufficiently detailed account, identifying the particular employment factors alleged to have caused or contributed to his knee conditions. He noted the physical requirements of his position as a letter carrier of lifting, sitting, standing, walking, climbing, kneeling, bending/stooping, twisting, pushing/pulling, simple grasping, fine manipulation, reaction above the shoulder, and driving a vehicle. Appellant stated that he had three different routes over the last three years, some of which included walking routes, some driving, and some a mix of both. He stated, "I believe this is a direct result of being a letter carrier for 15 years. My job consists of grossly walking, driving, sorting mail, flexion extending arms and legs on a continuous basis."

As noted above, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹¹ As such, the Board finds that appellant's account of the work factors alleged to have caused his knee conditions retains its great probative value and is sufficient to establish that he actually experienced the work factors identified. Appellant explained that he

⁶ *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

⁷ *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

⁸ *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

⁹ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

¹⁰ *D.B.*, 58 ECAB 464, 466-67 (2007); *Robert A. Gregory*, 40 ECAB 478, 483 (1989).

¹¹ *Id.*

worked as a letter carrier for 15 years which required a mix of standing, walking, and driving a postal vehicle.

As appellant's employment factors have been established, the Board finds that the first component of fact of injury has been met. The question becomes whether the implicated factors of his federal employment caused an injury to his knees. As OWCP found that appellant did not establish fact of injury, it did not analyze or develop the medical evidence. Thus, the Board will set aside OWCP's October 13, 2016 decision and remand the case for further action. After such further development of the case record as it deems necessary, OWCP shall issue a *de novo* decision on appellant's occupational disease claim.

CONCLUSION

The Board finds that the evidence of record establishes appellant's implicated factors of his federal employment. However, this case is not in posture for decision with regard to whether the medical evidence establishes an employment-related injury. On remand, OWCP will consider the medical evidence and issue a *de novo* decision on the issue.

ORDER

IT IS HEREBY ORDERED THAT the October 13, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to further action consistent with this decision.

Issued: November 7, 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