United States Department of Labor
Employees' Compensation Appeals Board

S.D., Appellant	)	
and	)	**Docket No. 16-0999**
	)	**Issued: October 16, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Brockport, NY, Employer	)	

Appearances:
Appellant, *pro se*
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 11, 2016 appellant filed a timely appeal from a January 4, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 his burden of proof to establish that his claimed end-stage left knee osteoarthritis was causally related to factors of his federal employment.

FACTUAL HISTORY

On December 19, 2014 appellant, then a 60-year-old letter carrier, filed an occupational disease claim (Form CA-2) for end-stage left knee osteoarthritis, which he attributed to "all the walking and stairs…." He identified September 10, 2014 as the date he first realized that his

[1] 5 U.S.C. § 810 *et seq.*

employment either caused or aggravated his claimed left knee condition. Appellant stopped work on December 11, 2014. The employing establishment indicated that appellant's left knee condition predated his June 2002 employment and, in fact, was originally injured while employed at another federal agency in 1979.

OWCP had accepted the 1979 injury for hemarthrosis secondary to trauma, left knee synovitis, and left medial meniscus tears under File No. xxxxxx725. On February 13, 1980 appellant underwent arthroscopy and left medial meniscectomy, which OWCP authorized. Additionally, on July 14, 1983 appellant received a schedule award for 15 percent permanent impairment of the left leg.

In support of his current occupational disease claim for end-stage left knee osteoarthritis, appellant submitted a December 4, 2014 report from Dr. Mark J. Stenclik, a Board-certified orthopedic surgeon. Dr. Stenclik noted that appellant was seen for his "very arthritic left knee," and would "acquiesce" to surgery as the knee was no longer functional. He explained that "the total knee should have been done a decade ago." Dr. Stenclik examined appellant and noted a fixed varus contracture. He also noted that appellant flexed surprisingly well to about 100 degrees, and had a huge amount of crepitus. Dr. Stenclik obtained new x-rays, noting that the left knee revealed "horrible varus arthritis." He indicated that appellant was walking on a depressed medial tibial plateau, depressed about a centimeter, and probably had a 25 degree fixed varus contracture. Dr. Stenclik also advised that appellant was walking on his tibial spines as well. He indicated that the left knee demonstrated spurs both anterior and posterior on the femur. Dr. Stenclik diagnosed horrible end-stage osteoarthritis of the left knee with fixed varus malalignment, bone on bone, and depressed medial tibia. He advised that, "if anybody needs a total knee arthroplasty, [appellant] does." Dr. Stenclik discussed surgical intervention with appellant and requested authorization for surgery "from a residual compensation claim back in 1979."[2] He recommended continued light-duty work where appellant did not have to be on his feet for more than a couple hours per day.

By letter dated February 4, 2015, OWCP advised appellant that the current factual and medical evidence was insufficient to establish entitlement to FECA benefits. Specifically, it noted that the evidence was insufficient to establish that appellant actually experienced the employment factor(s) alleged to have caused his injury. Additionally, OWCP noted that appellant had not provided a physician's opinion explaining how employment activities either caused, contributed to, or aggravated appellant's medical condition. It afforded appellant 30 days to submit the requested information. No evidence was received within the time allotted.

By decision dated March 27, 2015, OWCP denied appellant's claim. It found that appellant had not established that the event(s) occurred as alleged. OWCP noted that it had not received any additional factual or medical evidence in response to its February 4, 2015 development letter. Additionally, it found that Dr. Stenclik failed to explain how appellant's end-stage left knee arthritis was employment related.

On April 7, 2015 appellant timely requested an oral hearing before a representative of the Branch of Hearings and Review, which was held on October 28, 2015.

[2] Dr. Stenclik specifically identified June 12, 1979 as the date of injury.

OWCP received an April 1, 2015 operative report from Dr. Stenclik, who performed a total left knee arthroplasty. The pre- and postoperative diagnosis was severe post-traumatic left knee arthritis with fixed varus and fixed flexion contracture, 15 degrees. Appellant also submitted treatment records pertaining to his hospitalization from April 1 through 4, 2015, which included nurses' notes and inpatient physical therapy notes. OWCP also received a postsurgery treatment plan, as well as additional outpatient physical therapy records.

In an April 23, 2015 report, Dr. Stenclik noted that appellant was status post left total knee arthroplasty on April 1, 2015. Appellant was reportedly doing okay. Dr. Stenclik indicated that appellant would transition to outpatient therapy.

In a May 20, 2015 report, Dr. Stenclik noted that appellant was under his care for pain due to arthritic hip and knees. Regarding the left knee, he explained that this "has been a compensation event." Dr. Stenclik noted that appellant had "what was probably an open meniscectomy at a young age, he was doing well with that, but he has some 13 or 14 years pounding on this knee sometimes four to five miles a day with the [employing establishment]." He indicated that appellant underwent a total knee replacement on April 1, 2015 and was in the process of recovering. Dr. Stenclik explained that appellant had a fixed varus contracture, which had to be corrected at the time of the surgery and still impeded his motion a bit. He diagnosed slight flexion contracture posttotal knee replacement, and recommended continued physical therapy. Dr. Stenclik opined that the "prolonged walking as a letter carrier … contributed to and aggravated [appellant's] arthritic condition of the knee to the point that he required knee replacement." He further noted that walking all those years also resulted in a fixed varus and flexion contracture, which was being addressed. Dr. Stenclik anticipated better motion and endurance within a two-month period.

In a May 27, 2015 statement, appellant indicated that he was a letter carrier for 14 years. His duties included carrying mail 5 to 6 days a week, for up to 6 miles a day, and up to 10 hours a day. Appellant noted that during those 10 hours he would have to climb stairs to deliver mail and parcels. He also noted that he had to climb three flights of stairs in some apartment buildings. Appellant indicated that the constant pounding that his knees took contributed to his condition. He advised that for 14 years, he carried mail 5 to 6 days a week for up to 10 hours a day in all sorts of weather. Appellant explained that he first started noticing his knee in 2010, but kept delivering mail. He started seeing a doctor in 2011 and he also had to carry up to 35 pounds per bundle, with up to 12 bundles a day and his knee continued to worsen. Appellant explained that he filed an occupational disease claim on September 10, 2014 because his knee could not take the daily pounding anymore and he worked light duty until December 10, 2014. He noted that the employing establishment told them it did not have any more work for him and sent him home. Appellant did not indicate whether he had previous similar conditions.

OWCP received records from Dr. Stenclik dating from April 14, 2011 to May 17, 2012 advising that appellant had left knee pain. Dr. Stenclik referred to a July 1978 date of injury. He found fixed varus contracture and horrible end-stage medial compartment arthrosis with a very posterior medial dished bone deficiency in the proximal tibia which may be difficult to correct without an augment and a total knee arthroplasty, which he recommended. Dr. Stenclik also performed a right total hip arthroplasty on February 28, 2012. Records concerning the hip were also received.

OWCP received a June 10, 2014 treatment note from a physician assistant who referenced that appellant indicated his original problem with his knee began when he was working in New York City.

In a November 9, 2015 statement, appellant indicated that Dr. Stenclik performed his total knee replacement and retired in September 2015. He indicated that Dr. Stenclik was the only doctor on his case and it was "impossible" to obtain additional information. Appellant also noted that he started with the employing establishment in 2001 and was cleared for duty with no problems with his knee at that time. He explained that in 2001 he saw Dr. Stenclik and his deterioration of his knee caused his right hip to become very painful. Appellant advised that his right hip was replaced on February 28, 2012. After he returned to work, the left knee continued to worsen until he was placed on light duty on September 10, 2014. Appellant noted that he worked light duty until December 10, 2014, when he was taken off work. He further noted that he scheduled his left total knee replacement for April 1, 2015 and he returned to work on August 1, 2015.

By decision dated January 4, 2016, OWCP's hearing representative found that appellant established both the factual and medical components of fact of injury. However, she denied appellant's occupational disease claim because the medical evidence was insufficient to establish causal relationship between appellant's current left knee condition and the accepted employment factors. Consequently, the hearing representative modified and affirmed OWCP's March 27, 2015 decision, as modified.

LEGAL PRECEDENT

A claimant seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her 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.[4]

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

[3] *See supra* note 1.

[4] 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.*

occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.[5]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[6]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[7] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[8]

ANALYSIS

Appellant alleged that he developed a left knee condition due to daily walking as part of his work as a mail carrier. The evidence supports that appellant walked and climbed stairs as part of his mail carrier duties. Appellant was diagnosed with end-stage left knee osteoarthritis. OWCP accepted that appellant established fact of injury. However, it denied his claim, finding there was insufficient medical evidence to establish that appellant's left knee condition was caused or aggravated by his work duties. The Board finds that appellant failed to meet his burden of proof to establish that his left knee condition is causally related to factors of his federal employment. It is particularly important to note that appellant had a prior accepted left knee condition caused by his mail carrier duties.

The evidence submitted by appellant includes several reports from Dr. Stenclik. The most relevant report is his May 20, 2015 report in which Dr. Stenclik noted that appellant was under his care for an arthritic hip and knees. Regarding the left knee, he explained that this "has been a compensation event." Dr. Stenclik explained that appallant had "what was probably an open meniscectomy at a young age, he was doing well with that, but he has some 13 or 14 years pounding on this knee sometimes four to five miles a day with the [employing establishment]." He indicated that appellant underwent a total knee replacement on April 1, 2015 and was recovering. Dr. Stenclik opined that appellant's "prolonged walking as a letter carrier … contributed to and aggravated his arthritic condition of the knee to the point that he required knee replacement…." He explained that walking all those years also resulted in a fixed varus and flexion contracture. The Board notes that, while his report generally suggests that walking all those years in his capacity as a letter carrier caused appellant's left knee condition, Dr. Stenclik

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

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[7] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[8] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

did not explain how the work-related activities caused his left knee condition. This is especially important because appellant had a preexisting left knee condition dating back to 1979. The Board finds that such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the diagnosed conditions.[9] The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between appellant's condition and his employment factors.[10] Thus, the Board finds that Dr. Stenclik's reports are insufficiently rationalized to establish that appellant's condition was caused or aggravated by the accepted factors of his federal employment.

Appellant also submitted physical therapy treatment records, as well as nursing notes. However, these healthcare providers are not considered physicians under FECA. Therefore, their respective reports will not suffice for purposes of establishing entitlement to FECA benefits.[11]

On appeal appellant argued that he submitted sufficient medical evidence from his physician to establish his claim. However, as found above, the medical evidence of record is insufficiently rationalized.

The Board finds that the evidence of record fails to establish causal relationship between appellant's end-stage left knee osteoarthritis and his accepted factors of federal employment.[12] Accordingly, appellant has failed to meet his burden of proof.

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 failed to meet his burden of proof to establish that his claimed end-stage left knee osteoarthritis was causally related to factors of his federal employment.

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[9] *See K.W.,* Docket No. 10-0098 (issued September 10, 2010).

[10] *See Richard B. Cissel,* 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.,* 30 ECAB 567, 570 (1979).

[11] *See supra* notes 7 and 8.

[12] Appellant's personal belief that his employment activities either caused or contributed to his condition is insufficient, by itself, to establish causal relationship. 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2016 decision of the Office of Workers Compensation Programs is affirmed.

Issued: October 16, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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