United States Department of Labor
Employees' Compensation Appeals Board

J.F., Appellant	)	
and	)	**Docket No. 17-0458**
	)	**Issued: October 2, 2017**
DEPARTMENT OF THE ARMY, ABERDEEN PROVING GROUND, Aberdeen, MD, Employer	)	

Appearances:
Michael D. Overman, Esq., for the appellant[1]
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 December 22, 2016 appellant, through counsel, filed a timely appeal from a September 9, 2016 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 to consider the merits of this case.

ISSUE

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

[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.*

FACTUAL HISTORY

On August 13, 2015 appellant, then a 50-year-old electronics engineer, filed an occupational disease claim (Form CA-2) alleging an employment-related bilateral knee condition. On the reverse side of the form, appellant's supervisor noted that appellant had previously filed a traumatic injury claim for his left knee condition under OWCP File No. xxxxxx460.

In support of his claim, appellant submitted a March 10, 2015 letter from Dr. Douglas Palma, a treating Board-certified orthopedic surgeon, diagnosing left leg joint pain and knee joint effusion. Dr. Palma also provided work restrictions limiting appellant to a sedentary position.

By letter dated August 26, 2015, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of medical and factual information needed and afforded him 30 days to submit this information.

In response to OWCP's request, appellant submitted additional evidence.

A September 23, 2014 magnetic resonance imaging (MRI) scan of the left knee revealed left knee posterior horn medial meniscus prominent tear, mild degenerative medial compartment changes, popliteal cyst formation, and joint effusion.

On September 29, 2014 Dr. Palma indicated that appellant was seen for left knee pain and swelling with a sudden onset and no known mechanism of injury. He noted that appellant's condition was aggravated by his daily work activities of going up and down stairs. A medical history was detailed in the report, which included a history of osteoarthritis and right knee arthroscopic surgery, and physical examination findings were provided. Dr. Palma reported reduced bilateral knee range of motion restricted due to pain. Diagnoses included bilateral knee joint effusion, right knee degenerative joint disease, and bilateral joint pain.

In a February 26, 2015 operative report, Dr. Palma related that appellant had undergone left knee arthroscopic surgery that day.

In reports covering the period March 10 to June 30, 2015, Dr. Palma provided physical examination findings, noted appellant's medical history, and diagnosed left knee joint pain and effusion.

In a September 10, 2015 report, Dr. Palma noted appellant's medical and employment histories and that appellant was first seen on September 29, 2014 for bilateral knee pain complaints. He related that in February 2015 appellant complained of increased left knee pain upon return to work following his left knee surgery, which he attributed to frequent heavy lifting and climbing stairs several times per day. Based on review of a recent MRI scan Dr. Palma diagnosed a left knee meniscal tear. He opined that appellant's work duties of heavy lifting and stair climbing aggravated his knee condition.

By decision dated October 26, 2015, OWCP denied appellant's claim finding that he had failed to establish the factual portion of his claim. Specifically, it found that the evidence of record did not support that the event or injury occurred as alleged.

By letter dated October 28, 2015, counsel requested an oral hearing before an OWCP hearing representative, which was held on February 3, 2016.

On February 4, 2016 OWCP received additional evidence, including a November 15, 2013 right knee MRI scan which revealed normal meniscal and ligaments, no significant degenerative changes, popliteal cyst formation, and joint effusion.

The record also contains clinical update forms dated December 13 and 16, 2013, February 20 April 3, 2014 from Dr. Michael J. Pushkarewicz, a Board-certified orthopedic surgeon. The form dated December 13 and 16, 2013 diagnosed right knee pain, right knee effusion, right patellar tendinitis, and right meniscal tear while remaining forms diagnosed right knee meniscal medial cartilage tear and right knee degenerative joint disease. Dr. Pushkarewicz released appellant to modified duty beginning December 30, 2013 on the December 16, 2013 and February 20, 2014 forms and to full-duty work on the April 3, 2014 form. Both forms noted that surgery had been performed on December 18, 2013.

A December 18, 2013 surgical report by Dr. Pushkarewicz noted right knee arthroscopic surgery partial medial meniscectomy and removal of medical femoral condyle loose bodies.

OWCP also received reports dated December 26, 2013, February 20, April 3, May 1 and 27, 2014 from Dr. Pushkarewicz noting diagnoses of patellar tendinitis, knee pain, knee effusion, right knee meniscal medial cartilage tear and right knee degenerative joint disease and that there had been right knee arthroscopic partial medial meniscectomy surgery.

Dr. Pushkarewicz, in a January 16, 2014 report, diagnosed right knee degenerative disc disease and right medial meniscal tear and recommended therapy.

The record also contains health records from the employing establishment dated January 31 and May 7, 2014 noting diagnoses of post-traumatic knee osteoarthritis and degenerative knee cartilage and providing examination findings.

In a May 4, 2014 clinical update form, Dr. Pushkarewicz diagnosed right knee degenerative joint disease and recommended light-duty work beginning May 1, 2014.

In a November 13, 2015 report, Dr. Frank Sparandero, an employing establishment Board-certified internist and occupational medicine physician, noted that a worksite and work status evaluation was conducted for appellant's bilateral knee osteoarthritis. He reported that review of the occupational health record and other documentation showed appellant had work injuries to both knees. Dr. Sparandero then cited to medical literature regarding the impact of stair climbing, squatting, bending, kneeling, and other repetitive movements as primary risk factors associated with knee injuries and osteoarthritis. On November 6, 2014 he performed a worksite visit to determine whether there was any causal relationship between appellant's work activities and his severe bilateral knee osteoarthritis. Dr. Sparandero opined that appellant's bilateral knee osteoarthritis was aggravated by his work duties over the years requiring ascending and descending stairs and his limited knee flexion and extension. He recommended work restrictions/limitations for appellant to prevent further aggravation.

Dr. Palma, in a November 27, 2015 addendum, described appellant's medical history and opined that appellant's preexisting knee condition had been aggravated by his employment. He concurred with Dr. Sparandero's opinion that appellant's work activities involving climbing stairs and frequent heavy lifting aggravated his preexisting knee condition. Regarding the mechanism of aggravation, Dr. Palma referred to the reasons provided by Dr. Sparandero in his November 13, 2015 report.

On February 10, 2016 OWCP received reports dated January 16, February 20, and August 14, 2014 and a January 16, 2014 clinical note from Dr. Pushkarewicz. In his reports, Dr. Pushkarewicz noted that appellant was seen for right knee pain complaints and diagnoses included right knee degenerative joint disease. In a January 16, 2014 form, he noted surgery had been performed on December 18, 2013; diagnosed right knee effusion, pain, and meniscal tear; and provided work restrictions of no lifting more than 20 pounds, no squatting, and no kneeling.

On February 20, 2016 appellant submitted additional reports from Dr. Todd M. Lipschultz, a treating Board-certified orthopedic surgeon. On November 30, 2015 Dr. Lipschultz reported seeing appellant for his bilateral knee complaints, reviewed medical records, and noted his work and medical histories. A physical examination of both knees revealed changes consistent with osteoarthritis, bilateral medial joint line tenderness, mild bilateral knee flexion contraction, and no instability. Dr. Lipschultz diagnosed bilateral knee osteoarthritis which he attributed to multiple occupational knee injuries and concurred with Dr. Sparandero's opinion.

In a February 20, 2016 addendum, Dr. Lipschultz diagnosed bilateral progressive knee degeneration, chondral injury, and meniscal tearing. He opined that appellant's work duties aggravated the preexisting bilateral knee condition. In support of this conclusion, Dr. Lipschultz noted that appellant was required in February 2015 to lift heavy cases as well as ascending and descending stairs. He related that appellant's knee joint effusions were the result of the excessive knee stress aggravating his articular cartilage disorder.

By decision dated March 16, 2016, OWCP's hearing representative affirmed the denial of appellant's claim, as modified. He found the evidence of record was sufficient to establish the factual portion of appellant's claim. However, the hearing representative found that the medical evidence submitted was insufficient to establish causal relationship between the accepted employment factors and the diagnosed knee conditions.

On June 15, 2016 counsel requested reconsideration and submitted a February 25, 2016 report from Dr. James J. Rubano, a Board-certified orthopedic surgeon. Dr. Rubano noted appellant's medical and employment injury histories and reported that, based on his review of the medical and factual evidence, appellant appeared to have sustained work injuries to his right knee on November 5, 2013 and to his left knee injury on August 26, 2014. Dr. Rubano noted that arthritic changes were seen at the time of appellant's arthroscopic surgeries for his right and left knees. He then opined that the job duties as described by Dr. Sparandero in a worksite evaluation on November 13, 2015 would have aggravated his underlying knee arthritis. Dr. Rubano noted the work activities as including repetitive and frequent descending and ascending stairs/steps, carrying tools while ascending and descending, stooping/bending, and twisting leg movement.

On March 25, 2016 Dr. Rubano provided clarification, noting that appellant returned to full-time work from February 5 to 12, 2015. He opined that appellant's work duties as described by Dr. Sparandero aggravated appellant's bilateral knee conditions.

By decision dated September 9, 2016, OWCP denied modification of its prior decision, finding that the medical evidence of record was insufficiently rationalized to support appellant's claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (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.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[7] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.[8] 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.[9]

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[3] 5 U.S.C. § 8101 *et seq.*

[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[5] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Donald W. Wenzel*, 56 ECAB 390 (2005).

[7] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

[8] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

OWCP's Branch of Hearings and Review accepted that appellant experienced the alleged employment factors and that appellant suffered from a bilateral knee condition. However, it denied his claim as the medical evidence of record was insufficient to establish a causal relationship between the accepted employment factors and the diagnosed bilateral knee condition.

The Board finds that appellant has not established that his bilateral knee condition is causally related to factors of his federal employment.

The reports from Drs. Palma, Sparandero, Lipschultz, and Rubano, all opined in general terms that appellant's work aggravated appellant's bilateral knee condition. On September 29, 2014 Dr. Palma noted that appellant was seen for left knee pain and swelling, with sudden onset and known mechanism of injury. Subsequently on September 10, 2015 he diagnosed a left knee meniscal tear which he attributed to heavy lifting and stair climbing at work. In a November 27, 2015 addendum, Dr. Palma noted his agreement with Dr. Sparandero's opinion that appellant's work duties aggravated his bilateral knee condition. In a November 13, 2015 report, Dr. Sparandero reviewed appellant's worksite and work status and opined that appellant's duties aggravated his preexisting bilateral knee osteoarthritis. He explained that medical literature found a relationship between the duties appellant performed, knee injuries, and osteoarthritis.

The Board has previously held that mere conclusory statements not fortified by explanation are insufficient to establish causal relationship between employment factors and diagnosed conditions.[10] Without further explaining how the movements involved in appellant's employment duties caused or contributed to the diagnosed condition, these opinions on causal relationship are of limited probative value.[11] Furthermore, while Dr. Sparandero related that medical literature had found a relationship between the type of duties appellant performed and his diagnosed conditions, the Board has held that medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.[12]

On November 30, 2015 and February 20, 2016 Dr. Lipschultz diagnosed bilateral knee osteoarthritis, chondral injury, and meniscal tear. He opined that these conditions had been aggravated by appellant's duties and concurred with Dr. Sparandero's opinion and supporting rationale. Again, Dr. Lipschultz offered no medical rationale to explain how appellant's specific employment duties would have caused osteoarthritis, chondral injury, and meniscal tear.[13] As such, his opinion is of limited probative value.

[10] *N.M.*, Docket No. 10-0283 (issued August 19, 2010).

[11] *See S.C.*, Docket No. 17-0103 (issued May 2, 2017).

[12] *J.S.*, Docket No. 15-0619 (issued August 4, 2015).

[13] *Supra* note 11.

Dr. Rubano related on February 25, 2016 that appellant appeared to have sustained a work injury to his right knee on November 5, 2013 and to his left knee on August 26, 2014. He concluded that the employment duties described by Dr. Sparandero would have aggravated his bilateral knee arthritis. Dr. Rubano's opinion however, again does not explain how appellant's employment duties caused his diagnosed conditions. The Board also notes that the opinion is couched in speculative terms. A medical opinion that appellant's condition "appears" to be related to his employment is speculative and is of diminished probative value. A medical opinion without the necessary rationale explaining why the physician believes that a claimant's accepted duties would result in the diagnosed condition is insufficient to meet appellant's burden of proof.[14]

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 not met his burden of proof to establish a bilateral knee condition causally related to factors of his federal employment.

[14] *T.Y.*, Docket No. 12-0898 (issued September 26, 2017).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 9, 2016 is affirmed.

Issued: October 2, 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