United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 17-1870**
	)	**Issued: April 11, 2018**
DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, Washington, DC, Employer	)	

Appearances:
Thomas R. Uliase, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 5, 2016 appellant, through counsel, filed a timely appeal from an April 25, 2017 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 over the merits of this case.

[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.*

ISSUE

The issue is whether appellant met his burden of proof to establish knee osteoarthritis causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On June 3, 2015 appellant, then a 58-year-old pipefitter, filed an occupational disease claim (Form CA-2) alleging that he developed knee osteoarthritis as a result of his federal employment duties. He reported that his injury was a result of the repetitious stress from 23 years of work servicing 430 plumbing fixtures. Appellant first became aware of his condition on March 1, 2010 and of its relationship to his employment on February 1, 2015. He did not stop work.

By development letter dated July 8, 2015, OWCP informed appellant that the evidence of record was insufficient to support his claim. OWCP advised appellant of the type of factual and medical evidence needed and afforded him 30 days to submit the necessary evidence.

In a June 3, 2015 e-mail correspondence, appellant's supervisor reported that appellant worked on 432 plumbing fixtures throughout National Capital Parks East.

In an August 13, 2015 medical report, Dr. J. Michael Joly, a Board-certified orthopedic surgeon, reported that appellant had symptomatic moderate-to-severe right medial compartment osteoarthritis, as well as a lesser mild-to-moderate left medial compartment osteoarthritis. He noted that he began examining appellant on March 4, 2014 for recurrent pain localized to the medial compartment of his right knee due to moderate-to-severe medial compartment osteoarthritis. Dr. Joly noted that the only diagnostic testing performed were x-rays during his initial March 2014 evaluation. He opined within a reasonable degree of medical certainty that appellant's wear and tear osteoarthritis of the right medial compartment, and to a lesser extent the left medial compartment, could have resulted from employment activities over many years.

In a September 2, 2015 e-mail correspondence, appellant's supervisor reported that appellant's employment duties involved repairing and replacing plumbing fixtures and water lines. He noted that appellant was recently provided a stool and given knee pads after his physician informed him that he could not perform his employment tasks on his knees. The supervisor noted that appellant's duties involved walking, bending, stooping, twisting, pushing, pulling, and lifting.

By decision dated September 8, 2015, OWCP denied appellant's claim, finding that the evidence of record failed to establish that a diagnosed condition was causally related to the accepted federal employment duties.

On September 24, 2015 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative.

In support of his claim, appellant submitted medical reports dated March 4, 2014 through September 29, 2015 from Dr. Joly documenting treatment for his knee condition. In a March 4, 2014 report, Dr. Joly reported that appellant developed insidious onset of bilateral knee pain due to osteoarthritis. He noted a prior right-sided arthroscopic surgery several years ago which was minimally effective. X-rays taken on that date revealed moderate-to-severe right medial

compartment osteoarthritis and mild-to-moderate left medial compartment osteoarthritis. In a May 19, 2015 medical report, Dr. Joly reported reviewing appellant's job description, noting that he worked as a pipefitter and had performed a lot of plumbing work. He reported that his recurrent severe right knee pain due to medial compartment osteoarthritis could be a workplace injury. Dr. Joly's remaining medical reports documented physical examination findings and hyaluronic injection treatments administered to the right knee.

By letter dated April 12, 2016, counsel noted submission of a March 29, 2016 medical report from Dr. Evan Crain, a Board-certified orthopedic surgeon, in support of his occupational disease claim.

In a March 29, 2016 narrative report, Dr. Crain reported that he initially evaluated appellant on December 16, 2015 for bilateral knee pain. He reported that appellant had worked for over 23 years, initially as a plumber and later as a pipefitter. Dr. Crain noted that appellant's work required frequent squatting, kneeling, bending, and working on his knees on a regular basis. He reported that appellant personally serviced 430 plumbing fixtures over the course of 23 years that involved toilets, sinks, and fountains which required him to be on his knees. Dr. Crain discussed appellant's x-rays which revealed progressive deterioration of the medial compartment in both knees as a result of his employment activities over the years. He noted that appellant's bilateral knee pain was aggravated by his work activities over the past 23 years which caused further deterioration of his knees and the increase in symptomatology. Dr. Crain opined that, as a result of his employment duties which entailed repetitive bending, squatting, and kneeling, appellant developed a meniscus tear of the right knee that led to the arthroscopy, which further caused deterioration of the medial joint space that had now collapsed to bone-on-bone contact. Based on these findings, he reported a direct causal relationship to appellant's symptomatology as it related to his work activities, noting that these activities caused an exacerbation of his symptomatology and continued to do so on a daily basis.

A hearing was held on May 16, 2016 before an OWCP hearing representative. Appellant testified in support of his occupational disease claim, treatment pertaining to his injury, and prior right knee surgery. Counsel noted that he would attempt to obtain appellant's prior medical records related to his right knee surgery. The record was held open for 30 days. No additional evidence was received.

By decision dated July 28, 2016, an OWCP hearing representative affirmed the September 8, 2015 decision, finding that the medical evidence of record failed to establish that appellant's diagnosed condition was causally related to his accepted federal employment duties. The hearing representative noted that appellant's physicians were relying on his self-reported history with no medical records to support his preexisting condition.

On October 31, 2016 appellant, through counsel, requested reconsideration of the July 28, 2016 hearing representative's decision. Along with the request, counsel submitted an April 3, 2013 operative report, as well as medical reports from 2012 through 2015 in support of appellant's claim.

In an April 3, 2013 operative report, Dr. Ricardo O. Pyfrom, a Board-certified orthopedic surgeon, provided operative findings pertaining to a right knee torn medial meniscus and

chondromalacia arthroscopy. In progress noted dated November 27, 2012 through May 17, 2013, he discussed appellant's bilateral knee treatment. Physical therapy notes from Sports Pro Physical Therapy were also submitted.

By decision dated November 17, 2016, OWCP denied modification of the July 28, 2016 decision, finding that the medical evidence of record failed to establish that appellant's diagnosed condition was causally related to the accepted factors of his federal employment.

On January 19, 2017 appellant, through counsel, again requested reconsideration and submitted a January 9, 2017 medical report from Dr. Crain in support of appellant's claim.

In the January 9, 2017 medical report, Dr. Crain noted submission of his prior March 29, 2016 report which summarized his findings and reviewed appellant's work activities. He opined that appellant experienced bilateral, right greater than left, knee pain aggravated by his work activities, which he had performed over a 23-year time frame. Dr. Crain also opined that those specific work activities caused further deterioration of his knees and an increase in his symptomatology. He reported that appellant had undergone a previous right knee arthroscopy for a tear of his medial meniscus. Dr. Crain explained that the tearing of the meniscus caused further deterioration of the knee joint to the extent that appellant had loss of shock absorber on the medial side. He noted an exacerbation and worsening of appellant's symptoms.

Dr. Crain noted that he reviewed appellant's prior medical reports which documented knee pain as far back as 2012. Appellant was initially evaluated by Dr. Pyfrom on November 27, 2012 due to complaints of right knee pain for several years. He was also hit by a car in the right knee 30 years ago. Appellant had previously been diagnosed with arthritis and wore knee braces. A prior MRI scan reviewed was suggestive of a medial meniscus tear and arthroscopic surgery was recommended. On April 3, 2013 appellant underwent surgery which revealed a large complex tear of the medial meniscus. Surgery further revealed degenerative changes of the medial femoral condyle grade III and medial tibial plateau grade IV, as well as a chronically torn anterior cruciate ligament and chondromalacia grade III of the patella. A partial medial meniscectomy and chondroplasty were performed. Dr. Crain reported that appellant returned to work approximately four weeks following his surgery. In 2014, he began treatment with Dr. Joly who administered multiple injections and provided him with a knee brace. Dr. Crain reported that he initially evaluated appellant in December 2015.

Dr. Crain noted that after review of the subsequently provided medical records, there was no change in his opinion in regard to appellant's condition. The medical history reflected that, following his April 3, 2013 surgery, appellant did not develop a distinct injury, but rather a progressive increase in knee pain which he attributed to his work activities. After having reviewed the nature of his employment, job description, and self-reported work activities, Dr. Crain opined that appellant's employment duties aggravated an underlying degenerative condition. He reported that, if appellant were in a different job that did not require those employment activities required of him, he would not experience the symptoms necessitating his current treatment. Dr. Crain concluded that appellant developed further deterioration of his knees and an increase in symptomatology related to his work activities. The need for treatment was, therefore, related to his work activities.

By decision dated April 25, 2017, OWCP denied modification of its November 17, 2016 decision, finding that the medical evidence of record failed to establish that appellant's diagnosed condition was causally related to his accepted factors of his federal employment.

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 each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[5] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.[7] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is

[3] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

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

[5] *Elaine Pendleton*, *supra* note 3.

[6] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[7] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[8]

ANALYSIS

The Board finds that the medical evidence of record is insufficient to establish that appellant developed knee osteoarthritis causally related to the accepted factors of his federal employment as a pipefitter.

In support of his claim, appellant submitted medical reports dated March 4, 2014 through September 29, 2015 from Dr. Joly documenting the treatment of his right knee. Dr. Joly provided a diagnosis of moderate-to-severe right medial compartment osteoarthritis. He opined that appellant's medial compartment osteoarthritis could have resulted from his employment activities over many years.

The Board notes that Dr. Joly's opinion on causation is highly speculative as he notes that appellant's employment duties could aggravate his condition without a firm conclusion that these duties did in fact cause or aggravate his injury.[9] To be of probative value, a physician's opinion on causal relationship should be one of reasonable medical certainty.[10] While the physician noted that appellant worked as a pipefitter and performed a lot of plumbing work, he failed to discuss appellant's repetitive employment duties or explain how these movements would have caused or contributed to his diagnosed condition. Furthermore, Dr. Joly noted appellant's right knee arthroscopy yet failed to provide a detailed medical history to gain any understanding of his preexisting condition or prior injuries. He never addressed what caused the underlying condition nor did he discuss whether his preexisting injury had progressed beyond what might be expected from the natural progression of that condition.[11] A well-rationalized opinion is particularly warranted when there is a history of preexisting condition.[12] As such, Dr. Joly's reports lack the specificity and detail needed to establish that appellant's injuries are a result of a work-related occupational exposure.[13]

In medical reports dated March 29, 2016 and January 9, 2017, Dr. Crain described appellant's employment duties as a pipefitter over the course of 23 years which entailed frequent squatting, kneeling, bending, and working on his knees. He opined that as a result of appellant's employment duties which entailed repetitive bending, squatting, and kneeling, he developed a meniscus tear of the right knee that led to his right knee arthroscopy, leading to further deterioration of the medial joint space that had currently collapsed to bone-on-bone contact.

[8] *James Mack*, 43 ECAB 321 (1991).

[9] *See Michael R. Shaffer*, 55 ECAB 339 (2004).

[10] *See Beverly R. Jones*, 55 ECAB 411 (2004).

[11] *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

[12] *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[13] *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

The Board finds that the opinion of Dr. Crain is not well rationalized. The Board notes that the record reflects that appellant had a preexisting right knee meniscus tear which resulted in arthroscopy on April 3, 2013. Dr. Crain opined that appellant's repetitive employment duties caused his underlying right knee meniscus tear. While Dr. Crain reviewed and discussed appellant's prior medical history, he failed to provide any explanation pertaining to the mechanism of injury to establish that the initial right knee meniscus tear was work related. His statement that tearing of the meniscus caused further deterioration of the knee joint to the extent that appellant had loss of shock absorber on the medial side is insufficient. Without explaining how physiologically the movements involved in appellant's employment duties caused or contributed to the tearing of the meniscus, his diagnosed condition, his opinion on causal relationship is equivocal in nature and of limited probative value.[14]

Dr. Crain did not explain whether appellant's preexisting injury had progressed beyond what might be expected from the natural progression of that condition.[15] It is unclear if appellant's injury was caused or aggravated by his occupational employment duties, a result of a preexisting condition, or due to degenerative changes. The Board has held that medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.[16]

The remaining medical evidence of record is also insufficient to establish appellant's occupational disease claim. Dr. Pyfrom's medical reports dated November 27, 2012 through May 17, 2013 document treatment for a preexisting right torn medial meniscus and chondromalacia and April 3, 2013 arthroscopy. While the reports reflect that appellant sought medical treatment stemming back to 2012 for his right knee injury, Dr. Pyfrom failed to discuss appellant's employment duties and provided no opinion regarding the cause of his injury.[17] The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[18]

The Sports Pro Physical Therapy notes documenting treatment for his right knee are also insufficient to establish his claim. Physical therapists are not physicians as defined under FECA, their opinions are of no probative value.[19]

[14] *See L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

[15] *Supra* note 11.

[16] *S.R.*, *supra* note 13.

[17] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[18] *Id.*

[19] 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005). *See also J.A.*, Docket No. 17-0119 (issued July 11, 2017). A physical therapist is not a physician under FECA.

The Board notes that there is no requirement that the federal employment be the only cause of appellant's injury. An employee is not required to prove that occupational factors are the sole cause of his claimed condition. If work-related exposures caused, aggravated, or accelerated appellant's condition, he is entitled to compensation.[20] However, an award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[21] Appellant's honest belief that his occupational employment duties caused his medical injury is not in question,[22] but that belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship.[23]

The evidence of record lacks rationalized medical evidence establishing a causal relationship between appellant's federal employment duties as a pipefitter and his diagnosed knee osteoarthritis. Thus, appellant has failed to meet his burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's 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 knee osteoarthritis causally related to the accepted factors of his federal employment.

[20] *See Beth P. Chaput*, 37 ECAB 158, 161 (1985); *S.S.*, Docket No. 08-2386 (issued June 5, 2008).

[21] *D.D.*, 57 ECAB 734 (2006).

[22] *See M.C.*, Docket No. 17-1579 (issued November 28, 2017).

[23] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 11, 2018
Washington, DC

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

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

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