

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

N.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New York, NY, Employer**

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Docket No. 17-0190
Issued: February 23, 2018

Appearances:

Thomas S. Harkins, Esq., for the appellant¹
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 November 4, 2016 appellant, through counsel, filed a timely appeal from a June 27, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 a left knee condition causally related to the accepted 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 November 12, 2014 appellant, then a 53-year-old postal police officer, filed a recurrence claim (Form CA-2a) alleging that, on November 12, 2014, he sustained left knee pain, swelling, and difficulty walking as a result of prolonged standing and walking at work. He noted an original date of injury of June 4, 2013. Appellant stopped work on November 12, 2014.³

Dr. Drew Stein, a Board-certified orthopedic surgeon specializing in sports medicine, initially treated appellant. In narrative reports dated October 9 and November 11, 2014, he related that on June 4, 2013 appellant was involved in a motor vehicle accident at work and complained of bilateral knee pain. Dr. Stein indicated that appellant currently complained of increasing left knee pain. Upon physical examination of appellant's right knee, he observed medial joint line tenderness and no effusion. Sensation was intact and strength was 5/5. Dr. Stein reported that examination of appellant's left knee revealed lateral joint line tenderness and positive patella compression. He noted that a magnetic resonance imaging (MRI) scan of the left knee dated June 12, 2013 revealed contusion of the anterior medial tibial plateau and patella without fracture, small ganglion cysts along the superior aspect of the anterior cruciate ligament (ACL) and within the anterior intercondylar notch, chronic osteochondral lesions of the patellofemoral compartment, and minimal effusion. In the November 11, 2014 report, Dr. Stein related that a recent MRI scan of the left knee dated October 31, 2014 showed partial ACL tear, mild-to-moderate degenerative joint disease, lateral meniscus tear, and small joint effusion. He diagnosed bilateral knee contusions, right knee nondisplaced medial tibial plateau fracture, medial meniscus tear, ACL tear, and left knee patellofemoral osteochondritis dissecans (OCD), lateral meniscus tear.⁴ Dr. Stein reported that appellant's complaints and injuries were related to the described accident on June 4, 2013.

By letter dated February 18, 2015, OWCP informed appellant that while he initially filed a Form CA-2a alleging a recurrence of a June 4, 2013 employment injury, a review of the evidence demonstrated that he was alleging a new occupational disease due to repetitive work over the course of more than one work shift. It advised him that it was administratively creating a new occupational disease claim using his Form CA-2a. OWCP requested that appellant respond to an attached development questionnaire in order to substantiate the factual elements of his claim and provide a medical report from a physician which established a medical diagnosis causally related to his employment. Appellant was afforded 30 days to submit the additional evidence. A similar letter was sent to the employing establishment.

³ Appellant previously filed a traumatic injury claim (Form CA-1) for a June 4, 2013 employment injury under OWCP File No. xxxxxx900. OWCP accepted that claim for a contusion of the left wrist, tear of the medial meniscus of the right knee, hemothesis of the right knee, sprain of the right knee and contusion of the left knee. Appellant underwent arthroscopic repair of the right knee on August 7, 2013 and returned to work on November 4, 2013. Appellant also has a traumatic injury claim accepted for a March 15, 2006 employment injury under OWCP File No. xxxxxx464.

⁴ In an October 31, 2014 MRI scan report of appellant's left knee, an unknown provider informed Dr. Stein that the MRI scan revealed moderate intrasubstance partial tear diffusely involving the ACL with mild cystic changes proximally, a small horizontal tear of the body of the lateral meniscus, and small joint effusion. The unknown provider also noted mild-to-moderate degenerative joint disease of the lateral joint compartment.

In a March 3, 2015 report, Dr. Stein described the June 4, 2013 work injury and indicated that appellant currently complained of increasing left knee pain. He reviewed appellant's history, including appellant's June 12, 2013 and October 31, 2014 MRI scan reports. Upon physical examination, Dr. Stein observed positive lateral joint line tenderness and patella compression of appellant's left knee. He also reported intact sensation and 5/5 strength. Dr. Stein diagnosed bilateral knee contusions, right knee nondisplaced medial tibial plateau fracture, medial meniscus tear, ACL tear, and left knee patellofemoral OCD, lateral meniscus tear. He opined that appellant's complaints and injuries of bilateral knees were related to the described accident on June 4, 2013.

On March 23, 2015 appellant also resubmitted Dr. Stein's March 3, 2015 narrative report with an addendum. Dr. Stein opined:

“The condition in [appellant’s] left knee is the result of an occupational disease. [He] stands on his feet for the majority of the day and began experiencing increasing left knee pain following his right knee arthroscopy as he was favoring his left knee while in recovery. [Appellant’s] occupation, which requires extensive standing, has exacerbated his left knee ailment.”

Dr. Stein noted that the most recent MRI scan findings of the left knee dated October 31, 2014 showed degenerative joint disease and a lateral meniscus tear. He concluded that appellant's complaints and injury of the left knee were related to the described accident reported on October 1, 2014.

On March 11, 2015 OWCP received appellant's response to its development questionnaire. He attributed his left knee condition to prolonged standing and foot patrols since July 1999. Appellant noted that he stood for six to seven hours per shift for three to four days per week. He related that he originally filed a recurrence claim of his June 4, 2013 employment injury, but OWCP's claims examiner determined that his recurrence was actually a new occupational disease claim.

In a March 11, 2015 statement, the employing establishment concurred with appellant's allegations. It was noted that all postal police officers were required to perform intermittent patrols, standing, driving, and administrative work. It was also noted that once the employing establishment was made aware of appellant's pain and discomfort, he was placed to a limited assignment, which minimized the amount of standing.

By decision dated April 10, 2015, OWCP denied appellant's occupational disease claim. It accepted his employment duties as a postal police officer and that he had been diagnosed with a left knee condition, but denied his claim because the medical evidence of record was insufficient to establish causal relationship between appellant's left knee condition and his employment. OWCP determined that Dr. Stein merely provided generalized statements of causal relationship without sound medical rationale explaining how prolonged standing at work caused or aggravated his left knee condition.

On April 4, 2016 appellant requested reconsideration. Counsel reviewed appellant's history of injury, including his previously accepted June 4, 2013 employment injury. He related that appellant had returned to work following the June 4, 2013 employment injury, but had to

stop on November 10, 2014 due to prolonged standing and performing foot patrols. Counsel alleged that the factual and medical evidence submitted clearly established that appellant's medical conditions were compensable under FECA. He asserted that appellant had met his burden of proof to establish that his injuries were sustained in the performance of his federal duties and that such injuries and disability were causally related to the employment injury. Counsel indicated that he was providing a new November 12, 2015 report by Dr. Stein, which clearly constituted rationalized medical opinion evidence to establish causal relationship.

Appellant submitted a November 12, 2015 narrative report by Dr. Stein, which was substantially similar to his March 3, 2015 report and addendum. Dr. Stein accurately described appellant's previous June 4, 2013 employment injury and related appellant's complaints of increasing left knee pain. He provided the dates that he evaluated appellant in his office. Dr. Stein reviewed appellant's history, including the June 12, 2013 and October 31, 2014 MRI scan reports of appellant's left knee. He provided physical examination findings similar to his previous reports. Dr. Stein diagnosed bilateral knee contusion, right knee nondisplaced medial tibial plateau fracture, medial meniscus tear, and ACL tear post arthroscopy, and left knee patellofemoral OCD, lateral meniscus tear. He concluded that appellant's employment, which required extensive standing, exacerbated his left knee condition.

By decision dated June 27, 2016, OWCP denied modification of its April 10, 2015 denial decision. It found that the medical evidence failed to establish a causal relationship between appellant's left knee condition and his federal employment. OWCP determined that appellant's treating physician failed to provide a rationalized medical opinion based on an accurate history of appellant's left knee condition explaining how his employment duties aggravated his preexisting left knee condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁶ including that an injury occurred in the performance of duty and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.⁷ In an occupational disease claim, appellant's burden requires submission of the following: (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.⁸

⁵ *Supra* note 2.

⁶ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁷ *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁹ 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.¹⁰

ANALYSIS

The record reflects that appellant had a prior work injury on June 4, 2013 which was accepted for contusion of the left knee. The June 4, 2013 injury was also accepted for right knee conditions, including a tear of the right medial meniscus. Appellant underwent arthroscopy of the right knee on August 7, 2013 and returned to work in November 2013. On November 11, 2014 he alleged various left knee conditions had developed, including a partial ACL tear, as a result of prolonged standing and foot patrols as part of his employment duties as a postal police officer. OWCP accepted appellant's alleged factors of employment and that he sustained a diagnosed left knee condition. However, it denied his claim finding insufficient medical evidence to establish that his left knee condition was causally related to the accepted factors of employment.

The Board finds that appellant has not met his burden of proof.

Appellant narrative reports by Dr. Stein dated October 9, 2014 to November 12, 2015, which provided a history of the June 4, 2013 employment injury and the treatment that appellant received thereafter. Dr. Stein related that appellant currently complained of increasing left knee pain. He reviewed appellant's June 12, 2013 MRI scan report of the left knee and noted that a more recent MRI scan dated October 31, 2014 showed partial ACL tear, mild-to-moderate degenerative joint disease, lateral meniscus tear, and small joint effusion. Dr. Stein diagnosed bilateral knee contusions, right knee nondisplaced medial tibial plateau fracture, medial meniscus tear, ACL tear, and left knee patellofemoral OCD, lateral meniscus tear.

Although Dr. Stein initially reported that appellant's left knee complaints were related to the described accident on June 4, 2013, for which OWCP had accepted a left knee contusion, he opined in his March 3, 2015 report that appellant's left knee condition was exacerbated by his occupation, which required extensive standing. He noted that the new MRI scan findings of the left knee dated October 31, 2014 showed degenerative joint disease and a lateral meniscus tear, which was not present in his previous MRI scans. Dr. Stein explained: "[appellant] stands on his feet for the majority of the day and began experiencing increasing left knee pain following his right knee arthroscopy as he was favoring his left knee while in recovery." He concluded that appellant's complaints and injury of the left knee was related to the occupational injury as reported on October 1, 2014.

However, Dr. Stein failed to explain how the specific activity of standing caused or aggravated appellant's left knee condition conditions, which included lateral meniscal tear and degenerative joint disease. Without explaining how physiologically the act of standing caused or

⁹ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

contributed to the diagnosed conditions, Dr. Stein's opinion is of limited probative value.¹¹ A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted exposure resulted in the diagnosed condition is insufficient to meet appellant's burden of proof.¹² Furthermore, the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the left knee condition had been caused by the identified employment factor, is sufficient to establish causal relationship.¹³

While Dr. Stein suggested that appellant favored his left knee following his right knee arthroscopy, Dr. Stein also noted in his reports that appellant had no effusion of the right knee, intact sensation, and strength. He offered no rationalized medical explanation as to why appellant's essentially normal right knee findings would have caused the deterioration of appellant's left knee.¹⁴

While Dr. Stein opined that appellant's condition occurred at work, 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.¹⁵ His reports are therefore insufficient to meet appellant's burden of proof.

Appellant may submit additional evidence, together with a formal written request for reconsideration, to OWCP within one year of the Board's merit decision pursuant to 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to factors of his federal employment.

¹¹ See *Lee R. Haywood*, 48 ECAB 145 (1996).

¹² *G.M.*, Docket No. 14-2057 (issued May 12, 2015); *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹³ *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁴ In so far as Dr. Stein is suggesting a consequential injury from the accepted June 4, 2013 injury, the basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. In *L.T.*, Docket No. 11-0147 (issued September 8, 2011). Appellant stated that he favored his right knee that led to his left knee condition. However, he did not submit sufficient medical opinion from a physician who, on the basis of a complete and accurate factual and medical history, concluded that his left knee condition was caused or aggravated by residuals of his accepted injury.

¹⁵ See *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2016 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 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