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

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| **J.G., Appellant** | ) | |
| **and** | ) | **Docket No. 17-1062** |
| | ) | **Issued: February 13, 2018** |
| **U.S. POSTAL SERVICE, POST OFFICE, Boston, MA, Employer** | ) | |

*Appearances:*
*Benjamin Zimmerman, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On April 18, 2017 appellant, through counsel, filed a timely appeal from an April 4, 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.[3]

[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.*

[3] Appellant requested oral argument. By order dated August 25, 2017, the Board after exercising its discretion denied his request for an oral argument, finding that his arguments on appeal could adequately be addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 17-1062 (issued August 25, 2017).

## ***ISSUE***

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

## ***FACTUAL HISTORY***

On November 12, 2014 appellant, then a 57-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 6, 2014 he sustained an acute right knee injury when that knee buckled while he was pushing a cart in the performance of duty. He stopped work and did not return until December 9, 2014. In an attached statement, appellant related that, while walking his route between his last two scans, his knee gave him a sharp pain and buckled slightly.

Appellant submitted a November 7, 2014 report by Dr. Michael K. Rees, a Board-certified internist. Dr. Rees indicated that due to an acute injury appellant was currently totally disabled and he could not provide an estimated date of return to work.

In a November 7, 2014 right knee magnetic resonance imaging (MRI) scan report, Dr. Richard B. Schwartz, a Board-certified diagnostic and neuroradiologist, related appellant's complaints of right knee pain. He noted a complex tear of the lateral meniscal remnant, severe progressed lateral femorotibial compartment osteoarthritis, moderate-to-severe patellofemoral osteoarthritis, small leaking Baker's cyst, and moderate-sized joint effusion.

The employing establishment provided an authorization for examination and/or treatment (Form CA-16) dated November 12, 2014.

In a November 24, 2014 right knee radiology report, Dr. Justin W. Kung, a Board-certified diagnostic radiologist, related appellant's complaints of right knee pain. He reported mild-to-moderate degenerative changes of the right knee, most significant in the lateral compartment.

Appellant received medical treatment from Dr. Douglas Ayers, a Board-certified orthopedic surgeon. In a November 24, 2014 report, Dr. Ayers indicated that appellant was still working two jobs, approximately 80 hours a week, with the employing establishment and for Amtrak. He related that on November 6, 2014 appellant was carrying letters when he felt a sharp pain in his right knee. Appellant claimed that he was in daily pain and had been totally incapacitated. Dr. Ayers noted that a November 7, 2014 MRI scan showed a complex tear of the lateral meniscus remnant. He related that in 2010 appellant had undergone right knee surgery and now demonstrated a worsening of the posterior horn tear, severe lateral femorotibial compartment arthritis, and moderate-to-severe patellofemoral arthritis. Dr. Ayers recommended keeping appellant out of work for a week.

In December 1, 2014 examination notes, Dr. Ayers reported that appellant was examined and/or treated on December 1, 2014 for right knee arthritis. He recommended that appellant be excused from work until December 9, 2014 before returning to full duty.

Dr. Rees authorized appellant to resume work in a December 4, 2014 note. He advised that appellant's work should be limited to his regularly scheduled days and not be more than eight and a half hours a day.

By letter dated December 9, 2014, the employing establishment controverted appellant's claim. It alleged that the medical evidence he submitted did not contain any diagnosis or opinion on how his alleged right knee injury was work related.

Appellant submitted a December 16, 2014 attending physician's report from Dr. Ayers. He noted a date of injury of November 6, 2014 and described a history of injury of "knee buckling" and noted a preexisting injury of arthritis. Dr. Ayers diagnosed arthritis exacerbated by event and checked a box marked "yes" indicating that the diagnosed condition was caused or aggravated by the employment activity described above. He indicated that appellant was totally disabled from November 6 to December 4, 2014 and partially disabled beginning December 4, 2014.

In a December 16, 2014 duty status report (Form CA-17), Kristen Rodehoist, a certified physician assistant, noted a date of injury of November 6, 2014 and described that appellant was walking on his route when he felt sharp right knee pain. She diagnosed right knee arthritis and indicated that appellant could resume work.

By letter dated December 18, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish a traumatic injury claim. It requested that he respond to the attached development questionnaire and submit additional medical evidence to establish a diagnosed condition causally related to the alleged employment incident. Appellant was afforded 30 days to submit the additional information.

Appellant submitted various medical reports dated from July 2009 to June 2013, which indicated that he was receiving medical treatment for a right knee torn lateral meniscus and moderate osteoarthritis.

On January 20, 2015 OWCP received appellant's response to its December 18, 2014 development letter. Appellant explained that on November 6, 2014 he was on his mail route when he felt a sharp pain in his right knee. He related that his right knee buckled slightly and he took hold of his mail cart and a fence to avoid falling. Appellant indicated that after a couple of minutes the pain subsided and he was able to finish delivering the last seven stops on the route. He notified his supervisor when he returned to the employing establishment. Appellant noted that his right knee was operated on in March 2010.

Appellant also related that he had been a city letter carrier since December 8, 1984. He described his office duties to include standing while casing mail, bending, stooping, carrying mail from the distribution area, turning from side to side while casing mail, and loading push trucks to bring mail and packages from the office. Appellant also listed his street duties to include bending and twisting while loading a vehicle, getting in and out of a vehicle (approximately 12 to 15 times per day), pushing a mail cart up and down inclines, and walking on uneven sidewalks and pathways.

OWCP denied appellant's claim in a January 21, 2015 decision. It found that the factual evidence of record was insufficient to establish that the November 6, 2014 incident occurred as alleged. OWCP also determined that the medical evidence of record failed to establish a diagnosed condition causally related to the alleged employment incident.

On February 19, 2015 OWCP received appellant's request for an oral hearing before an OWCP hearing representative.

In a March 23, 2015 progress note, Dr. Rees related that appellant had an initial injury in November 1996 and continued to work steadily until the current onset of disability. He indicated that appellant had increasing difficulty with right knee pain over the past several years, but continued to work. Dr. Rees noted that as a letter carrier appellant spent long hours standing, walking, step climbing, bending, and stooping to take up packages. He opined that appellant's occupation "has been a direct cause of the deterioration of the knee."

Ms. Rodehoist indicated in a March 24, 2015 letter that appellant would be having right total knee arthroplasty on April 2, 2015. She advised that appellant would need to remain out of work while recovering from his surgery and would have monthly follow-up visits to determine his ability to return to work.

A hearing was held on June 22, 2015. Counsel asserted that appellant incorrectly filed a Form CA-1 for a traumatic injury, but he should have filed a Form CA-2 because the medical evidence of record clearly demonstrated that appellant had sustained an occupational illness as a result of factors of his federal employment. He requested that OWCP consider appellant's claim as an occupational disease claim. Counsel alleged that the medical evidence of record, specifically a series of MRI scan reports from 2010, 2013, and 2014, showed an acceleration of right knee arthritis. He further noted that the most recent medical record from Dr. Rees contained his opinion that appellant's occupation was a direct cause of the deterioration of his right knee condition. Appellant explained that he had experienced right knee problems since 1990 and had right knee surgery in 2010, but that was unrelated to his employment. He described his duties as a letter carrier on a walking route and also described the work he did for Amtrak as a car cleaner. Appellant explained that he filled all the water tanks on the passenger cars by attaching a water hose to the water inlet. He noted that there was no incline or stair walking and no heavy lifting at his Amtrak job.

By decision dated September 2, 2015, an OWCP hearing representative affirmed the January 21, 2015 decision, with modification. She noted that appellant now attributed his right knee condition to his federal employment duties. The hearing representative accepted appellant's duties as a letter carrier and that he established a diagnosed right knee condition, but denied his claim because the medical evidence of record failed to establish that his current right knee condition was caused or aggravated by factors of his federal employment.

On August 19, 2016 appellant, through counsel, requested reconsideration. Counsel asserted in a memorandum that new medical evidence established appellant's occupational disease claim for permanent aggravation of right knee arthritis. He alleged that the new evidence fit within the description of the term "acceleration" as defined in OWCP's procedures. Counsel

related that Dr. Rees' August 9, 2016 report would address how appellant's duties as a letter carrier contributed to the development, aggravation, and acceleration of his right knee arthritis.

Appellant submitted an August 9, 2016 report by Dr. Rees. He indicated that in response to the question of whether appellant's duties as a letter carrier for 30 years contributed in any way to the development, acceleration, or aggravation of his right knee arthritis, his answer was yes. Dr. Rees related that appellant's job as a letter carrier required long periods of standing, walking, ascending and descending steps, twisting, bending, stooping, lifting, and carrying mail each day for the past 30 years. He noted that it was well-documented that these types of high-impact activities contributed to and accelerated degenerative arthritis of the knee. Dr. Rees explained that appellant's radiology studies clearly demonstrated the progression of appellant's right knee arthritis as he worked as a letter carrier. He reported:

> "Once the knee has sustained an injury that damages bone, cartilage -- or both -- the joint becomes increasingly vulnerable to further injury from high impact activities, such as those suffered by letter carriers. Thus, we see that not only did [appellant's] work directly initiate knee damage; it was the major contributor to progressive deterioration caused by his long years of service."

Dr. Rees further explained that, although appellant had another job working for Amtrak that required walking, which might have contributed to his arthritis, it was of minimal importance compared to his 30 years of daily high-impact activity as a letter carrier. He concluded that appellant's initial injury while working as a letter carrier and his continued working as a letter carrier for 30 years was the cause of his disability, which otherwise would not have developed or progressed as soon and as quickly as it did.

OWCP received a statement from appellant who related that he had worked for the employing establishment as a letter carrier for almost 32 years. Appellant explained that his duties involved a significant amount of standing, bending, twisting, squatting, kneeling, ascending and descending stairs, ascending and descending hills, lifting, and carrying. He estimated that during an average workday, he walked three miles, climbed and descended 400 stairs, spent over 1.5 hours standing and casing mail, and lifted or carried well over 100 pounds of mail per day.

Appellant submitted an April 2, 2015 operative report, which indicated that he underwent right total knee arthroplasty for a diagnosis of right knee osteoarthritis.

By decision dated September 19, 2016, OWCP denied modification of its prior decision. It found that the new medical evidence from Dr. Rees was not based on a complete and accurate history and was thus insufficient to establish that appellant's employment duties aggravated or precipitated his right knee osteoarthritis.

On November 15, 2016 appellant, through counsel, again requested reconsideration. He indicated that he was submitting a new medical report by Dr. Rees that addressed all the deficiencies noted by OWCP. Counsel noted that Dr. Rees submitted yet another report thoroughly rationalizing his opinion that appellant's work duties contributed to his right knee

acute meniscal tear and arthritis. He further alleged that the case of *Matter of Stanczak v. U.S. Postal Service*[4] supported appellant's occupational disease claim.

Appellant submitted an October 19, 2016 report by Dr. Rees. Dr. Rees asserted that as appellant's treating physician for several decades, no one would have more knowledge of appellant's medical history. He noted that he was aware of appellant's nonwork-related knee injuries over the years, including in 1990, 1996, and 2010, as well as the work injury he reported in November 2014. Dr. Rees explained:

> "In knees like [appellant's] that have sustained multiple traumas (whether work-related or not), impact-loading activities such as standing, walking, step climbing and descending, twisting, bending and stooping, lifting, and carrying will accelerate and aggravate arthritis even more so than in someone who has not suffered prior trauma. These traumatic events combined with [appellant's] work activities hastened the chemical process that destroys cartilage over time, and, therefore, aggravated and accelerated the arthritis, to the point of undergoing arthroplasty."

Dr. Rees reported that the fact that appellant had repeated, nonwork-related trauma in his right knee fully supported and strengthened his opinion that appellant's 30 years of impact-loading activities as a letter carrier had accelerated and aggravated his arthritis. He further related that appellant's obesity, like his prior traumatic events, also made his work activities even more contributory to his arthritis than if he were not obese and had no prior trauma. Dr. Rees noted that the extra weight of carrying his mail satchel and packages weighing up to 70 pounds was also a direct contributing factor. He concluded that appellant's work duties for 30 years and the November 6, 2014 incident contributed to the acceleration and aggravation of appellant's arthritis.

By decision dated April 4, 2017, OWCP denied modification of its prior decision. It found that the medical evidence of record failed to establish causal relationship between appellant's current right knee condition and his employment duties. OWCP found that Dr. Rees did not provide a well-rationalized opinion that appellant's medical condition was aggravated by factors of his federal employment.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[5] 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[6] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally

[4] *Ted A. Stanczak*, Docket No. 99-0682 (issued November 4, 1999).

[5] *Supra* note 2.

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

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]

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 Board finds that this case is not in posture for a decision.

Appellant alleged that he sustained permanent aggravation of right knee osteoarthritis as a result of the repetitive duties of working as a letter carrier over the course of 30 years. In a detailed statement, he explained that his duties as a letter carrier involved casing mail, bending, stooping, carrying mail from the distribution area, turning from side to side while casing mail, loading push trucks to bring mail and packages from the office, bending and twisting while loading a vehicle, getting in and out of a vehicle (approximately 12 to 15 times per day), pushing a mail cart up and down inclines, and walking on uneven sidewalks and pathways.

In support of his claim, appellant submitted various reports dated March 23, 2015 to October 19, 2016 from Dr. Rees. Dr. Rees noted that appellant worked as a letter carrier for 30 years and described appellant's duties to include long periods of standing, walking, ascending and descending steps, twisting, bending, stooping, lifting, and carrying mail. He reviewed appellant's history and provided findings on examination. Dr. Rees diagnosed aggravation of right knee osteoarthritis. He opined that appellant's work was the major contributor to the progressive deterioration of his right knee. In an August 9, 2016 report, Dr. Rees explained that high-impact activities, such as those he described, contributed to and accelerated degenerative arthritis of the knee. He reported that, although appellant had another job, it was of minimal importance compared to appellant's 30 years of daily high-impact activity as a letter carrier. In an October 19, 2016 report, Dr. Rees further noted that appellant's multiple traumas, whether work-related or not, combined with appellant's high-impact work activities "hastened the chemical process that destroys cartilage over time, and, therefore, aggravated and accelerated the arthritis."

[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).

[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).

Accordingly, the Board notes that Dr. Rees provided an affirmative opinion on causal relationship. The Board further finds that Dr. Rees' reports, when read together, identified employment factors which appellant claimed caused his condition, identified findings upon examination, and explained how the identified employment factors, specifically the repetitive high-impact work activities, aggravated appellant's right knee osteoarthritis. The Board finds that Dr. Rees' opinion, while not sufficiently rationalized to meet appellant's burden of proof, is sufficient, given the absence of any opposing medical evidence, to require further development of the record.[11] It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[12] OWCP has an obligation to see that justice is done.[13]

The case will be remanded to OWCP for further action consistent with this decision.[14] On remand, after such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

## ***CONCLUSION***

The Board finds that this case is not in posture for decision.

[11] *See A.F.*, Docket No. 15-1687 (issued June 9, 2016). *See also John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

[12] *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770–71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

[13] *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

[14] A properly completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003). On return of the case, OWCP shall also determine whether the CA-16 form of record in this case properly authorized any medical treatment.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the April 4, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for additional development consistent with this decision.

Issued: February 13, 2018
Washington, DC

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

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

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