United States Department of Labor
Employees' Compensation Appeals Board

T.R., Appellant	)	
and	)	**Docket No. 17-1486**
	)	**Issued: June 18, 2018**
U.S. POSTAL SERVICE, FORT POINT STATION, Boston, MA, Employer	)	

Appearances:
Benjamin R. Zimmermann, 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 June 20, 2017 appellant, through counsel, filed a timely appeal from a June 8, 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, through counsel, timely requested an oral argument before the Board pursuant to section 501.5(b) of the Board's *Rules of Procedure*, 20 C.F.R. § 501.5(b). After exercising its discretion, by order dated November 17 2017, the Board denied the request for oral argument as the appeal could proceed to a decision based on the case record. *Order Denying Request for Oral Argument*, Docket No. 17-1486 (issued November 17, 2017).

ISSUE

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

On appeal counsel contends that OWCP committed error in denying appellant's claim. He notes that the only medical evidence of record was uncontroverted and supported acceptance of the claim. Counsel further contends that OWCP's hearing representative and claims examiners supplanted the uncontroverted medical evidence with their own lay opinions.

FACTUAL HISTORY

On August 18, 2015 appellant, then a 66-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging bilateral knee arthritis. He alleged that he first became aware of his injury and its relationship to factors of his federal employment on June 5, 2015. In an accompanying employee statement dated April 22, 2015, appellant claimed that there was no particular time or date that his knees began to bother him. He related that during the winter of 2014 he had trouble putting on his socks. Appellant had an appointment with Dr. William Schmitt, a Board-certified internist, and had an x-ray taken on December 11, 2014. The x-ray revealed osteoarthritis in both knees. Dr. Schmitt referred appellant to Dr. Andrew A. Freiberg, a Board-certified orthopedic surgeon, who examined him on February 5, 2015, reviewed x-rays, and confirmed that appellant had advanced osteoarthritis in both knees. Appellant noted being a letter carrier since February 1984. He attributed his knee condition to his work duties, which included standing and sorting mail for about three hours, a process that included lifting heavy tubs and pivoting and twisting in a congested area.[4] Appellant also attributed his condition to walking many miles a day, noting that the hardest part of his job was walking to all destinations with a heavy satchel. He provided a history of his employment at the employing establishment. Appellant related that he had not suffered a similar condition.[5]

OWCP received a patient note dated December 11, 2014 from Dr. Schmitt in which he reported appellant's bilateral knee symptoms, a history of his medical, family, and social background, and examination findings. Appellant's problems included osteoarthritis in both knees. Dr. Schmitt related that appellant was still very functional, but his condition was getting worse. In a letter also dated December 11, 2014, he informed appellant that test results revealed severe right and left knee medial compartment predominant tricompartmental osteoarthritis. On February 26, 2015 Dr. Schmitt noted laboratory test results.

[4] The record does not contain a report from Dr. Freiberg on or about February 5, 2015.

[5] The case record in the instant claim indicates that, prior to his filing of a claim for an occupational disease, appellant had submitted medical records dated May 6, 1987 through June 17, 1992, which indicated that he sustained internal derangement, strain, chondritis, early osteoarthritis, torn meniscus of the right knee and addressed his medical treatment, including arthroscopic surgery, and work capacity. Appellant has another claim, OWCP File No. xxxxxx424, for a May 1, 1987 employment injury. OWCP accepted this claim for right knee strain. The Board notes that OWCP combined OWCP File No. xxxxxx424 with the current claim, OWCP File No. xxxxxx039. OWCP File No. xxxxxx424 serves as the master file.

OWCP also received a December 11, 2014 bilateral knee x-ray report from Dr. Ambrose J. Huang, a Board-certified radiologist. He provided an impression of severe right and left knee medial compartment predominant tricompartmental osteoarthritis.

In a July 11, 2015 report, Dr. Byron V. Hartunian, an attending orthopedic surgeon, reviewed appellant's medical records, described his work duties, and noted a history of his bilateral knee symptoms. He discussed findings on examination and reviewed x-ray results. Dr. Hartunian diagnosed primary right knee joint arthritis with no cartilage interval at the medial femoral-tibial joint. He also diagnosed primary left knee joint arthritis with two-millimeters (mm) of cartilage interval at the medial femoral tibial joint. Dr. Hartunian found that appellant had reached maximum medical improvement (MMI) for both his knees on February 5, 2015, the date of Dr. Freiberg's examination. He noted that Dr. Freiberg opined that appellant was a total knee replacement candidate, which indicated that his arthritic condition had stabilized at that time. Dr. Hartunian noted that arthritis was a failure and loss of articular cartilage surface. "It is the impact loading resulting from repeated local stresses that accelerated the progression of arthritis through a process of chronic inflammation." He indicated that appellant's job required constant and repetitive walking, squatting, stooping, climbing, bending, lifting, carrying, stair climbing, and twisting activities. These impact loading activities exerted repeated local stresses to appellant's legs resulting in chronic inflammation. The inflammation caused a loss of proteoglycans which were responsible for cartilage resilience and this loss resulted in a stiffer material that was more easily damaged by wear and tear. Regarding the effect of high-impact loading activities and repeated local stresses, Dr. Hartunian noted that research showed that ascending stairs loaded on the lower extremity joints approximately three times body weight and that descending stairs loaded on the lower extremity joints approximately six times body weight. He referenced medical studies as support for the contribution of high-impact loading activities to the development and progression of leg arthritis which he asserted supported that appellant's job duties "included the offending activities cited in these studies as causative contributing factors to the development and progression of lower extremity arthritis." Dr. Hartunian advised that, objective support for the causal relationship was provided in his medical records which showed that during the time that appellant was engaged in high-impact loading activities, his arthritis progressed substantially. Dr. Hartunian indicated that research had established the causal link between high-impact loading activities and lower extremity arthritis. He referenced additional current medical literature and contended that osteoarthritis was no longer a disease that had a natural progression or ordinary course which was consistent with the hypothesis that specific ergonomic stresses such as, knee bending, kneeling, and squatting may constitute long-term stresses leading to osteoarthritis. Dr. Hartunian cited additional medical literature that indicated that osteoarthritis was not simply a process of aging cartilage, which was also consistent with the same hypothesis that specific ergonomic stresses such as, knee bending, kneeling, and squatting may constitute long-term stresses leading to osteoarthritis.

OWCP also received a position description for a letter carrier as well as a February 5, 2015 treatment note from a nurse practitioner.

In an October 5, 2015 letter, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence.

On November 15, 2015 appellant responded to OWCP's letter. He acknowledged that he had left knee arthroscopic surgery in 1985 and right knee arthroscopic surgery in 1987 due to pain and an inability to walk. Appellant maintained that his activities outside of work were going to the gym a few times a week where he used machines to work out his upper body. He submitted medical records dated May 4, 1987 through July 9, 1992 which addressed his bilateral knee conditions, medical treatment including his 1985 and 1987 arthroscopic knee surgeries, and work capacity. OWCP received a December 9, 2015 duty status report (Form CA-17) with an unknown signature.

By decision dated January 14, 2016, OWCP denied appellant's occupational disease claim. It found that Dr. Hartunian did not provide a rationalized medical opinion sufficient to establish causal relationship. OWCP further found that appellant failed to submit operative reports regarding his bilateral knee condition.

On February 19, 2016 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. In a June 9, 2016 memorandum, counsel requested that the Branch of Hearings and Review reverse the January 14, 2016 denial decision as the application of the proper legal standards to the facts of the case required acceptance of the claim. He further contended that OWCP's reasons for the denial of the claim were not legally or medically valid and they had been addressed with the submission of new evidence.

Counsel submitted a June 14, 2016 report from Dr. Hartunian disagreeing with OWCP's January 14, 2016 decision. He asserted that it was inaccurate to talk about "underlying arthritis" *versus* work factors as contributors to arthritis. However, assuming that appellant had "underlying arthritis," his daily work duties, which included walking, standing, going up and down stairs, bending, stooping, and carrying, contributed to the development, acceleration, and aggravation of his condition. Dr. Hartunian indicated that, if appellant did not have such duties for 30 years before his end-stage arthritis diagnosis, his arthritic condition would not have been as severe and manifested as early and to the degree it did as a result of his years of impact-loading activities at work. Appellant's work factors for 30 years undoubtedly contributed to the development, onset, and acceleration and aggravation of his arthritis. Dr. Hartunian claimed that, contrary to OWCP's finding, he provided a history of appellant's prior knee injuries and surgery. Appellant's history and surgeries strengthened his opinion that his job duties contributed to his arthritis. Dr. Hartunian advised that the most detailed history of prior injuries and surgeries was provided in appellant's medical records which he reviewed and incorporated into his report. He referenced medical literature that supported that once a joint suffered from an injury, such as a torn meniscus, it was substantially more susceptible to the development of arthritis and that arthritis was more likely to reach an end stage more quickly than in someone with no previous injury. Although Dr. Hartunian noted that it was not logically and medically necessary to draw a distinction between the effect of appellant's prior injuries and meniscectomies and his work factors to determine whether his work factors contributed to his arthritis, he attempted to do so. He related that appellant's bilateral knee injuries and surgeries in the l980s predisposed his joints to the effects of impact loading activities, *i.e.*, made those activities even more likely to lead to arthritis or an acceleration or aggravation of that condition, which happened to him.

Dr. Hartunian noted a 1992 impression of Dr. Frederick Mansfield, a Board-certified orthopedic surgeon, that appellant had partial meniscectomies of both knees with a good result and

no sign of internal derangement or arthritic change either knee. He related that the physician's statement illustrated and confirmed his opinion that the trauma and meniscectomies did not cause appellant's arthritis. Rather, they enhanced the contribution of his work duties to the development, acceleration, and aggravation of end-stage arthritis with which he was diagnosed as having after performing his work duties for 30 years. Dr. Hartunian maintained that the fact that appellant experienced prior trauma and surgeries in his knees reinforced his conclusion that following his meniscectomies in the 1980s, appellant's many years of work contributed to his bilateral knee arthritis.

Appellant, in an expanded narrative statement dated June 27, 2016, again described his work duties. In a June 27, 2016 affidavit, an associate of appellant's counsel, advised that she was unable to obtain medical records regarding appellant's surgeries in the 1980s.

By decision September 9, 2016, an OWCP hearing representative affirmed the January 14, 2016 decision.

On March 3, 2017 counsel requested reconsideration and submitted Dr. Hartunian's February 21, 2017 report. Dr. Hartunian noted that appellant had worked as a letter carrier since 1984, well over 30 years, with relatively brief periods in other jobs. He indicated that appellant had degenerative osteoarthritis of his knees. Dr. Hartunian referenced Dr. Mansfield's July 1992 fitness-for-duty report which found no arthritic changes and the December 11, 2014 x-rays showed severe right knee degenerative changes and moderate left knee degenerative changes as objective evidence of the progression of appellant's bilateral knee osteoarthritis. He opined that appellant's bilateral degenerative osteoarthritis was likely aggravated by work activities, which included repeated lifting, walking, twisting, bending, stooping, and squatting for decades. Dr. Hartunian advised that this likely aggravated the underlying knee condition and caused permanent aggravation of the osteoarthritis. He noted that the aggravation was permanent as appellant's loss of cartilage was irreversible and painful. Dr. Hartunian concluded that there was no doubt that appellant's high impact-loading work activities contributed to the development and progression of his arthritis based on his medical records.

By decision dated March 15, 2017, OWCP denied modification of its September 9, 2016 decision. It found that Dr. Hartunian's February 21, 2017 opinion was speculative and not rationalized and was not based on a complete and an accurate factual and medical history regarding appellant's work history and presence of underlying right knee osteoarthritis.

On March 27, 2017 counsel requested reconsideration and submitted medical evidence. In a March 23, 2017 letter, Dr. Hartunian disagreed with OWCP's March 15, 2017 decision. He maintained that his February 21, 2017 report concluded that there was no doubt that the high-impact loading work activities engaged in by appellant contributed to the development and progression of his arthritis. Dr. Hartunian indicated that appellant's 30 years of work at the employing establishment contributed to his arthritis by causing inflammation, which aggravated and accelerated, *i.e.*, sped up the arthritic process. He noted that 1987 medical records, which indicated that appellant's 1987 arthroscopy surgery found missing cartilage and removed cartilage and a diagnosis of early osteoarthritis, further supported that appellant's work duties contributed to the aggravation and acceleration of his arthritis. Dr. Hartunian advised that it was well known that prior injury and surgery increased the effects of impact-loading activities on the joint so that

the existence of cartilage defects during and following that surgery confirmed that 30 years of work that followed that surgery aggravated and accelerated his condition more than it would have in an otherwise healthy knee. He advised that during appellant's hiatus from his letter carrier duties between 1987 and 1992 and the business route appellant had since 2014, appellant's work duties involved fewer impact-loading activities. Appellant's work duties continued to contribute to his arthritis, but less than the other 22-plus years he was on full duty. Dr. Hartunian noted that appellant's gym activities along with his 30 years of work activities contributed to his arthritis. He advised that, factors such as, appellant's age and obesity increased the impact and effects of his decades of work on his arthritis. Dr. Hartunian reiterated that the term "natural progression of degenerative osteoarthritis" was not medically accurate. He concluded that, without the decades of impact-loading activities at work, appellant's arthritis would not have progressed as soon and as quickly as it did even as he aged and remained obese.

By decision dated June 8, 2017, OWCP denied modification of its March 15, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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.[7] 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.[8]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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 occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by medial

[6] *Supra* note 2.

[7] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[9]

ANALYSIS

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

Appellant filed an occupational disease claim for a bilateral knee injury caused or aggravated by factors of his federal employment. OWCP accepted that appellant performed the work duties of a letter carrier, which involved lifting heavy tubs, pivoting, twisting, walking, and carrying a satchel, but repeatedly denied appellant's claim because the medical evidence was insufficiently rationalized to establish a causal relationship between his diagnosed bilateral knee condition and the established employment factors.

In support of his claim, appellant submitted four reports from Dr. Hartunian. Read together, these reports are sufficient to require further development of the medical evidence. Dr. Hartunian noted that appellant worked as a letter carrier for 30 years and described appellant's duties to include carrying mail and repetitive walking, lifting, squatting, stooping, climbing, bending, carrying, stair climbing, twisting, and reaching. He reviewed appellant's history and provided findings on examination. Dr. Hartunian diagnosed bilateral knee osteoarthritis. He opined that appellant's condition was caused, accelerated, and aggravated by his letter carrier duties. Dr. Hartunian explained that, high-impact activities, such as those he described, contributed to and accelerated degenerative arthritis of the knee. He further explained that, had appellant not performed the described work duties for 30 years, his arthritic condition would not have manifested as early as it did and have been as severe. Dr. Hartunian reasoned that his bilateral knee injuries and surgeries in the l980s predisposed his joints to the effects of impact-loading activities, which made these activities even more likely to lead to arthritis or an acceleration or aggravation of this condition. He related that, a 1992 finding that appellant's bilateral knee partial meniscectomies had a good result and no sign of internal derangement or arthritic change of either knee confirmed his opinion that the trauma and meniscectomies did not cause his arthritis.

Accordingly, the Board notes that Dr. Hartunian provided an affirmative opinion on causal relationship. Further, the Board finds that Dr. Hartunian's reports, when read together, identified the 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, caused or aggravated appellant's bilateral knee osteoarthritis. The Board finds that Dr. Hartunian's 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.[10] 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

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams, id.*

[10] *See J.G.*, Docket No. 17-1062 (issued February13, 2018); *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).

compensation, OWCP shares responsibility in the development of the evidence.[11] OWCP has an obligation to see that justice is done.[12]

The case will be remanded to OWCP for further action consistent with this decision. 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 a decision.

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: June 18, 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

[11] *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 (1956); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

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