

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

S.F., Appellant)	
)	
and)	Docket No. 18-1030
)	Issued: April 5, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
South Hampton, NY, Employer)	
)	

Appearances:
Capp Taylor, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 23, 2018 appellant, through counsel, filed a timely appeal from a December 26, 2017 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.

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 has met her burden of proof to establish a bilateral knee condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On May 15, 2014 appellant, then a 53-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a bilateral knee injury as a result of her federal employment duties which entailed standing for long periods of time. She noted that she first became aware of her condition and of its relationship to her federal employment on April 29, 2014, which was the date that she notified her supervisor, stopped work, and first sought medical treatment. On May 10, 2014 appellant returned to work in a modified-duty capacity based on restrictions provided by her physician.

By development letter dated June 18, 2014, OWCP informed appellant that the evidence of record was insufficient to support her claim. It advised her of the medical and factual evidence needed and provided her with a questionnaire for completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant responded to OWCP's questionnaire and provided various statements describing her employment duties. She explained that her duties entailed constant standing and walking for long periods of time while casing and sorting mail, moving heavy trays, moving packages, pushing gurneys filled with mail, loading and unloading mail and packages into her truck, and delivering mail. Appellant reported delivering mail *via* her postal vehicle which entailed more than 100 stops. This required her to repeatedly step in and out of the vehicle, ascend and descend stairs, and lift packages weighing up to 70 pounds.

In a June 12, 2014 medical report, Dr. Allen Fein, Board-certified in family medicine, reported that appellant presented for a follow-up evaluation of her knees. He noted that she had worked for the employing establishment since 1987 and would walk/drive for 5.5 hours daily. Dr. Fein reported that appellant had no prior history of knee injury, noting that she did not have knee problems at the start of her employment. He explained that her knee pain and swelling began "perhaps a couple of years ago," occurring intermittently towards the end of her shift, especially when getting in and out of her truck. Appellant first consulted with another physician for her knee complaints and was diagnosed with phlebitis. She declined recommended surgery and opted for cortisone injections which were unsuccessful. Dr. Fein provided physical examination findings, noting that both knees had small effusions. He diagnosed osteoarthritis and opined that her "job was directly responsible for her worn out knees." Dr. Fein further noted that her weight was a contributing factor.

By decision dated August 8, 2014, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that her diagnosed condition was causally related to the accepted factors of federal employment.

On September 4, 2014 appellant requested an oral hearing before an OWCP hearing representative.

Appellant thereafter submitted medical reports dated April 25, 2013 through August 28, 2014 from Dr. Peter G. Sultan, a Board-certified orthopedic surgeon. In his April 25, 2013 report, Dr. Sultan reported that appellant developed left knee pain, worsening over the past three weeks. He noted that she worked for the employing establishment and reported that walking frequently exacerbated her knee condition. Dr. Sultan provided findings on physical examination. He noted that x-rays revealed a moderate amount of medial joint space narrowing bilaterally, left more than right. Dr. Sultan further reported osteophytes at the lateral joint space.

In a May 15, 2014 report, Dr. Sultan reported that appellant presented for left knee pain, and that x-rays of appellant's knees showed nearly bone-on-bone medial compartment deformity and osteophytes. He diagnosed left leg arthropathy and joint pain.

In an August 28, 2014 report, Dr. Sultan related that appellant presented for follow up of her bilateral knee pain, as well as new complaints for bilateral hip pain which began on April 29, 2014 when she exited her work vehicle. He further reported that lumbar x-rays showed minimal narrowing of the L4-S1 disc spaces with normal lordosis and pelvic x-rays revealed minimal superior narrowing of the hip joints bilaterally. Dr. Sultan diagnosed joint pain of the pelvis, lumbar disc degeneration, joint pain of the left leg, and arthropathy of the left leg. He noted that appellant had fairly advanced arthritic changes which she believed stemmed from her work activities.

A hearing was held on February 9, 2015 wherein appellant discussed her employment duties and her course of treatment regarding her knees, noting that she currently required bilateral knee replacement surgery.

By decision dated March 18, 2015, OWCP's hearing representative affirmed the August 8, 2014 decision, finding that the evidence of record was insufficient to establish that appellant's bilateral knee osteoarthritis was causally related to the established factors of her federal employment.

On June 9, 2015 appellant requested reconsideration and submitted additional medical evidence.

In an April 17, 2015 medical report, Dr. Grace Grandville, Board-certified in family medicine, evaluated appellant for bilateral knee osteoarthritis. She provided findings on physical examination and review of diagnostic testing, diagnosing bilateral knee osteoarthritis. Dr. Grandville related that appellant's employment duties involved walking, jumping off a truck two feet off the ground, walking up and down stairs, walking on uneven ground, and carrying loads of mail weighing 35 pounds or more. She noted that these were activities that would exacerbate arthritis. Dr. Grandville reported that appellant had end-stage osteoarthritis which takes a long time to precipitate. She further noted that morbid obesity may be an impinging factor. Dr. Grandville explained that osteoarthritis forms traumatically or with excessive wear and tear over time, the latter being applicable to appellant. She stated that she could not determine if the osteoarthritis caused by excessive wear and tear could be attributed to appellant's employment, however, it could be an impinging factor.

In a March 12, 2015 narrative report, Dr. Fein reported that he initially evaluated appellant for bilateral knee pain April 29, 2014. Appellant described her duties as a letter carrier. This included approximately 5.5 hours of mail delivery on the street repeatedly, entering and exiting her mail truck repeatedly, lifting trays that weighing up to 70 pounds, carrying a mail satchel weighing up to 35 pounds, climbing stairs, and walking over uneven terrain which was frequently unstable due to weather related changes. Dr. Fein reported that these tasks had adverse consequences on the knees. He noted that examination findings revealed that appellant's symptoms were consistent with osteoarthritis. Dr. Fein explained that this was a chronic condition which developed over time when the joint cartilage wears down from repetitive motion and overuse. When the cartilage was essentially gone, causing bone-on-bone abrasion, the severe pain that appellant experienced was an expected consequence.

Based upon his examinations of appellant, radiological study results, and experience in evaluating these conditions, Dr. Fein opined with a reasonable degree of certainty that the exposure to the referenced work factors during a 28-year career as a letter carrier was the proximate cause of appellant's bilateral osteoarthritis of the knee. He explained that his opinion was supported by the consistency of the medical condition with the constant wear and tear on the knee joint that was demanded by her work. Dr. Fein described the medical condition, noting that the cartilage in human joints was flexible and not unlike a sponge in consistency. Normal use would generally delay erosion of the cartilage until the person was of advanced age. The rate of erosion, however, was much greater when the joint was repetitively in motion. Dr. Fein asserted that the cartilage wears away when the patient spends a lot of time on his or her feet and has impact from repetitive lifting and climbing (steps in and out of the truck). Once the cartilage has worn, the more serious symptoms emerge due to bone grinding on bone. Dr. Fein concluded that appellant's painful bilateral knee osteoarthritis was consistent with the physiologic mechanics described above and a basis to establish causal relationship.

By decision dated September 2, 2015, OWCP denied modification of the March 18, 2015 decision, finding that the evidence of record was insufficient to establish that her bilateral knee arthritis was causally related to the established factors of federal employment.

On August 15, 2016 appellant, through counsel, requested reconsideration and submitted additional medical evidence in support of the claim.

In an August 9, 2016 narrative report, Dr. Fein discussed appellant's employment duties as a letter carrier which required her to spend several hours on her feet, mostly on concrete, to case mail and prepare her route. He reported that once out in a vehicle on her route, she would make constant stops throughout the day to deliver mail. This required appellant to get in and out of her vehicle to make deliveries and walk up and down stairs on a frequent basis. Dr. Fein noted that, over the years, appellant experienced knee pain and x-rays revealed severe cartilage loss of the bilateral knees. He reported that due to the severe loss of cartilage in both knees, she would likely need bilateral knee replacement. However, appellant would most likely need to undergo a weight loss program before those procedures could be undertaken. Dr. Fein explained that the near constant standing on her feet throughout the workday, which included stepping up and down to exit her vehicle, walking, and prolonged standing on hard surfaces, would provide abnormal wear and tear on the knees and hips sufficient to wear down the cartilage in the knees as depicted on x-ray. He further noted that appellant's obesity would contribute to the wear and tear of the knees.

Dr. Fein concluded that she could no longer perform her regular position as a carrier and required a sedentary job that allowed her to stretch her legs with no requirements of walking or standing.

By decision dated December 26, 2017, OWCP denied modification of the September 2, 2015 decision, finding that the evidence of record was insufficient to establish that appellant's diagnosed bilateral knee condition was causally related to her accepted employment factors.

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 every compensation claim regardless of whether the claim is predicated on a traumatic injury or 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.

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 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. The weight of medical evidence is determined by its reliability, its

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 M.D.*, Docket No. 18-0563 (issued February 21, 2019).

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 appellant has not met her burden of proof to establish a bilateral knee condition causally related to the accepted factors of her federal employment.⁹

In medical reports dated June 12, 2014 through August 9, 2016, Dr. Fein opined that appellant's 28-year career as a letter carrier was the proximate cause of her bilateral knee osteoarthritis from the constant wear and tear on the knee joint that was demanded by her work. He explained that this was a chronic condition which developed over time when the joint cartilage wears down from repetitive motion and overuse, causing bone-on-bone abrasion as demonstrated by appellant's x-ray, which resulted in the severe pain that she experienced as an expected consequence. The Board finds that the opinion of Dr. Fein is not well rationalized.

Dr. Fein explained that appellant's daily duties involved standing for several hours to case mail, repetitively completing 5.5 hours of mail delivery on the street, entering and exiting her mail truck, lifting trays weighing up to 70 pounds, carrying a mail satchel weighing up to 35 pounds, climbing up and down stairs, stepping in and out of her vehicle, and walking over uneven terrain over the course of a 28-year career. While he had some understanding of the employment factors, Dr. Fein failed to adequately discuss how these employment duties caused or aggravated her condition.¹⁰ His statement that appellant's employment factors wore down the cartilage in her knees is vague and generalized without specifically explaining how these movements caused or contributed to the diagnosed condition.¹¹ Dr. Fein's opinion on causal relationship is further unfounded and speculative considering his limited knowledge of appellant's medical history. The lack of a comprehensive medical history was demonstrated in his June 12, 2014 report as Dr. Fein speculated that appellant's knee pain and swelling began "perhaps a couple of years ago." Given the deficiencies in his reports, Dr. Fein's opinion on causal relationship is equivocal in nature and of limited probative value.¹²

The remaining medical evidence is also insufficient to establish appellant's occupational disease claim. In medical reports dated April 25, 2013 through August 28, 2014, Dr. Sultan diagnosed joint pain of the pelvis, lumbar disc degeneration, joint pain of the left leg, and arthropathy of the left leg. However, he failed to provide any opinion on the cause of appellant's conditions. Rather, Dr. Sultan only generally repeated appellant's allegations pertaining to the employment incident, noting that she had fairly advanced arthritic changes which she believed stemmed from her work activities. Such generalized statements do not establish causal

⁸ *James Mack*, 43 ECAB 321 (1991).

⁹ *T.S.*, Docket No. 17-1709 (issued May 7, 2018).

¹⁰ *S.W.*, Docket 08-2538 (issued May 21, 2009).

¹¹ *R.T.*, Docket No. 18-0581 (issued October 3, 2018).

¹² 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).

relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how the physical activity actually caused the diagnosed conditions.¹³ The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁴ His reports are insufficient to establish appellant's claim.¹⁵

In an April 17, 2015 medical report, Dr. Grandville diagnosed bilateral knee osteoarthritis and reported that appellant's employment duties could exacerbate her arthritis from excessive wear and tear over time. The Board finds that his medical report does not provide support for a work-related occupational injury as the physician opined that she could not determine if the osteoarthritis was caused by excessive wear and tear from appellant's employment. Dr. Grandville's opinion was couched in speculative terms, noting that appellant's employment duties could be an exacerbating factor.¹⁶ To be of probative value, a physician's opinion on causal relationship should be one of reasonable medical certainty.¹⁷ As Dr. Grandville failed to provide an opinion that appellant's bilateral knee osteoarthritis was caused by her repetitive employment duties as a letter carrier, her report is insufficient to meet appellant's burden of proof.¹⁸

Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship.¹⁹ In the instant case, the record lacks rationalized medical evidence establishing causal relationship between appellant's federal employment duties as a letter carrier and her diagnosed conditions.²⁰ Thus, appellant has failed to meet her burden of proof.

Appellant may submit new evidence and/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 her burden of proof to establish a bilateral knee condition causally related to the accepted factors of her federal employment.

¹³ *R.S.*, Docket No. 18-0120 (issued August 8, 2018).

¹⁴ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ *T.G.*, Docket No. 14-0751 (issued October 20, 2014).

¹⁶ *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

¹⁷ *See Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁸ *Id.*

¹⁹ *D.D.*, 57 ECAB 734 (2006).

²⁰ *See J.S.*, Docket No. 17-0507 (issued August 11, 2017).

ORDER

IT IS HEREBY ORDERED THAT the December 26, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2019
Washington, DC

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

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

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