

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

E.G., Appellant)	
)	
and)	Docket No. 19-1296
)	Issued: December 18, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Raleigh, NC, Employer)	
)	

Appearances:
Daniel F. Read, 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
JANICE B. ASKIN, Judge

JURISDICTION

On May 21, 2019 appellant, through counsel, filed a timely appeal from December 4, 2018 and May 9, 2019 merit decisions 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 his burden of proof to establish knee conditions causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On February 7, 2018 appellant, then a 48-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained right knee injuries in the performance of duty. He noted that he first became aware of his condition on November 23, 2017, and first realized it was caused or aggravated by factors of his federal employment on December 6, 2017. Appellant explained that he had a prior claim which had been accepted for a sprain of the right shoulder and upper arm, sprain of the right foot, bilateral knee contusions, and lumbar back strain under OWCP File No. xxxxxx710 and that he had filed a claim for recurrence of disability under that claim number, but his recurrence claim was denied. On the reverse side of the claim form the employing establishment indicated that appellant was last exposed to the employment factors alleged to have caused his conditions on December 26, 2017, stopped work on December 27, 2017, and returned to work on February 7, 2018.

In a development letter dated February 15, 2018, OWCP advised appellant that additional factual and medical evidence was necessary to establish his claim. It requested that he submit a comprehensive narrative medical report from his attending physician which included a diagnosis of a medical condition and a rationalized medical opinion supporting causal relationship between the diagnosed condition and factors of his federal employment. Appellant was also provided a questionnaire for his completion. OWCP afforded him 30 days to submit the necessary evidence.

In a separate development letter of even date, OWCP notified the employing establishment of appellant's claim. It requested comments from a knowledgeable supervisor on the accuracy of appellant's statements, a list of tasks appellant performed which required physical exertion, a list of precautions taken to minimize effects of these activities, and a copy of appellant's position description. OWCP afforded the employing establishment 30 days to respond.

In a report dated January 19, 2018, Dr. David Dellaero, a Board-certified orthopedic surgeon, indicated that appellant reported persistent popping in his right knee with diffuse and lateral pain. Based on an x-ray and magnetic resonance imaging (MRI) scan, he diagnosed right knee medial and lateral meniscus tears. Dr. Dellaero recommended partial medial and lateral meniscectomies.

In a supplemental statement received on February 7, 2018 appellant related that he was seen on December 27, 2017 by Dr. Dellaero for right knee swelling, popping, and buckling. Appellant related that his workload usually increased each November, and in 2017 the parcel volume was extraordinarily heavy. As a result he worked 90- to 100-hour workweeks, 7 days a week. He related that the stress of being on his feet all day, stepping in and out of a mail truck, turning and twisting to load packages from a hamper into his truck, and retrieving packages from his truck caused stress on his right knee, which started swelling in late November or early December.

An employing establishment supervisor's statement dated February 7, 2018 confirmed that the workload increased tremendously at the employing establishment during the month of December 2017. Most carriers worked 14 to 15 hours a day, 7 days a week during December 2017.

By decision dated March 22, 2018, OWCP denied appellant's claim finding that he had not submitted medical evidence containing a medical diagnosis in connection with factors of his federal employment.

In a report dated June 8, 2018, Dr. Dellaero diagnosed tear of the right knee medial meniscus and related that he had discussed right knee arthroscopy with appellant.

In a supplemental statement dated August 21, 2018, appellant explained that a traumatic injury claim for a March 2013 injury had been accepted for bilateral knee contusions. He further related that the stress of being on his feet each day for 17 to 19 hours and carrying packages and other mail items up and down stairs, in and out of businesses, and residences had caused swelling, popping, and buckling of his right knee.

On September 5, 2018 appellant, through counsel, requested reconsideration of OWCP's March 22, 2018 decision. He submitted additional evidence with his request.

In reports dated January 29, February 11 and 25, June 16, September 28, and November 22, 2016, Dr. Dina Eisinger, Board-certified in pain medicine and physical medicine and rehabilitation, noted that she had examined appellant for a follow-up regarding his chronic back and knee pain. She diagnosed lumbosacral intervertebral disc degeneration and knee pain.

In reports dated February 15, March 2 and 27, June 28, and August 7 and 24, 2017, Dr. Eisinger noted that she examined appellant for a follow-up regarding his chronic back and knee pain. She diagnosed lumbar radiculopathy, lumbar intervertebral disc degeneration, and displacement of lumbar intervertebral disc without myelopathy.

In a letter dated August 29, 2018, Dr. Dellaero indicated that appellant had been a patient of his for over eight years. He noted that his first major clinical issue was a microfracture and meniscal tear of his left knee in 2010, which was treated with arthroscopic surgery. Dr. Dellaero related that appellant was then in a car accident in 2013 which resulted in bilateral knee contusions, lumbar sprain, right shoulder strain, and foot strain. He diagnosed right knee medial and lateral meniscus tears, left hip femoral acetabular impingement syndrome, left knee post-traumatic osteoarthritis, lumbar radiculopathy, and right shoulder sprain. Dr. Dellaero opined that appellant's knee conditions were a result of his workplace duties. He explained that osteoarthritis occurs when the lubricating protective cartilage that covers the ends of bones, known as articular cartilage, degenerates and wears down progressively. Dr. Dellaero explained that appellant was not yet 50 years of age, but that repetitive mechanical pressure on the knee, as well as prolonged standing which was superimposed on a knee already weakened by surgery and an automobile accident had accelerated that normal wearing down. He concluded that appellant's workplace duties were therefore a significant contributing factor in advancing and accelerating the loss of cartilage in his left knee to the point that his osteoarthritis became a serious clinical problem.

By decision dated December 4, 2018, OWCP affirmed, as modified, its March 22, 2018 decision finding that appellant had established the factual component of his claim. It also found,

however, that the evidence of record was insufficient to establish that his diagnosed right knee conditions were causally related to the accepted factors of his federal employment.

On February 19, 2019 appellant, through counsel, requested reconsideration of OWCP's December 4, 2018 decision.

By decision dated May 9, 2019, OWCP denied modification of its December 4, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 timely filed within the applicable time limitation period of FECA, that an injury was sustained 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

In an occupational disease claim, appellant's burden of proof 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.⁶

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.⁷

³ *Supra* note 2.

⁴ *S.M.*, Docket No. 19-0556 (issued September 6, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *S.M., id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *S.M., supra* note 4; *C.D.*, Docket No. 17-2011 (issued November 6, 2018); *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁷ *A.P.*, Docket No. 19-1158 (issued October 29, 2019); *see J.R.*, Docket No. 17-1781 (issued January 16, 2018); *I.J.*, 59 ECAB 408 (2008).

ANALYSIS

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

In support of his claim appellant submitted a letter dated August 29, 2018, from his attending physician, Dr. Dellaero, who indicated that appellant had been a patient of his for over eight years. Dr. Dellaero noted his history of prior left knee conditions which included both a prior microfracture and a subsequent meniscal tear of his left knee in 2010. He explained that appellant had a prior arthroscopic surgery for the meniscal tear. Dr. Dellaero also noted that he had been in a car accident in 2013 which resulted in bilateral knee contusions, a lumbar sprain, a right shoulder strain, and a foot strain -- conditions accepted by OWCP in File No. xxxxxx710. He diagnosed current conditions including right knee medial and lateral meniscus tear, left hip femoral acetabular impingement syndrome, left knee post-traumatic osteoarthritis, lumbar radiculopathy, and right shoulder sprain. Dr. Dellaero opined that his knee conditions were a result of his workplace duties. In support of his opinion on causation the doctor explained that osteoarthritis occurs when the lubricating protective cartilage that covers the ends of bones (articular cartilage) degenerates and wears down progressively. Dr. Dellaero explained that appellant was not yet 50 years of age, but that repetitive mechanical pressure on the knee, as well as prolonged standing which was superimposed on a knee already weakened by surgery and an automobile accident had accelerated that normal wearing down. He discussed the accepted workplace duties performed by appellant and opined that, for the reasons he had explained, they were a significant contributing factor in advancing and accelerating the loss of cartilage in his left knee to the point that his osteoarthritis became a serious clinical problem.

The Board finds that while Dr. Dellaero's August 19, 2018 letter is not fully rationalized, it is relevant evidence in support of appellant's claim as it explains the physiological process by which appellant's accepted factors of his federal employment could have resulted in the claimed knee conditions. Although the opinion letter by Dr. Dellaero is alone insufficient to meet appellant's burden of proof to establish his claim, it does raise an uncontroverted inference between the diagnosed knee conditions and the accepted employment factors sufficient to require OWCP to further develop the claim.⁸

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.⁹ It has the obligation to see that justice is done.¹⁰ The Board will, therefore, remand the case to OWCP for further development of the medical evidence. On remand OWCP shall refer appellant, a statement of accepted facts, and the medical evidence of record to an appropriate Board-certified physician. The chosen physician shall provide a rationalized opinion finding that the diagnosed conditions are causally related to the accepted

⁸ See *J.G.*, Docket No. 18-1484 (issued June 14, 2019); *D.V.*, Docket No. 17-1590 (issued December 12, 2018); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁹ *C.W.*, Docket No. 19-0231 (issued July 15, 2019); *D.G.*, Docket No. 15-0702 (issued August 27, 2015); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁰ *Id.*

factors of appellant's federal employment. If the physician opines that the diagnosed conditions are not causally related, they must explain with rationale how or why their findings differ from that of Dr. Dellaero's.¹¹ Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2019 and December 4, 2018 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 18, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹¹ OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files. For example, if a new injury claim is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8(c) (February 2000). On remand OWCP shall administratively combine all necessary claims with the present file for a full and fair adjudication of appellant's pending right knee injury claim prior to the referral to an appropriate specialist.