

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

M.E., Appellant)	
)	
and)	Docket No. 18-1135
)	Issued: January 4, 2019
U.S. POSTAL SERVICE, ELMHURST POST OFFICE, Elmhurst, IL Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 15, 2018 appellant, through counsel, filed a timely appeal from a March 22, 2018 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 to consider 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 injury causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On September 6, 2017 appellant, then a 57-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that she developed unilateral primary osteoarthritis of the right knee due to her employment duties. She first became aware of her condition of bilateral knee pain on December 14, 2016 and first attributed the condition to her federal employment on August 28, 2017. In her accompanying narrative statement, appellant attributed her right knee condition to standing for two to three hours a day casing mail for 33 years. She was also required to walk up to eight hours a day delivering mail with a 35-pound mailbag walking on uneven grass and concrete, and walking up and down stairs.

In a report dated August 28, 2017, Dr. Sean D. Odell, a Board-certified orthopedic surgeon, examined appellant due to bilateral knee pain, greater on the right. He noted that she had previously undergone two right knee arthroscopies on April 15, 1999 for partial medial meniscectomy and chondroplasty of the patella and on April 12, 2007 for partial lateral meniscectomy and chondroplasty of the patella, which was work related. Dr. Odell examined appellant's right knee and found positive medial joint line tenderness, positive patellofemoral tenderness, and crepitus with range of motion from 0 to 125. Appellant's left knee demonstrated mild medial joint line tenderness as well as discomfort with McMurray's and Apley's tests. Dr. Odell reviewed appellant's knee x-rays and on the right found significant medial joint space narrowing with medial and patellofemoral osteophyte formation. On the left appellant's x-ray demonstrated mild medial joint space narrowing with osteophyte formation. Dr. Odell diagnosed right knee osteoarthritis exacerbation and pain, work related and left knee mild osteoarthritis, work related. He explained that the 2007 work-related right knee arthroscopy with partial meniscectomy and chondroplasty had increased the rate of arthritic changes in her right knee, combined with significant walking at work and carrying mail, resulting in exacerbation of her arthritic symptoms.

In a development letter dated September 19, 2017, OWCP requested additional medical evidence in support of appellant's occupational disease claim. It noted that a physician's opinion as to how employment activities caused, contributed to, or aggravated her medical condition had not been provided. OWCP afforded appellant 30 days to submit the requested information.

Dr. Odell authored a report of October 2, 2017 and repeated his physical findings and diagnoses. He described appellant's work duties including carrying a 30-pound mailbag and walking up to 8 hours a day as well as traversing stairs for 33 years. Dr. Odell opined:

“[Appellant] is carrying extra weight in the mailbag, walking all day, and going up and down stairs repeatedly, this could, and I believe did, aggravate the arthritic changes in her knees. In specific regards to her right knee, she had two prior knee arthroscopies that were both due to work-related injuries.... These two work-related injuries to her right knee with subsequent surgical intervention increased the rate of her arthritic progression in the right knee.

“Therefore, it is my belief that the exacerbation of bilateral knee [osteoarthritis] is due to her work activities.”

By decision dated November 15, 2017, OWCP denied appellant’s occupational disease claim finding that Dr. Odell’s reports were insufficiently rationalized to establish causal relationship between appellant’s diagnosed condition and her work events.

On December 26, 2017 appellant requested reconsideration of the November 15, 2017 decision. She resubmitted the August 28, 2017 report from Dr. Odell as well as additional treatment notes. On November 2, 2017 Dr. Odell noted that he had previously described why he felt appellant’s knee pain was work related. In a report dated December 12, 2017, he described her history of knee pain in December 2016 and her two right knee surgeries. Dr. Odell provided his finding on physical examination and reviewed bilateral knee x-rays. He opined:

“It is with medical certainty that [appellant] sustained a work-related injury which was directly caused by aggravation that is permanent.... The surgeries to her meniscus and chondral damage discussed on the arthroscopies increased the rate of arthritic changes in her right knee. That combined with significant walking at work and carrying mail had exacerbated her arthritic symptoms. This has occurred in the right knee greater than [the] left. [Appellant] suffers from bilateral knee osteoarthritis due to the wear and tear on her knees while working. She is required to bend, lift, carry, push, pull, and perform heavy work duties which make it strenuous on her lower extremities.”

By decision dated March 22, 2018, OWCP reviewed appellant’s occupational disease claim on the merits and denied modification, finding that the medical evidence did not establish that her diagnosed condition of bilateral osteoarthritis of the knees was causally related to her accepted employment duties. It further found that the opinion of Dr. Odell was insufficient to establish an acceleration of her underlying condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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, 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 or specific condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

³ *Supra* note 2.

⁴ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

⁵ *K.B.*, Docket No. 17-1997 (issued July 27, 2018).

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."⁶ 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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors.

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish bilateral knee injuries causally related to the accepted factors of her federal employment.

Appellant's attending physician, Dr. Odell, has provided several reports attributing her bilateral knee osteoarthritis to her employment duties as well as to her two previous employment-related right knee surgeries. He explained that the surgeries to her meniscus and chondral damage discussed on the arthroscopies increased the rate of arthritic changes in her right knee and that her significant walking at work, carrying extra weight in the mailbag and going up and down stairs repeatedly, aggravated the arthritic changes in her knees bilaterally.

While he provided an affirmative opinion on causal relationship, Dr. Odell's conclusory opinion is insufficiently rationalized. He failed to provide an explanation pertaining to the mechanism of injury to establish that appellant's bilateral knee osteoarthritis initial right knee meniscus tear was work related. Without explaining how physiologically the movements involved in appellant's employment duties caused or contributed to the arthritic process, Dr. Odell's opinion on causal relationship is equivocal in nature and of limited probative value.⁷

Furthermore, Dr. Odell noted appellant's prior history of right knee arthroscopy yet failed to provide a detailed medical history to provide an understanding of her preexisting condition or prior injuries. He failed to address what caused the underlying condition and he did not discuss whether her preexisting injury had progressed beyond what might be expected from the natural progression of that condition.⁸ A well-rationalized opinion is particularly warranted when there is a history of preexisting condition.⁹ As such, Dr. Odell's reports lack the specificity and detail

⁶ 20 C.F.R. § 10.5(q).

⁷ See *J.B.*, Docket No. 17-1870 (issued April 11, 2018).

⁸ *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

⁹ *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

needed to establish that appellant's bilateral knee conditions are a result of a work-related occupational exposure.¹⁰

The Board notes that there is no requirement that the federal employment be the only cause of appellant's injury. An employee is not required to prove that occupational factors are the sole cause of his or her claimed condition. If work-related exposures caused, aggravated, or accelerated appellant's condition, she is entitled to compensation.¹¹ However, an award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.¹² Appellant's honest belief that her occupational employment duties caused her medical injury is not in question,¹³ but that belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship.¹⁴

The evidence of record lacks sufficient rationalized medical evidence establishing a causal relationship between the accepted factors of appellant's federal employment and her diagnosed knee osteoarthritis. Thus, appellant has failed to meet her burden of proof.

Appellant may submit new evidence 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 injury causally related to the accepted factors of her federal employment.

¹⁰ *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

¹¹ *See Beth P. Chaput*, 37 ECAB 158, 161 (1985); *S.S.*, Docket No. 08-2386 (issued June 5, 2008).

¹² *D.D.*, 57 ECAB 734 (2006).

¹³ *See M.C.*, Docket No. 17-1579 (issued November 28, 2017).

¹⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 2019
Washington, DC

Christopher J. Godfrey, 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