United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 18-0162**
	)	**Issued: July 24, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Dorchester, MA, Employer	)	

Appearances:
John L. Whitehouse, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 30, 2017 appellant, through his representative, filed a timely appeal from an October 13, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)[2] 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 that he developed bilateral knee osteoarthritis causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On September 15, 2016 appellant, then a 60-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed arthritis of both knees due his federal employment duties including years of walking and climbing up and down stairs while carrying a heavy mail sack. He indicated that he first became aware of the disease or illness on March 12, 1997 and first realized its relation to his federal employment on October 30, 2000. Appellant had filed previous claims for knee conditions with OWCP. He retired from his federal employment on February 29, 2016.

On September 21, 2016 OWCP received an unsigned statement from appellant. Appellant described the physical requirements of the letter carrier position, noting that he had worked for approximately 28 years, 8 hours a day, 5 days a week, with as much overtime as possible. He noted that he spent approximately two hours standing at a case setting up his route, six hours delivering the mail which required carrying a sack weighing up to 70 pounds while walking about 6 to 8 miles each day. Appellant also indicated that he delivered mail to 200 to 300 houses going up and down thousands of steps each day. He explained that he tolerated the employment duties until an injury to his left knee on March 24, 1994, after which he compensated by favoring the injured knee causing problems with both knees. Appellant indicated that he was diagnosed with osteoarthritis and degenerative arthritis of both knees.

In a development letter dated October 31, 2016, OWCP informed appellant that the evidence submitted was insufficient to establish his claim and it explained the type of evidence required to establish his claim. It asked him to respond to a questionnaire and to arrange for a physician's opinion as to how specific work activities caused, contributed to, or aggravated his condition. On even date a development letter was sent to the employing establishment requesting information from a knowledgeable supervisor as to the physical duties performed by appellant. OWCP afforded him and the employing establishment 30 days to respond.

In a November 22, 2016 statement, J.O., a manager, noted that the statement that appellant had previously provided to OWCP was true. He indicated that appellant worked full time, as well as overtime. J.O. noted that appellant was a productive worker who worked within his restrictions. He informed OWCP that appellant previously had a knee replacement.

By decision dated December 1, 2016, OWCP denied appellant's claim finding that he had not submitted medical evidence containing a firm medical diagnosis from a physician in relation to his injury claim. It concluded that he had not met the requirements to establish an injury as defined by FECA.

In a letter dated November 30, 2016, K.S., a health and resource management specialist for the employing establishment, controverted the claim. She explained that appellant had not been required to carry 70 pounds in his mail satchel, but rather only 10 to 35 pounds. K.S. also noted

that he spent most of his career as a parcel post driver. She indicated that appellant was out of work for intermittent periods throughout his career due to his other claims. K.S. indicated that his compensation benefits had been terminated on October 17, 2016 and he had not returned to work, but was out on a nonpay status for the period October 18, 2016 through February 29, 2017, when he retired.

On December 28, 2016 appellant requested reconsideration. He submitted his responses to the development questionnaire. Appellant explained that he began his federal career in 1984 at the age of 28 and was given a complete physical examination which he passed. He noted no history of arthritis of his knees. Appellant explained that he worked 10 years as a carrier before twisting his knees in March 1994 while delivering his route and that two months later he had arthroscopic surgery. He noted that he eventually returned to regular duty, but then developed pain in both knees, which worsened over time and he was subsequently diagnosed with osteoarthritis/ degenerative arthritis of both knees. Appellant repeated his prior statement of his daily employment duties as a letter carrier.

In support of his claim appellant submitted medical records from Carney and New England Baptist Hospitals (including inpatient patient assessments, preoperative nursing notes, and discharge summaries) for a variety of postoperative bilateral knee conditions.

In a May 27, 1994 operative report, Dr. Leonid Dabuzhsky, a Board-certified orthopedic surgeon, performed a left knee procedure to the torn left medial meniscus and diagnosed chondromalacia of the left femur.

In an October 26, 1994 report, Dr. Dabuzhsky related that appellant continued to have significant pain in his left knee. He examined appellant and opined that it was five months since his surgery without any significant improvement in his symptoms. Dr. Dabuzhsky recommended another surgical procedure.

A December 26, 2000 x-ray of the left knee read by Dr. Steven Wetzner, a Board-certified diagnostic radiologist, revealed degenerative changes of the medial compartment of the knee with marginal osteophyte formation and mild patellofemoral disease with small joint effusion.

On January 5, 2001 Dr. David Mattingly, a Board-certified orthopedic surgeon, performed a left total knee replacement. In a January 5, 2001 pathology report, Dr. Karoly Balogh, a Board-certified anatomic pathologist, found degenerated fibrocartilage and articular surface with reactive changes in adjacent bone and fatty bone marrow.

In a January 9, 2001 discharge summary, Dr. Thomas Hackett, an orthopedic surgeon, noted that appellant had slipped on ice while working as a letter carrier approximately seven years prior and suffered a twisting injury to his left knee. He noted that appellant underwent multiple left knee arthroscopies without relief or discomfort. Dr. Hackett explained that all of the conservative modalities had failed.

An October 8, 2009 x-ray, read by Dr. Mattingly, revealed a well-positioned left total knee replacement. An October 24, 2013 magnetic resonance imaging (MRI) scan of the right knee, read by Dr. Berry, found no evidence of infection and significant synovitis, but no effusion (right knee pain and instability).

In a May 13, 2014 operative report, Dr. Berry diagnosed severe osteoarthritis of the right knee and performed a total right knee replacement. In reports dated July 14 and September 25, 2014, he performed a right knee manipulation. Dr. Berry provided progress notes for treatment of the right knee dated October 17 and December 2, 2014 and January 15, April 3, and August 6, 2015. He advised that appellant previously had right total knee replacement surgery and diagnosed other synovitis and tenosynovitis. Dr. Berry saw appellant on December 2, 2014 and advised that he was having persistent symptoms of pain and stiffness after the operation. He explained that appellant was doing better in November, but had aggravated his knee due to his employment duties which required a lot of deliveries and going up and down stairs, about 600 to 700 steps per day. Dr. Berry recommended retirement.

In an April 3, 2015 report, Dr. Berry advised that appellant believed that his symptoms in his right knee had been aggravated when he returned to work with the employing establishment. He opined that appellant was incapable of working. In a February 23, 2016 report, Dr. Berry indicated that appellant was permanently disabled from work from his injury of August 15, 2013.

In a June 16, 2016 report, Dr. Mattingly saw appellant for left knee pain. He determined that appellant could return to full-time work with appropriate restrictions.

By decision dated May 25, 2017, OWCP modified its prior decision to accept fact of injury. However, it denied appellant's claim finding that he had not submitted sufficient evidence to meet his burden of proof to establish causal relationship. OWCP explained that medical evidence on causal relationship was required to address his preexisting bilateral knee conditions.

On July 17, 2017 appellant, through counsel, requested reconsideration. He submitted a new report from Dr. Berry dated December 16, 2016, which he explained had been inadvertently omitted from his previous submissions. Counsel asserted that the report from Dr. Berry set forth a rationalized opinion that appellant's bilateral osteoarthritis of the knees was causally related to his employment as a letter carrier.

In the December 16, 2017 report, Dr. Berry noted appellant's employment history and noted that he commenced his letter carrier duties in 1984, at the age 28, and was essentially healthy at that time with no prior history of knee problems. He explained that appellant's duties included standing at a case for two hours, setting up his mail route, followed by six hours of delivering mail. Dr. Berry further explained that appellant walked approximately six to eight miles per day carrying a mail sack, weighing up to 70 pounds, delivering mail to 200 to 300 houses and ascending over a thousand stairs in the course of a workday. He advised that on March 24, 1994, while at work, he sustained a twisting injury to the left knee resulting in pain and swelling, with a diagnosis of a torn meniscus, and a March 27, 1994 arthroscopic surgery of the left knee with debridement of a large osteocartilaginous lesion. Dr. Berry recounted appellant's extensive treatment for his knees.

Dr. Berry explained that appellant developed arthrofibrosis of the knee status post right total knee replacement and required knee manipulation. He indicated that appellant ultimately returned to work and he worked for three days. However, during this three-day period, appellant's symptoms progressed dramatically including increased pain, increased swelling, his range of motion dropped from over 100 down into the 70's, and he was limping and he just felt he could not do the work. Dr. Berry opined that appellant's bilateral knee diagnoses were directly causally

related to his employment activities as a letter carrier over almost a 30-year period. He explained that appellant's requirement to walk six to eight miles and climb and descend many hundreds of stairs in the course of a workday while carrying a mail sack weighing up to 70 pounds, combined with his body weight, placed an axial load of almost 300 pounds on each knee with each step. Dr. Berry opined that these exposures continued for almost three decades during which appellant walked and climbed an incalculable number of miles and stairs. He explained that osteoarthritis was a degenerative disease that occurred when the cartilage that cushioned the ends of the bones forming the knee joint gradually deteriorated, leaving the patient with bone rubbing on bone causing further deterioration as well as pain, swelling, and stiffness in the knee joint. Dr. Berry opined that the employment exposures clearly placed inordinate repetitive and prolonged stress on appellant's knee joint and both precipitated and accelerated the disease causing the need for bilateral total knee replacement.

By decision dated October 13, 2017, OWCP denied modification of the May 25, 2017 decision.

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 timely filed within the applicable time limitation period of FECA,[3] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is 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]

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[6] The second component is whether the employment incident caused a personal injury. An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[7]

[3] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.[8] Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[9] 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 employee.[10] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[12]

ANALYSIS

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

In support of his claim appellant submitted medical reports from his attending physician, Dr. Berry, who consistently opined that his bilateral knee osteoarthritis had been caused or aggravated by his duties over numerous years as a postal letter carrier. In his December 16, 2017 report, he accurately reported the history of injury, appellant's prior medical treatment history, and the accepted employment factors including repetitive standing, walking a mail route six to eight miles per day, climbing stairs, carrying a 70-pound mail sack, and ascending over a thousand stairs per day while delivering mail to 200 to 300 houses. Dr. Berry explained that osteoarthritis of the knees is a repetitive stress injury which can be related to repetitive occupational exposures. He indicated that appellant's combined body weight, while carrying a postal sack, placed an axial load of almost 300 pounds on each knee with each step. Noting the amount of walking and traversing steps he performed each day for almost 30 years, Dr. Berry opined that such forces were sufficient to have resulted in osteoarthritis. He also provided a pathophysiological explanation as to the development of osteoarthritis describing how the cartilage that cushioned the ends of the bones forming the knee joint deteriorate due to the repetitive forces including axial loading, leaves an individual with bone rubbing on bone causing further deterioration as well as pain, swelling, and

[8] *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[9] *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[10] *L.D., id.; see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[11] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *see K.P.*, Docket No. 18-0041 (issued May 24, 2019).

stiffness in the knee. Dr. Berry opined that his exposures placed inordinate repetitive and prolonged stress on his knee joint and both precipitated and accelerated the disease causing the need for bilateral total knee replacements.

Accordingly, the Board finds that Dr. Berry provided an affirmative and rationalized opinion on causal relationship. The Board further finds that Dr. Berry's 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 as a letter carrier, had aggravated appellant's bilateral knee osteoarthritis and resulted in bilateral total knee replacements. The Board finds that Dr. Berry's opinion, while not sufficiently rationalized to meet appellant's burden of proof, is sufficient, given the absence of opposing medical evidence, to require further development of the record.[13]

It is well established that proceedings under FECA are not adversarial in nature, and that while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[14] OWCP has an obligation to see that justice is done.[15]

The case will therefore be remanded to OWCP for further development of the medical evidence, including the preparation of a statement of accepted facts which include all of appellant's accepted employment duties and a referral to an appropriate medical specialist for an examination and opinion on the issue of causal relationship. After such further development as OWCP deems necessary, it shall issue a *de novo* decision.[16]

CONCLUSION

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

[13] *See J.G.*, Docket No. 17-1062 (issued February 13, 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).

[14] *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

[15] *See B.C.*, Docket No. 15-1853 (issued January 19, 2016).

[16] The Board notes that it was unable to review appellant's additional OWCP files in relation to his prior knee claims as those cases were not within the Board's jurisdiction. It is especially important, on remand, that all of his prior knee claims be administratively combined as OWCP's referral physician will require access to all of the relevant medical records to issue an informed decision on causal relationship. Pursuant to OWCP procedures cases should be doubled where correct adjudication depends on cross-referencing between files. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c)(2) (February 2000).

ORDER

IT IS HEREBY ORDERED THAT the October 13. 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: July 24, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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