United States Department of Labor
Employees' Compensation Appeals Board

F.R., Appellant	)	
and	)	**Docket No. 18-1576**
	)	**Issued: July 17, 2019**
U.S. POSTAL SERVICE, POST OFFICE, New London, CT, Employer	)	

Appearances:
Daniel B. Shapiro, 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
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 15, 2018 appellant, through counsel, filed a timely appeal from a February 21, 2018 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] Together with his appeal request, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). By order dated March 5, 2019, the Board exercised its discretion and denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 18-1576 (issued March 5, 2019).

ISSUE

The issue is whether appellant has met his burden of proof to establish medical conditions causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On March 21, 2017 appellant, then a 57-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed osteoarthritis of the bilateral hips and knees due to factors of his federal employment. He indicated that he first became aware of his condition and first realized it was caused or aggravated by his employment duties on February 10, 2017. Appellant did not stop work.

OWCP accepted a prior work injury to appellant's right knee sustained on October 26, 2004 for derangement of posterior horn of right medial meniscus and approved a December 10, 2004 right knee arthroscopy (under OWCP File No. xxxxxx817)[4] and a left knee injury sustained on October 22, 2009 which was accepted for left knee strain and left knee contusion (under OWCP File No. xxxxxx191).

In a narrative statement dated February 1, 2017, appellant related that he was not certain when he first began to experience pain in his hips and left knee. He recalled spraining his left knee in approximately October 2009 and his left knee continued to hurt after that point in time. In January 2014, appellant slipped and fell while delivering mail and he began to experience pain in his left hip and groin. He went to see his primary care doctor later in 2014 and was eventually referred to an orthopedic specialist.

Appellant underwent a left hip replacement surgery in June 2015 and then returned to work with continued hip and left knee pain. He indicated that his federal duties of delivering mail required extensive and repetitive bending, stooping, twisting, kneeling, and turning motions which impacted his lower extremities. Appellant also drove a long-life vehicle (LLV) to complete his deliveries and he had to get in and out of the LLV approximately 20 times per day, which required stress and pressure on his lower extremities as he was required to twist, turn, kneel, and bend in order to get himself in and out of the driver's seat.

Appellant submitted medical reports dated February 18, 2014 through December 16, 2015 from Dr. William A. Colom, a Board-certified internist, who diagnosed osteoarthritis of the right knee.

In reports dated April 11 through September 23, 2015, Dr. Mark E. Wilchinsky, a Board-certified orthopedic surgeon, diagnosed degenerative lumbar disc disease with sciatica, degenerative joint disease (DJD) of the left hip, lumbar radiculitis, lumbar spondylosis, and lumbar stenosis and indicated that he had performed a left total hip replacement on June 3, 2015. He asserted that appellant never had any one specific injury, but did a lot of walking at work.

[4] By decision dated April 1, 2014, OWCP awarded appellant a schedule award for nine percent permanent impairment of the right lower extremity.

On April 6, 2015 Dr. Seth Dubin, a certified physician assistant, diagnosed low back pain and left hip pain, acute-on-chronic.

In an April 14, 2015 report, Dr. Daniel E. Weiland, a Board-certified orthopedic surgeon, diagnosed DJD of the left hip and related that appellant had preexisting arthritis in his left hip. He noted that appellant also had discomfort and disc disease in his lower back and there was a question as to where the generator of pain was coming from.

On February 10, 2017 Dr. Byron V. Hartunian, a Board-certified orthopedic surgeon, examined and evaluated appellant and his medical records regarding the care he received for arthritis of his hips and knees and for which he underwent a left total hip replacement. He found that appellant's degenerative osteoarthritis of his bilateral knees and hips had resulted in the need for a total left hip replacement. Dr. Hartunian opined that his work activities, which included repetitive lifting, walking, and climbing, "most likely" aggravated his underlying arthritis conditions.

In a development letter dated May 16, 2017, OWCP advised appellant of the deficiencies of his claim and instructed him as to the factual and medical evidence necessary to establish his claim. It afforded him 30 days to submit additional evidence and respond to its inquiries.

In a June 23, 2017 response, appellant indicated that his activities outside of federal employment included performing yard work, performing home repairs and maintenance, and using his stationary bike. Additionally, he had coached little league baseball from 1992 to 1996 when his sons were playing.

Appellant further submitted physical therapy reports in support of his claim.

By decision dated August 18, 2017, OWCP denied appellant's claim finding that the medical evidence of record failed to establish a causal relationship between his diagnosed conditions and the accepted factors of his federal employment.

On August 29, 2017 appellant requested an oral hearing before a representative of the OWCP Branch of Hearings and Review.

On November 10, 2017 appellant requested that his oral hearing be converted to a review of the written record.

Appellant also submitted progress reports dated April 7 and July 18, 2016 from Dr. Colom.

In reports dated August 10, 2016 and February 28, 2017, Dr. Wilchinsky diagnosed chondromalacia patellae of the left knee and indicated that appellant's left leg was slightly longer than his right and he felt that the leg length discrepancy may have been the cause of his pain. Appellant was recovering well from his left hip replacement and had an orthotic lift in his right shoe, but he did not feel that it was helping enough.

On August 5, 2016 Dr. Steven B. Carlow, a Board-certified orthopedic surgeon, diagnosed mild-to-moderate right hip osteoarthritis and found that a magnetic resonance imaging (MRI) scan revealed a question of loose bodies, as well as evidence of early degenerative change of the medial

tibial plateau, postoperative changes, and a tear of the medial meniscus, joint effusion, and chondromalacia patella.

By decision dated February 21, 2018, an OWCP hearing representative completed a review of the written record and affirmed the prior decision finding that the medical evidence of record failed to establish a causal relationship between appellant's diagnosed conditions and the accepted factors of his federal employment.

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,[5] 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.[6] 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.[7] To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit 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.[8]

Causal relationship is a medical issue, and 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 medical 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 appellant has not met his burden of proof to establish medical conditions causally related to the accepted factors of his federal employment.

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

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

[7] *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).

[8] *K.C.*, Docket No. 18-1330 (issued March 11, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[9] *Id.*

In support of his claim, appellant submitted reports from Dr. Colom, Dr. Carlow, and Dr. Weiland who provided medical diagnoses, but failed to address causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[10] Thus, appellant has not met his burden of proof with this evidence.

In his reports dated April 11 through September 23, 2015, Dr. Wilchinsky indicated that appellant never had one specific injury, but did a lot of walking at work. He also noted that appellant's left leg was slightly longer than his right and he felt that the leg length discrepancy may have been the cause of his pain. The Board finds that Dr. Wilchinsky's opinion regarding the cause of appellant's left lower extremity conditions is speculative and equivocal in nature.[11] Dr. Wilchinsky did not otherwise sufficiently explain the reasons why diagnostic testing and examination findings led him to conclude that the accepted employment factors caused or contributed to the diagnosed conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.[12]

On February 10, 2017 Dr. Hartunian examined appellant and found that his degenerative osteoarthritis of his bilateral knees and hips had resulted in the need for a total left hip replacement. He opined that his federal duties "most likely" aggravated his underlying arthritis conditions. Dr. Hartunian's opinion regarding the cause of appellant's bilateral lower extremity conditions is also speculative and equivocal in nature.[13] He did not provide sufficient medical rationale explaining how appellant's repetitive lifting, walking, and climbing at work had caused or aggravated the diagnosed medical conditions. The Board has held that 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 a causal relationship.[14] Thus, the Board finds that the report from Dr. Hartunian is insufficient to establish that appellant sustained an employment-related injury.

Additionally, appellant submitted reports from physical therapists and a physician assistant in support of his claim. These documents do not constitute competent medical evidence because neither a physical therapist nor a physician assistant is considered a "physician" as defined under

[10] *See L.T.*, Docket No. 18-1603 (issued February 21, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[11] Medical opinions that are speculative or equivocal in character are of little probative value. *See Kathy A. Kelley*, 55 ECAB 206 (2004).

[12] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

[13] *Id*.

[14] *E.J*., Docket No. 09-1481 (issued February 19, 2010).

FECA.[15] Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[16] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to compensation benefits.[17] For these reasons, the above-noted evidence is insufficient to satisfy appellant's burden of proof with respect to causal relationship.[18]

As appellant has not submitted rationalized medical evidence to support his allegation that he sustained an injury causally related to the accepted factors of his federal employment he has not met his burden of proof to establish his claim.

Appellant may submit new evidence 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 his burden of proof to establish medical conditions causally related to factors of his federal employment.

[15] 5 U.S.C. § 8101(2); *Sean O'Connell*, 56 ECAB 195 (2004) (reports by nurse practitioners and physician assistants are not considered medical evidence as these persons are not considered physicians under FECA). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

[16] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[17] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[18] *See supra* notes 3-4.

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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