United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 18-1006**
	)	**Issued: May 3, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Wells, VT, Employer	)	

Appearances:
Stephen L. Cusick, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 17, 2018 appellant, through counsel, filed a timely appeal from a January 18, 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.

[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 a left leg condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On June 3, 2015 appellant, then a 52-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that he developed "ligament pull or meniscus tear, pain radiating in lower and upper part of leg" as a result of hyperextension of his left leg while delivering mail. He indicated that he first became aware of his condition and first realized that it was caused or aggravated by his federal employment on May 22, 2015. Appellant stopped working on June 2, 2015.

In a May 24, 2015 report, Dr. Rick Teetz, a Board-certified family practitioner, diagnosed knee pain and indicated that he suspected ligamentous or meniscus pathology. He noted that appellant had a one-week history of increasing left knee pain, mostly posteromedial with radiation anteriorly. Dr. Teetz further noted that appellant recalled no specific strain or injury and was in and out of his vehicle all day in his job as a mailman.

Appellant also submitted reports dated June 2 and 23, 2015 from Lisa M. Riley, a certified physician assistant, who diagnosed effusion joint lower leg and noted that appellant's left knee pain was located medially and had been present for six months and ongoing for months related to work. Ms. Riley indicated that appellant's symptoms had worsened since onset and reported as pain, aggravated by squatting. She advised that appellant was totally disabled for work.

In a development letter dated July 17, 2015, OWCP advised appellant of the deficiencies of his claim. It advised that appellant had not established the implicated employment factors and that there was no rationalized medical evidence containing a diagnosed condition and relating such condition to the factors of his federal employment. OWCP afforded him 30 days to submit additional evidence and to respond to its inquiries.

On July 7, 2015 Dr. Douglas P. Kirkpatrick, a Board-certified orthopedic surgeon, performed a left knee scopic partial medial meniscectomy.

In a duty status report (Form CA-17) dated July 21, 2015, Dr. Kirkpatrick diagnosed left knee meniscus tendon tear and advised that appellant was able to work two days per week effective July 8, 2015.

In an attending physician's report (Form CA-20), dated July 21, 2015, Dr. Kirkpatrick diagnosed left dislocation knee tear of the medial meniscus and opined that appellant's diagnosis and location of meniscus tear were "in correspondence to his postal job duties."

By decision dated September 4, 2015, OWCP denied appellant's claim, finding that appellant had not established that the alleged employment factors occurred as described.

Appellant subsequently submitted a July 1, 2015 magnetic resonance imaging (MRI) scan of the left knee, which demonstrated small tear posterior horn prepatellar bursitis, mild medial collateral ligament sprain, and grade IV chondromalacia patella.

On September 30, 2015 Dr. Kirkpatrick released appellant to work on "October 2, 2016."

In an August 25, 2015 report, Dr. Kirkpatrick diagnosed dislocation knee tear of medial cartilage or meniscus and noted that appellant's left knee pain, located medially, had been present since a work injury on May 22, 2015. On September 4, 2015 Dr. Kirkpatrick performed a left knee arthroscopy with partial medial meniscectomy. In a September 15, 2015 report, Dr. Kirkpatrick reiterated his diagnosis. In reports dated October 7, November 18, and December 2, 2015, Dr. Kirkpatrick diagnosed other meniscus derangements, posterior horn of medial meniscus and unilateral post-traumatic osteoarthritis of the left knee. He also reported that appellant had persistent pain and swelling, exacerbated after returning to work. In these three reports Dr. Kirkpatrick checked a box marked "yes" indicating that appellant's description of the incident "was the competent medical cause of this injury/illness," that appellant's complaints and objective findings were consistent with the "history of the injury/illness," and that he had a resulting 25 percent disability.

A left knee MRI scan dated December 15, 2015 showed findings suggestive of a subchondral fracture and/or osteonecrosis at the medial femoral condyle with an associated sizable area of bone marrow edema.

In two reports dated January 19, 2016, Dr. Kirkpatrick diagnosed other osteonecrosis, left femur and opined that he "correlate[d] this area of osteonecrosis with his initial injury of [May 22, 2015]." He provided work restrictions of sit-down work only effective January 19, 2016. Dr. Kirkpatrick checked the box marked "yes" in response to the same questions contained in his October 7, November 18, and December 2, 2015 reports and increased appellant's rating of permanent impairment to 75 percent.

In a February 5, 2016 report, Dr. William Lighthart, a Board-certified orthopedic surgeon, diagnosed osteonecrosis in the medial femoral condyle. He noted that appellant was injured on May 22, 2015, had a knee arthroscopy on September 4, 2015, and was still having pain in his left knee. Appellant reported that he had not sustained an "all-at-once injury," but rather had repetitive damage from 24 years as a rural carrier, twisting his knee awkwardly to deliver the mail. He also reported that it was better with rest and worse with activity. Dr. Lighthart explained that osteonecrosis in the medial femoral condyle was often thought to be a complication of arthroscopic surgery, but now there was evidence of the problem developing prior to arthroscopic surgery and that it had simply been unmasked where the symptoms correlated postsurgery.

On March 8, 2016 appellant requested reconsideration of the September 4, 2015 decision and submitted an undated, unsigned duty status report (Form CA-17).

In a May 24, 2015 report, Dr. Teetz continued to diagnose knee pain and noted suspect ligamentous or meniscus pathology. He pointed out that appellant was in and out of his vehicle all day working as a mailman and reported an injury about 20 years prior where an effusion required aspiration.

In reports dated June 9 and 30, and July 30, 2015, Dr. Carrie McNeil, a Board-certified family practitioner, diagnosed diffuse left knee pain, particularly worsened with lateral movement or stress, and calf swelling. She opined that appellant's injury occurred over a period of years due to repetitive movements in the left knee. Appellant believed his left knee pain was related to trying to operate left-sided gas and brake pedals of his vehicle while sitting on the right side of the vehicle "because it is the most efficient way to deliver the mail."

In reports dated March 1 through April 22, 2016, Patrick McDermott, a certified physician assistant, diagnosed other meniscus derangements and posterior horn of medial meniscus, and released appellant to work effective March 28, 2016.

On February 24, 2016 Dr. Kirkpatrick indicated that appellant had been under his care for his left knee since June 2, 2015 and opined that the ergonomics of the position, the rotation and twisting and turning of his leg extended utilizing the left leg for gas and brake was a probable cause of meniscal tear in his left knee and injury. He further opined that the meniscal tear had led to other conditions to appellant's left knee as well that were currently being treated.

A left knee MRI scan dated March 24, 2016 revealed near complete resolution of extensive bone edema medial femoral condyle and postoperative changes medial meniscus, stable.

In a March 4, 2016 letter, counsel contended that appellant was a rural carrier who spent up to 5.5 hours per day delivering mail from his vehicle. Appellant drove his personal vehicle, which had a steering wheel, brake, and accelerator located on the left side. When he delivered the mail, appellant operated the vehicle by sitting in the center of the front seat and extending his left leg laterally to the left to operate the brake pedal and accelerator. To deliver mail in the rural boxes, he was required to reach with his right arm out the window. Counsel argued that these ergonomics resulted in the injury to his left knee. Additionally, he noted that appellant was required to get out of the vehicle multiple times daily to deliver packages. Counsel further contended that the medical evidence of record was sufficient to establish that appellant's injury was work related, caused by the constant twisting and turning of his left knee that was required to operate his vehicle while delivering the mail.

By decision dated June 6, 2016, OWCP denied modification of its prior decision.

On April 12, 2017 appellant, through counsel, requested reconsideration and submitted a December 1, 2016 narrative statement providing factual evidence in support of his claim. Appellant indicated that he had been a full-time rural carrier since August 1998 and his current mail route included about 440 mailboxes. He stated that he used his own vehicle for deliveries and he sat in the center of the vehicle with his left leg extended laterally to operate the accelerator and the brake. At the same time, when he pulled up to a mailbox, appellant extended his right arm and torso to deliver the mail outside the right side of the vehicle. He argued that the ergonomics of such delivery had caused strain to his left knee. Additionally, appellant noted that he had to get in and out of the vehicle approximately 40 to 50 times per day to deliver oversized packages to residences and he argued that this further caused left knee strain. He indicated that he performed rural mail delivery in this manner since 1998, five days per week for 5.5 hours per day. Appellant noted that he had previously suffered from left knee pain and injury in approximately 1995, but

those symptoms had resolved after undergoing surgery and he did not begin to experience pain in that knee again until January 2015.

Appellant also submitted two reports dated December 27, 2016 and January 24, 2017 from Mr. McDermott.

By decision dated October 19, 2017, OWCP modified its prior decision and found that the factual evidence of record established that the alleged employment factors occurred as described, but the claim remained denied because the medical evidence of record failed to establish causal relationship between appellant's diagnosed conditions and the accepted factors of his federal employment.

On October 23, 2017 appellant, through counsel, requested reconsideration and submitted a February 14, 2017 report from Dr. Kirkpatrick who opined that appellant's MRI scan initially had demonstrated a medial meniscal tear which was treated with surgery and he "did return to work, but ultimately likely related to his meniscal tear, as well as additional work activities, he developed bone marrow edema, possible avascular necrosis within his medial femoral condyle." Dr. Kirkpatrick found that this resolved with an extended period of nonweight bearing, but the return of his symptomatology due to the left knee medial meniscal tear was caused by his work duties which required stretching across his car and putting a fair amount of pressure on the medial aspect of his knee. He also noted that appellant's knee treatment 20 years ago did not appear to have anything to do with his current status, as his medial meniscus was normal, except for the tear witnessed at the time of surgery and the chondral damage noted to be in confluence with the meniscal tear. Dr. Kirkpatrick concluded that appellant's "avascular necrosis and developing arthritis is a direct causal relationship to this as well."

By decision dated January 18, 2018, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[4] 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.[5] 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.[6]

[3] *Id.*

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

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

[6] *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).

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.[7]

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.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left leg condition causally related to the accepted factors of his federal employment.

In his February 5, 2016 report, Dr. Lighthart opined that appellant sustained an injury by "twisting his knee awkwardly to deliver the mail." However, such generalized statements do not establish causal relationship because it merely repeats appellant's allegations and are unsupported by adequate medical rationale explaining how his physical activity actually caused the diagnosed condition.[9] The Board thus finds that Dr. Lighthart's opinion regarding the cause of appellant's left knee condition is speculative and equivocal in nature[10] and is insufficient to satisfy appellant's burden of proof with respect to causal relationship.[11]

In reports dated October 7, November 18, and December 2, 2015, as well as January 19, 2016, Dr. Kirkpatrick indicated by checking a box marked "yes" that appellant's description of the incident "was the competent medical cause of this injury/illness," and that his complaints and objective findings were consistent with the injury. The Board notes, that the doctor did not include a history of the claimed injury, which diminishes the probative value of his report.[12] Similarly, an

[7] *See D.R.*, Docket No. 09-1723 (issued May 20, 2010). *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).

[8] *See J.R.*, Docket No. 17-1781 (issued January 16, 2018); *I.J.*, 59 ECAB 408 (2008).

[9] *See K.W.*, 59 ECAB 271, 279 (2007).

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

[11] *See supra* notes 3 to 5.

[12] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value); *see also G.T.*, Docket No. 17-1959 (issued June 22, 2018).

affirmative checkmark indicating causal relationship, without more my way of medical rationale, is also of diminished probative value and, thus, insufficient to establish causal relationship.[13]

Dr. Kirkpatrick, in his reports dated February 24, 2016 and February 14, 2017, opined that the ergonomics of appellant's position, the rotation and twist and turn of his leg extended utilizing the left leg for gas and braking was a probable cause of meniscal tear in his left knee and injury. He further opined that appellant's left knee meniscal tear led to other conditions and he likely developed bone marrow edema and possible avascular necrosis related to his meniscal tear and as a result of his work activities. Dr. Kirkpatrick concluded that appellant's left knee medial meniscal tear, as well as the avascular necrosis and developing arthritis, was directly caused by his work duties which required stretching across his car and putting a fair amount of pressure on the medial aspect of his knee.

The Board finds that Dr. Kirkpatrick's opinion regarding the cause of appellant's left leg conditions is speculative and equivocal in nature.[14] Dr. Kirkpatrick did not otherwise sufficiently explain the reasons why diagnostic testing and examination findings led him to conclude that appellant's driving a vehicle with his left leg and/or getting in and out of the vehicle to deliver mail caused or contributed to the diagnosed conditions. The fact that a condition manifests itself during a period of employment is not sufficient to establish causal relationship.[15] Temporal relationship alone will not suffice.[16] A physician's opinion must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[17] For these reasons, Dr. Kirkpatrick's report is also insufficient to satisfy appellant's burden of proof with respect to causal relationship.[18]

In his several reports, Dr. McNeil opined that appellant's left knee condition occurred over a period of years due to repetitive movements. However, his reports did not contain rationalized medical evidence, based on a complete factual and medical background, supporting causal relationship between the claimed knee condition and the accepted factors of his federal employment.[19] As such, these reports are insufficient to establish appellant's claim.

[13] *See J.A.*, Docket No. 17-1936 (issued August 13, 2018).

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

[15] 20 C.F.R. § 10.115(e).

[16] *See D.I.*, 59 ECAB 158, 162 (2007).

[17] *Victor J. Woodhams*, *supra* note 7.

[18] *See supra* notes 3 to 5.

[19] *See G.T.*, Docket No. 18-1369 (issued March 13, 2019); *S.J.*, Docket No. 17-0828 (issued December 20, 2017).

The diagnostic reports lack probative value as diagnostic reports fail to provide an opinion on causal relationship between appellant's employment factors and his claimed condition. For this reason, this evidence is insufficient to meet appellant's burden of proof.[20]

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

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 a left leg condition causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2019
Washington, DC

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

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

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

[20] *See M.S.*, Docket No. 18-1280 (issued March 12, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).