

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

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A.G., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Raleigh, NC, Employer )  
\_\_\_\_\_ )

**Docket No. 19-0153  
Issued: May 13, 2019**

*Appearances:*

*Capp P. Taylor, Esq., for the appellant<sup>1</sup>  
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  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On October 25, 2018 appellant, through counsel, filed a timely appeal from a May 2, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

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

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On January 19, 2016 appellant, then a 62-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he developed osteoarthritis in his left knee and bursitis in his right hip as a result of standing eight hours per day, pushing, pulling, bending, and climbing, while in the performance of duty. He indicated that he first became aware of his claimed condition in 2004 and first realized it was caused or aggravated by his federal employment in June 2013.

In a development letter dated February 5, 2016, OWCP informed appellant that the factual and medical evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By decision dated April 13, 2016, OWCP found that the noted employment factors occurred as alleged, but denied appellant's occupational disease claim, finding that the medical evidence submitted was insufficient to establish a diagnosed medical condition in connection with the accepted employment factors.

Appellant, through counsel, requested reconsideration on April 12, 2017. Along with his request, he submitted a report dated March 16, 2017 from Dr. Derek L. Reinke, a Board-certified orthopedic surgeon. Dr. Reinke indicated that appellant first presented with left knee pain and diagnosed medial compartment arthritis of the left knee in 2006 which resulted in a high tibial osteotomy which was fully successful. He noted an x-ray examination performed on November 20, 2012 demonstrated advanced medial compartment arthritis bilaterally, which was confirmed with clinical examination and magnetic resonance imaging (MRI) scan. Dr. Reinke opined that appellant probably had varus alignment congenitally, which possibly made him more susceptible to developing osteoarthritic knees. He further noted that appellant's performance of his job at the employing establishment required him to stand, walk, and frequently bend and stoop and over many years had contributed to the bilateral osteoarthritis. Dr. Reinke explained that appellant's work activity "would provide" repetitive cartilage stress that, coupled with the factor of aging, "more likely than not contributed to the worsening of his arthritis."

By decision dated May 23, 2017, OWCP modified its April 13, 2016 decision, finding that the medical evidence provided a diagnosed condition, but the claim remained denied because the medical evidence of record was insufficient to establish causal relationship between the accepted factors of appellant's federal employment and his diagnosed conditions. It noted that Dr. Reinke had not explained with medical rationale how or why his work factors caused or contributed to his diagnosed conditions.

Appellant, through counsel, requested reconsideration on January 17, 2018 and submitted a report dated January 4, 2018 from Dr. Reinke. Supplementing his March 16, 2017 report, Dr. Reinke explained that appellant's job requirements -- repetitive standing, pushing, pulling, climbing, and bending eight hours per day -- contributed to his bilateral knee osteoarthritis. He explained that osteoarthritis of the knees is a repetitive stress injury which is usually the result of the type of job a person has, typically including a lot of activity that puts stress on the joint such as kneeling, squatting, or lifting. Dr. Reinke acknowledged that age is also a factor as age affects the ability of cartilage to heal and that ability decreases as a person gets older. He explained that appellant's symptoms increased regarding his complaints of pain and such a worsening of symptoms is consistent with the x-rays of both knees that demonstrated a progression of the

advance of the medial compartment arthritis bilaterally. Dr. Reinke explained that as repetitive motions wear down protective cartilage at the knee joints, causing bones to rub together, and cause pain and inflammation. He explained that these actions were the pathophysiologic process involved in appellant's osteoarthritis and the forces were sufficiently severe to have led to the need for bilateral knee replacements.

By decision dated May 2, 2018, OWCP denied appellant's claim, finding that causal relationship had not been established. It noted that Dr. Reinke opined that appellant's work factors contributed to the diagnosed conditions of bilateral osteoarthritis, but offered no definitive opinion indicating that factors of his federal employment caused or aggravated his bilateral knee osteoarthritis.

### **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,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

Causal relationship is a medical issue and the evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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.<sup>8</sup>

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

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

<sup>5</sup> *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).

<sup>6</sup> *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>7</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

<sup>8</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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.<sup>9</sup>

### 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. Reinke. In his March 16, 2017 report, Dr. Reinke opined that appellant's repetitive standing, pushing, pulling, climbing, and bending at work caused a worsening of appellant's symptoms consistent with a progression of the advance of medial compartment arthritis bilaterally. He acknowledged appellant's prior history of a knee injury in 2006 and noted that appellant had returned to full-duty employment working 8 to 10 hours per day performing repetitive tasks as a mail carrier. Dr. Reinke explained that appellant's work activity "would provide" repetitive cartilage stress that, coupled with the factor of aging, "more likely than not contributed to the worsening of his arthritis."

On January 4, 2018 Dr. Reinke provided a supplemental statement in which he addressed, to a reasonable degree of medical certainty, his opinion on whether appellant's employment duties had caused, contributed to, or aggravated appellant's diagnosed condition of osteoarthritis. He accurately reported the history of injury, appellant's prior medical history, and the accepted employment factors including repetitive standing, pushing, pulling, climbing, and bending for eight hours a day. Dr. Reinke explained that osteoarthritis of the knees is a repetitive stress injury which is usually the result of the type of job a person has, typically including a lot of activity that puts stress on the joint such as kneeling, squatting, or lifting. He acknowledged that age is also a factor as it affects the ability of cartilage to heal and that ability decreases as a person gets older. Dr. Reinke explained that as repetitive motions wear down protective cartilage at the knee joints, causing bones to rub together, and cause pain and inflammation. He explained that these actions were the pathophysiologic process involved in appellant's osteoarthritis

Accordingly, the Board finds that Dr. Reinke provided an affirmative opinion on causal relationship. The Board further finds that Dr. Reinke'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, had aggravated appellant's right knee osteoarthritis. The Board finds that Dr. Reinke's opinion, while not sufficiently rationalized to meet appellant's burden of proof, is sufficient, given the absence of any opposing medical evidence, to require further development of the record.<sup>10</sup>

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares

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<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

<sup>10</sup> 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).

responsibility in the development of the evidence.<sup>11</sup> OWCP has an obligation to see that justice is done.<sup>12</sup>

The case will be remanded to OWCP for further action consistent with this decision. On remand, after such further development of the medical record as OWCP deems necessary, it shall issue a *de novo* decision.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 2, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: May 13, 2019  
Washington, DC

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

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

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

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<sup>11</sup> *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).

<sup>12</sup> *See B.C.*, Docket No. 15-1853 (issued January 19, 2016).