

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On June 3, 2015 appellant, then a 58-year-old pipefitter, filed an occupational disease claim (Form CA-2) alleging that he developed knee osteoarthritis as a result of his federal employment duties. He reported that his injury was a result of the repetitious stress to his bilateral knees from 23 years of work servicing 430 plumbing fixtures. Appellant first became aware of his condition on March 1, 2010 and of its relationship to his federal employment on February 1, 2015. He did not stop work. OWCP initially denied the claim by decision dated September 8, 2015 as appellant had not established that his diagnosed medical condition was causally related to the accepted employment factors.

In a March 29, 2016 narrative report, Dr. Evan Crain, a Board-certified orthopedic surgeon, reported that he initially evaluated appellant on December 16, 2015 for bilateral knee pain. He reported that appellant had worked for over 23 years, initially as a plumber and later as a pipefitter. Dr. Crain noted that appellant's work required frequent squatting, kneeling, bending, and working on his knees. He reported that appellant personally serviced 430 plumbing fixtures over the course of 23 years, including toilets, sinks, and water fountains, which required that appellant be on his knees to perform the work. Dr. Crain discussed appellant's x-rays which revealed progressive deterioration of the medial compartment in both knees as a result of his employment activities over the years. He opined that, as a result of appellant's employment duties, appellant developed a meniscus tear of the right knee, which required arthroscopy, and which had caused deterioration of the medial joint space that had collapsed to bone-on-bone contact. Based on these findings, Dr. Crain concluded that there was a direct causal relationship between appellant's symptomatology and his work activities.

Following further development of the record, by decisions dated July 28, and November 17, 2016, OWCP affirmed the denial of the claim.

On January 19, 2017 appellant, through counsel, again requested reconsideration and submitted a January 9, 2017 report from Dr. Crain. In the January 9, 2017 report, Dr. Crain noted submission of his prior March 29, 2016 report which summarized his findings and reviewed appellant's work activities. He opined that appellant experienced bilateral, right greater than left, knee pain aggravated by his work activities, which he had performed over a 23-year time frame. Dr. Crain also opined that those specific work activities caused further deterioration of his knees and an increase in his symptomatology. He reported that appellant had undergone a previous right knee arthroscopy for a tear of his medial meniscus. Dr. Crain explained that the tearing of the

³ Docket No. 17-1870 (issued April 11, 2018).

meniscus caused further deterioration of the knee joint to the extent that appellant had loss of shock absorber on the medial side. He noted an exacerbation and worsening of appellant's symptoms.

Dr. Crain reviewed appellant's prior medical reports which documented prior knee pain. Appellant was evaluated by Dr. Ricardo O. Pyfrom, a Board-certified orthopedic surgeon, on November 27, 2012 due to complaints of right knee pain for several years. He had also related a history that his right knee had been struck by a car 30 years ago. Appellant had previously been diagnosed with arthritis and had worn knee braces. A prior magnetic resonance imaging (MRI) scan was suggestive of a medial meniscus tear and arthroscopic surgery was recommended. On April 3, 2013 appellant underwent surgery which revealed a large complex tear of the medial meniscus. Surgery further revealed degenerative changes of the medial femoral condyle grade 3 and medial tibial plateau grade 4, as well as a chronically torn anterior cruciate ligament and chondromalacia grade 3 of the patella. A partial medial meniscectomy and chondroplasty were performed. Dr. Crain reported that appellant returned to work approximately four weeks postsurgery. In 2014, appellant began treatment with a Dr. Joly who administered multiple injections and provided him with a knee brace. Dr. Crain reported that he initially evaluated appellant in December 2015.

Dr. Crain noted that, after review of subsequently provided medical records, there was no change in his opinion with regard to appellant's condition. Appellant's medical history reflected that, following his April 3, 2013 surgery, he did not experience a distinct injury, but rather had a progressive increase in knee pain which he attributed to his work activities. After having reviewed the nature of appellant's employment, job description, and self-reported work activities, Dr. Crain opined that appellant's employment duties aggravated an underlying degenerative condition. He reported that, if appellant were in a different job that did not require the employment activities required of him, appellant would not have experienced the symptoms necessitating his current treatment. Dr. Crain concluded that appellant developed further deterioration of his knees and an increase in symptomatology. He opined that the need for treatment was, therefore, related to appellant's work activities.

By decision dated April 25, 2017, OWCP denied modification of its November 17, 2016 decision, finding that the medical evidence of record failed to establish that appellant's diagnosed conditions were causally related to his accepted factors of his federal employment.

On September 5, 2017 appellant, through counsel, requested an appeal before the Board. By decision dated April 11, 2018, the Board affirmed OWCP's April 25, 2017 decision, finding that appellant had not met his burden of proof to establish a bilateral knee condition causally related to the accepted factors of his federal employment.⁴

On August 14, 2018 appellant, through counsel, requested reconsideration and submitted a July 25, 2018 medical report from Dr. Crain.

In his July 25, 2018 report, Dr. Crain reported that he last evaluated appellant on May 29, 2018 for a follow-up due to continued severe right medial knee pain. He reported that appellant experienced a lot of pain with prolonged standing, getting up from a seated position, and going up

⁴ *Id.*

and down stairs, noting that the pain was localized to the medial aspect of the knee. Physical examination revealed varus alignment because appellant was bone-on-bone, pain with varus compression of the medial compartment, and trace swelling. Dr. Crain noted review of x-rays which showed that appellant's right knee was completely bone-on-bone. He further noted that there was cupping and spur formation on the patella and the left knee showed minor narrowing. Dr. Crain recommended right total knee replacement. He opined that, based on appellant's employment duties, he sustained a tear of the medial meniscus that led to the deterioration of the medial compartment. Dr. Crain explained that the medial meniscus was an important shock absorber to the medial aspect of the knee. He opined that, due to this repetitive positional requirement, appellant sustained a medial meniscus tear during the scope of his employment in which he performed this specific mechanism of activity for many years. Dr. Crain noted that, once the medial meniscus tore, appellant lost the shock absorber in the medial compartment of the knee and this caused deterioration and further deterioration of the medial compartment of the knee to the extent that appellant was now bone-on-bone. Dr. Crain reported that this mechanism was clearly supported in orthopedic practice as a common mechanism of developing post-traumatic arthritis of the knee. He explained that kneeling, squatting, bending, stooping, and twisting increase pressure on the meniscus and when done repetitively or with one single event, a tear can occur. Based on the tear and the lack of shock absorption, Dr. Crain opined that appellant's knee progressed to bone-on-bone contact. He concluded that, as a result of appellant's job activities, the progression of appellant's knee condition occurred, causing him to become symptomatic, and require treatment including knee replacement surgery.

By decision dated November 9, 2018, OWCP denied modification of its prior decision, finding that the evidence of record was insufficient to establish causal relationship between the accepted employment factors and the diagnosed right knee conditions.

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 a claim for occupational disease, 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

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).

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 evidence.⁹ The opinion of the physician must be based on a complete factual and medical background, 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 appellant.¹⁰

ANALYSIS

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

Preliminarily, the Board notes that it is unnecessary for it to consider the evidence appellant submitted prior to the issuance of OWCP's April 25, 2017 decision because the Board considered that evidence in its April 11, 2018 decision and found it insufficient to establish causal relationship. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹¹

In further support of his claim, appellant submitted a July 25, 2018 medical report from Dr. Crain discussing his right knee condition. The Board finds that the opinion of Dr. Crain is not well rationalized and fails to establish appellant's occupational disease claim.¹² In his July 25, 2018 report, Dr. Crain opined that, based on appellant's employment duties, he sustained a tear of the medial meniscus that led to the deterioration of the medial compartment. He noted that, once the medial meniscus tore, appellant lost the shock absorber in the medial compartment of the knee and this caused deterioration and further deterioration of the medial compartment of the knee to the extent that he was now bone-on-bone. The Board notes that Dr. Crain's July 25, 2018 medical report is largely duplicative of the opinions expressed in his prior reports.¹³ While Dr. Crain provided some additional discussion pertaining to mechanism of injury, he failed to clearly describe the specific physiological mechanism through which specific work activities could have caused or aggravated appellant's diagnosed medical condition. He explained that kneeling, squatting, bending, stooping, and twisting increased pressure on the meniscus and when done repetitively or with one single event, a tear could occur. Dr. Crain opined that, due to this repetitive

⁸ See *M.W.*, Docket No. 18-1555 (issued March 20, 2019); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁹ *B.K.*, Docket No. 19-0829 (issued September 25, 2019).

¹⁰ *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

¹¹ See *L.E.*, Docket No. 18-1138 (issued February 1, 2019); *B.R.*, Docket No. 17-0294 (issued May 11, 2018).

¹² *S.F.*, Docket No. 18-1030 (issued April 5, 2019).

¹³ *S.S.*, Docket No. 17-1106 (issued June 5, 2018).

positional requirement, appellant sustained a medial meniscus tear during the scope of his employment as he performed this specific mechanism of activity for many years. The Board finds his explanation to be generalized and of limited probative value on the issue of causal relationship.¹⁴ Dr. Crain failed to adequately describe appellant's employment duties, during any specific time period, but instead referred to appellant's employment as a whole. His generalized explanation pertaining to the mechanism of injury addresses a meniscus tear occurring from one single event, as well as from repetitive movements. Therefore, it is unclear whether appellant's right meniscus tear was the result of his repetitive employment duties, rather than caused by a single traumatic occurrence.

Moreover, the record reflects that appellant had a preexisting right knee condition from a motor vehicle accident, as well as a degenerative osteoarthritic condition. However, Dr. Crain failed to discuss whether appellant's preexisting conditions had progressed beyond what might be expected from the natural progression of that condition.¹⁵ A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.¹⁶ The Board finds that Dr. Crain's July 25, 2018 report is insufficient to establish appellant's claim.¹⁷

The Board finds that the record lacks rationalized medical evidence establishing causal relationship between the accepted employment factors and appellant's diagnosed right knee condition.¹⁸ Thus, appellant has not met his burden of proof.¹⁹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of the Board's 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 right knee condition causally related to the accepted factors of his federal employment.

¹⁴ *D.M.*, Docket No. 19-0389 (issued July 16, 2019).

¹⁵ *C.E.*, Docket No. 19-0192 (issued July 16, 2019); *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

¹⁶ *E.B.*, Docket No. 17-1497 (issued March 19, 2019).

¹⁷ *See C.D.*, Docket No. 19-0611 (issued August 9, 2019).

¹⁸ *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

¹⁹ *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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