

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

C.K., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
LOUIS STOKES VETERANS)
ADMINISTRATION MEDICAL CENTER,)
Cleveland, OH, Employer)

**Docket No. 18-1286
Issued: April 20, 2020**

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On June 12, 2018 appellant, through counsel, filed a timely appeal from an April 17, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 her burden of proof to establish an injury causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

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

On November 10, 2014 appellant then a part-time 53-year-old podiatrist, filed an occupational disease claim (Form CA-2) alleging that her employment duties aggravated her preexisting, nonwork-related right knee replacement. She worked three 8-hour days weekly, and did not stop work.⁴

Appellant had submitted medical evidence including reports dated May 2, 2014 to February 3, 2016 from Dr. Raymond Horwood, a Board-certified orthopedic surgeon, who noted a history of right knee osteoarthritis and that he had performed the right knee replacement in December 2013. Dr. Horwood described her right knee condition and course of treatment. In reports dated September 26, 2014 to January 15, 2015 and, in an undated report received by OWCP on March 11, 2016, Dr. Bernard N. Stulberg, also a Board-certified orthopedist, described appellant's right knee condition and course of treatment, including that, due to increased symptoms, he performed revised her right knee arthroplasty on May 1, 2014.

By decision dated June 8, 2016, OWCP denied modification of a December 8, 2015 decision that denied appellant's claim.

On August 9, 2016 appellant, through counsel, filed a timely appeal with the Board.

By decision dated February 14, 2017, the Board affirmed the June 8, 2016 OWCP decision with modification, finding that the evidence was undisputed that appellant's employment duties included repetitively sitting, standing, and ambulating. However, the Board found no medical evidence of record which established that appellant's accepted employment duties caused or aggravated her claimed condition.

Following the Board's February 14, 2017 decision on February 12, 2018 appellant, through counsel, requested reconsideration with OWCP. She submitted evidence previously of record and a January 31, 2018 report from Dr. Stulberg in which he described Dr. Horwood's treatment and conclusions, including that Dr. Horwood had performed a total knee replacement in December 2013. Dr. Stulberg noted that he first treated appellant on September 26, 2014 and that,

³ Docket No. 16-1623 (issued February 14, 2017).

⁴ An e-mail from Dr. Barbara A. Yeager, podiatry manager, dated December 4, 2014, described appellant's job duties. On the claim form S.P., the facility director, indicated that appellant had been offered, but refused, reasonable accommodation. In correspondence dated December 4, 2014, the employing establishment controverted the claim. A.G., an injury compensation specialist, wrote that appellant also worked two days a week at a private clinic.

when he saw her on March 23, 2015, she had increasing symptoms of instability, which he opined, were related to the type of work she was doing. He described examination findings of increased instability and recommended revision of appellant's right knee arthroplasty. Dr. Stulberg indicated that he performed the revision procedure in late "April 2015,"⁵ after which she had near immediate relief of her symptoms. He opined that, after reviewing appellant's medical records, with a reasonable degree of medical certainty, the routine physical activities required in her job, which included increased flexion, standing, and climbing activities, all directly led to the increased instability in the knee joint replacement, and that this increased instability led to greater stress on the posterior cruciate ligament, which caused the need for a revision arthroplasty.

By decision dated April 17, 2018, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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, 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.⁷ 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.⁸

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.⁹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ 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.¹¹

⁵ The revision occurred in May 2014.

⁶ *Supra* note 2.

⁷ *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *Id.*

⁹ *L.C.*, Docket No. 19-1301 (issued January 29, 2020).

¹⁰ *D.L.*, Docket No. 19-1053 (issued January 8, 2020).

¹¹ *R.G.*, *supra* note 7.

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 appellant has not met her burden of proof to establish an injury causally related to the accepted factors of her federal employment.

Although appellant's duties as a podiatrist included repetitively sitting, standing, and ambulating on a part-time basis, the Board finds that there is no rationalized medical evidence that establishes that her work duties caused or aggravated her claimed condition. The record supports that appellant had preexisting right knee osteoarthritis.

With her February 12, 2018 reconsideration request, appellant submitted a January 31, 2018 report in which Dr. Stulberg described appellant's right knee condition and treatment. Dr. Stulberg opined that, after reviewing appellant's medical records including the total knee replacement by Dr. Horwood in December 2013, with a reasonable degree of medical certainty the routine physical activities required in her job, which included increased flexion, standing, and climbing activities, all directly led to the increased instability in the knee joint replacement and that this increased instability led to greater stress on the posterior cruciate ligament, which caused the need for a revision arthroplasty. He, however, did not provide sufficient medical rationale explaining how her job duties of repetitively sitting, standing, and ambulating on a part-time basis caused or aggravated her right knee condition.¹³ Dr. Stulberg did not discuss any specific employment duties, but merely referenced "routine physical activities" of increased flexion, standing, and climbing. He did not provide a pathophysiological explanation as to how the accepted factors of employment either caused or contributed to appellant's diagnosed right knee condition.¹⁴ The Board has held that rationalized medical opinion evidence must explain the nature of the relationship between the diagnosed condition and the specific employment factors.¹⁵ The Board notes that this is particularly important in light of appellant's preexisting right knee osteoarthritis.¹⁶ Dr. Stulberg's reports are therefore insufficient to establish causal relationship.¹⁷

¹² *P.L.*, Docket No. 19-1750 (issued March 26, 2020); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); see *Charles W. Downey*, 54 ECAB 421 (2003).

¹³ See *L.J.*, Docket No. 19-1343 (issued February 26, 2020).

¹⁴ *P.L.*, *supra* note 12.

¹⁵ See *D.M.*, Docket No. 18-0844 (issued December 19, 2019).

¹⁶ *L.J.*, *supra* note 13.

¹⁷ *P.L.*, *supra* note 12.

As appellant has not submitted rationalized medical evidence sufficient to establish causal relationship, the Board finds that she has not met her burden of proof.¹⁸

On appeal counsel argues that the April 17, 2018 decision was “simply wrong” because Dr. Stulberg explained causation. For the reasons set forth above, the medical evidence of record is insufficient to meet appellant’s burden of proof.

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 her burden of proof to establish an injury causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2018 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: April 20, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees’ Compensation Appeals Board

Christopher J. Godfrey, Deputy Chief Judge
Employees’ Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees’ Compensation Appeals Board

¹⁸ *Id.*