

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

C.R., Appellant)	
)	
and)	Docket No. 20-0366
)	Issued: December 11, 2020
U.S. POSTAL SERVICE, SPRINGFIELD)	
NETWORK DISTRIBUTION CENTER,)	
Springfield, MA, Employer)	
)	

Appearances:
John L. DeGeneres, Jr., Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On December 5, 2019 appellant, through counsel, filed a timely appeal from an October 3, 2019 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.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 Counsel timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). Given the disposition of the issue on appeal, the request for oral argument is denied.

ISSUE

The issue is whether appellant has met her burden of proof to establish a left knee condition causally related to the accepted August 29, 2016 employment incident.

FACTUAL HISTORY

On August 30, 2016 appellant, then a 59-year-old general expeditor, filed a traumatic injury claim (Form CA-1) alleging that on August 29, 2016 she injured her left knee when lifting a dock door while in the performance of duty. She stopped work that same day.

Appellant was initially treated in the hospital emergency department on August 29, 2016. Hospital discharge instructions indicated that she was seen by Dr. Robert A. Spence, Board-certified in emergency medicine, for knee pain and a possible meniscus injury.

In a September 15, 2016 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a factual questionnaire for her completion. OWCP afforded appellant 30 days to provide the necessary evidence.

In an August 29, 2016 medical report, Dr. Spence noted that appellant had arrived by ambulance on that day with complaint of left knee pain. Appellant indicated that she felt a pop in her left knee when lifting a heavy door at work. Physical examination revealed lateral tenderness and pain with pivot shift tests. Dr. Spence indicated that the x-rays demonstrated degenerative joint disease. He diagnosed left knee pain and a possible meniscus tear. In a medical note of even date, Dr. Spence detailed appellant's medication history.

An August 29, 2016 left knee x-ray report revealed degenerative change and effusion, but no evidence for fracture.

In a September 14, 2016 medical report, Dr. Martin Luber, a Board-certified orthopedic surgeon, noted that on August 29, 2016 appellant was lifting a heavy door at work by pushing the door from below, while using her legs to be the primary power generator, when she felt a pop and acute onset of left knee pain. He indicated that she immediately developed a burning sensation and a large intra-articular effusion. Dr. Luber noted that appellant was out of work since that injury and relying on anti-inflammatories and crutches for ambulation. On physical examination he noted valgus malalignment on both knees, coarse retropatellar crepitation on the left, moderate lateral joint line pain on the left, and coarse right patella crepitation on the right. Dr. Luber indicated that the radiographic studies showed endstage bicompartamental osteoarthopathy bilaterally, finding that the total femoral joint was worse in the left knee. He diagnosed an acute onset of left knee pain and an exacerbation of the underlying osteoarthopathy. Dr. Luber recommended a course of conservative care and noted that it was unlikely that arthroscopic surgery for meniscus pathology was warranted based on the degree of appellant's osteoarthopathy. In a prescription slip of even date, he diagnosed left knee osteoarthritis. In a work restriction note of even date, Dr. Luber advised that appellant remain off work until a follow-up appointment in four weeks.

Appellant also submitted a continuation of pay nurse report dated September 15, 2016, indicating that she remained off work due to a left knee injury.

OWCP received physical therapy notes dated September 20 through October 7, 2016.

In an October 12, 2016 work restrictions note, Michael Cavanagh, a certified physician assistant, advised that appellant remain off work until her next follow-up appointment.

By decision dated October 25, 2016, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that her diagnosed medical condition was causally related to the accepted August 29, 2016 employment incident.

In an October 12, 2016 medical report, Mr. Cavanagh noted that appellant had well-documented endstage osteoarthritis and underwent injections in both knees in late September 2016. He diagnosed symptomatic lateral compartment osteoarthritis of bilateral knees. In a duty status report (Form CA-17) of even date, an unidentifiable healthcare provider held appellant off work until her follow-up appointment on November 9, 2016.

On October 28, 2016 appellant filed a claim for compensation (Form CA-7) for disability from work for the period October 14 through 28, 2016.

In a November 9, 2016 medical report, Mr. Cavanagh noted that appellant's symptoms continued. He indicated that appellant developed intermittent wear and tear on her left knee over her 40 years of employment. Mr. Cavanagh diagnosed advanced left knee osteoarthritis and post-traumatic exacerbation of the preexisting condition.

In a November 18, 2016 work restrictions note, Mr. Cavanagh provided restrictions, including no prolonged standing, sitting, or walking.

On November 23, 2016 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

In a December 22, 2016 medical report, Mr. Cavanagh observed that appellant had exquisite lateral joint line tenderness and mild pain in her left knee. He diagnosed post-traumatic exacerbation of the left knee lateral compartment arthritis.

By decision dated May 1, 2017, an OWCP hearing representative affirmed the October 25, 2016 decision.

On April 27, 2018 appellant, through counsel, requested reconsideration.

Appellant resubmitted Mr. Cavanagh's reports dated October 12 through December 22, 2016, countersigned by Dr. Luber.

In a January 15, 2017 narrative report, Dr. Justin W. Kung, a Board-certified radiologist, reviewed appellant's September 14, 2016 bilateral knee x-rays. He found that, overall, the x-rays revealed severe degenerative changes in the lateral component of both knees.

In an August 2, 2017 medical report, Dr. Jeffrey L. Katzell, an orthopedic surgery specialist, indicated that appellant retired from the employing establishment in 2017, after 41 years of service. He noted that the continuous performance of her work duties, including bending, twisting, squatting, and stooping for each delivery, over 2,400 full calendar days, produced extensive wear and tear on both knees. Dr. Katzell indicated that appellant currently used a cane and still had significant pain while walking on flat surfaces, walking up and down stairs, and walking on uneven surfaces. On physical examination he noted bilateral lateral patella maltracking, palpable crepitation when grinding with motion, tenderness, and peripheral varicosities. Dr. Katzell diagnosed bilateral knee degenerative arthritis and permanent aggravation of the preexisting left knee degenerative arthritis secondary to the accepted August 29, 2016 employment incident. He explained that arthritis was a loss of articular cartilage surface which was impact loading resulting from repeated local stresses that caused and accelerated the progression of arthritis through a process of chronic inflammation. Dr. Katzell found that for an employee like appellant, who could not engage in lifestyle modification because her job required her to do such activities every day, the progression of arthritis was accelerated.

Dr. Katzell opined that the accepted August 29, 2016 employment incident caused an exacerbation/acceleration of appellant's preexisting left knee arthritis. He noted that appellant developed marked swelling in her left knee with pain as a result of the accepted August 29, 2016 employment incident when she injured her left knee while lifting a heavy door. Dr. Katzell explained that the fact that she heard a pop in her left knee on August 29, 2016 while lifting the heavy door signified an acute and traumatic instance of severe impact loading onto the surface of the articular cartilage of the joint. He further opined that such acute events were direct causes of articular surface damage, which, by definition, would be an aggravation of the preexisting arthritis. Dr. Katzell further explained that "pushing the door from below while using her legs to be the primary generator power" was a classic description of an excessive impact loading movement that would and did cause further degradation of the articular surface of the weight-bearing joints of the lower extremity. He concluded that both appellant's work activities over a period of time and the accepted August 29, 2016 employment incident contributed to her present arthritic condition. Dr. Katzell indicated that appellant had 50 percent bilateral knee impairment and that the loss of cartilage in both knee joints was irreversible.

By decision dated July 18, 2018, OWCP denied modification of the May 1, 2017 decision.

On July 11, 2019 appellant, through counsel, requested reconsideration and attached a July 10, 2019 narrative report from Dr. Katzell. In an accompanying brief in support of appellant's claim, counsel argued that Dr. Katzell's July 10, 2019 report would show that, in addition to the previously diagnosed aggravation of the preexisting condition, appellant also sustained a lateral meniscus tear from the accepted August 29, 2016 employment incident.

In his July 10, 2019 supplemental medical report, Dr. Katzell indicated that he reviewed appellant's factual and medical history, including Dr. Lubber's medical reports dated from September 14 through December 22, 2016, to provide an opinion within a reasonable degree of medical certainty. He noted that he agreed with Dr. Lubber's assessment that appellant suffered from a work-related exacerbation of her underlying left knee arthritis. Dr. Katzell opined that appellant's description of the mechanism of injury, including pushing a steel door upward while using her legs as a power generator, would result in a torn meniscus, which was caused by

significant downward pressure on the knee joint while engaged in a one-time forceful activity. He indicated that the immediate “popping” sensation with immediate onset of pain was also a classic symptom of a torn meniscus. Dr. Katzell explained that the fact that more than two weeks of ice, anti-inflammatories, and crutch assisted ambulation did not result in any significant improvement confirmed that there was additional pathology contributing to the medical condition of appellant’s left knee. He opined that the “likelihood that the pathology was a torn lateral meniscus” was very strong. Dr. Katzell also noted that a meniscus tear was immediately suspected as a possible diagnosis after appellant was taken to the emergency room on August 29, 2016. He concluded that Dr. Luber’s findings in his December 22, 2016 report of appellant’s exquisite lateral joint line tenderness further confirmed the diagnosis of a meniscus tear.

Appellant also submitted a July 1, 2019 statement in support of reconsideration in which she reiterated her history of injury while working on August 29, 2016. She explained that, when she bent down to lift a steel dock door to an elevated position, she grabbed the handle of the door and used her legs to lift the door. When she did this, appellant felt a pop and then immediate pain in her left knee, and she could not put a weight on it. She noted that she was immediately taken to the emergency room by ambulance and was told that she had a possible meniscus tear in her left knee.

By decision dated October 3, 2019, OWCP denied modification of the July 18, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including 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 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 determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the

⁴ *Id.*

⁵ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

time, place, and in the manner alleged. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ 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 specific employment factors identified by the employee.¹⁰

In a case in which 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.¹¹

ANALYSIS

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

In support of her claim, appellant submitted August 2, 2017 and July 10, 2019 reports from Dr. Katzell addressing causal relationship. In both reports, Dr. Katzell provided a comprehensive factual and medical history of her medical conditions and found that the accepted August 29, 2016 employment incident aggravated her preexisting left knee arthritis. In the August 2, 2017 report, he explained that pushing the door from below while using her legs to as the primary power generator was a classic description of an excessive impact loading movement that would and did cause further degradation of the articular surface of the weight bearing joints of the lower extremity. Dr. Katzell opined that such acute events were direct causes of articular surface damage, which, by definition, would be an aggravation of a preexisting arthritis. Furthermore, in his July 10, 2019 report, he opined that the accepted August 29, 2016 employment incident also caused a meniscus tear. Dr. Katzell explained that the fact that more than two weeks of ice, anti-inflammatories, and crutch assisted ambulation did not result in any significant improvement confirmed that there was additional pathology contributing to the medical condition of appellant's left knee. He opined that the "likelihood that the pathology was a torn lateral meniscus" was very strong. Dr. Katzell also noted that a meniscus tear was immediately suspected as a possible diagnosis when appellant was immediately taken to the emergency room on August 29, 2016. He

⁸ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

concluded that Dr. Luber's findings in his December 22, 2016 report of appellant's exquisite tenderness and explained that the report further confirmed the diagnosis of a lateral meniscus tear.

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 responsibility in the development of the evidence.¹² It has an obligation to see that justice is done.¹³

Accordingly, the Board finds that, while Dr. Katzell's August 2, 2017 and July 10, 2019 reports are not fully rationalized, they are sufficient to require further development as his opinion demonstrates knowledge of appellant's preexisting left knee condition and explains the physiological process by which the accepted August 29, 2016 employment incident could have aggravated appellant's preexisting left knee arthritis and caused a possible meniscus tear. Dr. Katzell also noted physical findings upon examination and treatment consistent with his noted mechanism of injury and provided an opinion citing to the facts of the case. Thus, the Board finds that Dr. Katzell's opinion is sufficient to require further development of the record by OWCP.¹⁴

On remand OWCP shall refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts. The referral physician shall be instructed to provide a well-rationalized opinion as to whether appellant's diagnosed left knee conditions are causally related to the accepted employment duties, including the incident on August 29, 2016 incident. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why their opinion differs from that articulated by Dr. Katzell. After such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

¹² *T.L.*, Docket No. 19-1572 (issued March 12, 2020); *see C.C.*, Docket No. 18-1453 (issued January 28, 2020); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹³ *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *see B.C.*, Docket No. 15-1853 (issued January 19, 2016).

¹⁴ *J.J.*, Docket No. 19-0789 (issued November 22, 2019); *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*, *supra* note 8; *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the October 3, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 11, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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