United States Department of Labor
Employees' Compensation Appeals Board

K.J., Appellant	)	
and	)	**Docket No. 19-0886**
	)	**Issued: February 5, 2020**
U.S. POSTAL SERVICE, POST OFFICE, City of Industry, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 19, 2019 appellant filed a timely appeal from a February 5, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

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.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the February 5, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On November 25, 2015 appellant, then a 64-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he injured his right knee due to factors of his federal employment, which required continuous walking, standing, pushing, pulling, and kneeling. He indicated that he first became aware of his condition and first realized that it was caused or aggravated by his employment duties on September 23, 2015. Appellant did not stop work.

In a narrative statement dated September 23, 2015, appellant asserted that he was injured due to moving heavy over-the-road containers (OTRs), all-purpose containers (APCs), wire containers, driving on an uneven workroom floor, getting on and off a powered industrial truck (PIT) continuously, bending at the knees, and twisting and turning trying to move heavy equipment over the years.

In a development letter dated January 15, 2016, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for completion. Appellant was afforded 30 days to submit the necessary evidence.

In response, appellant submitted a January 25, 2016 statement indicating that he had not been involved in any outside activities or physical sports outside of his job.

A magnetic resonance imaging scan of the right knee dated November 4, 2015 demonstrated derangement at the lateral meniscus and a tear of the anterior cruciate ligament (ACL) with posterior buckling of the posterior cruciate ligament (PCL) and partial tear.

In November 4, 2015 report, Dr. Hosea Brown, III, a Board-certified internist, related that appellant was seen for an evaluation of occupational injuries to his right knee reported on September 23, 2015 while federally employed as a mail handler. He indicated that appellant's federal duties included driving a PIT (Mule) and was responsible for dispatching mail to all areas in the building by pulling/pushing heavy containers, wire cages, APCs, and OTRs. Dr. Brown further explained that appellant had to connect the APC to his mule which required him to maneuver the APC close enough to the mule and the stoop down to connect the pieces of equipment. These containers varied from hampers weighing from 100 to 300 pounds, to APCs weighing from 250 to 600 pounds, and OTRs weighing from 550 to 1,000 pounds. The APCs could contain both sacks and tubs, therefore, appellant had to sort the sacks and tubs by lifting them out of the APC and placing them in a separate APC. Additionally, if the APCs were overloaded, then he had to remove the tubs and place them in another APC. Appellant reported that his right knee injury was caused by pushing and pulling all the wire cages, APCs, and OTRs on a daily basis over the course of his 26-year career as a mail handler.

Dr. Brown related that appellant initially noticed that his right knee collapsed inward and saw his physician in 2013 due to his increasing pain and discomfort. He was given home exercises and received cortisone injections twice a year. Dr. Brown continued to experience constant popping in his right knee and complained of continuous aching pain on a daily basis. Prolonged standing and pushing and pulling aggravated his symptoms. Dr. Brown noted that appellant had a past medical history that included a right knee meniscus repair approximately 20 years prior. Upon

physical examination he found evidence of decreased range of motion and significant pain and discomfort in the right knee. Plain x-ray of the right knee revealed evidence of severe tri-compartmental degenerative joint disease and complete obliteration of the medial joint space with severe sclerosis and degenerative changes. Dr. Brown diagnosed severe degenerative joint disease, ACL tear, partial PCL tear, and bursitis of the right knee and opined that these conditions were causally related to appellant's employment duties. He asserted that appellant saw his private physician 20 years ago due to complaints of right knee discomfort and was told at that time that he had a right medial meniscal tear, but he chose not to file a claim although he felt that his condition was due to the performance of his work-related duties.

On February 8, 2016 OWCP referred appellant to Dr. Steven Ma, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of his employment-related conditions.

In a letter dated February 24, 2016, Dr. Brown contested the selection of Dr. Ma arguing he had a pattern of unfairly evaluating patients with regard to work-related injuries.

In a second opinion report dated March 16, 2016, Dr. Ma evaluated the medical evidence of record and provided the results of his physical examination. He found that appellant had a normal heel to toe gait and he was able to toe and heel walk normally. Appellant was able to go down to a semi-squatting position and had a valgus alignment of his right knee. Examination of the right knee revealed healed arthroscopic right knee scars. There was no effusion or ecchymosis present. However, there was prominence and crepitation of the right knee. There was no tenderness on compression of the patellofemoral joint bilaterally. There was a negative apprehension sign about both patellas. Appellant had no point tenderness anywhere about either knee. There was no medial or lateral joint line tenderness. Appellant pointed to the anterior aspect of his right knee as the location of his symptoms. He had limited flexion in the right knee. Appellant's left knee went from full extension to 130 degrees of flexion. Lachman's testing, AP drawer, pivot shift, and McMurray's testing were all negative. Vargus/valgus stressing the knee in extension and in 30 degrees flexion elicited no instability. There was no ligamentous laxity about either knee. Sensory examination was intact to light touch and pinprick throughout both lower extremities. Dr. Ma diagnosed degenerative arthritis of the right knee status post 1992 meniscectomy. He explained that it was very common for a patient who has had a previous meniscectomy to develop advanced arthritis about the knee, which is what appellant currently suffered. Dr. Ma opined that appellant's osteoarthritis of the right knee was not medically connected to appellant's employment either by direct cause or aggravation, but it was connected to his age and the surgery he underwent 20 years prior to the same knee. He determined that appellant had reached maximum medical improvement (MMI) and released him back to full duty.

By decision dated April 8, 2016, OWCP found that appellant had established fact of injury, but the medical evidence of record was insufficient to establish causal relationship between the diagnosed condition and the accepted factors of his federal employment.

On June 7, 2016 appellant requested reconsideration.

In support of his reconsideration request, appellant submitted an April 27, 2016 report from Dr. Brown who reiterated his medical opinions and indicated that he was attaching a March 1,

2016 medical report from Dr. Charles Herring, a Board-certified orthopedic surgeon, who agreed that appellant had work-related injuries to his right knee. In an addendum report also dated April 27, 2016, Dr. Brown indicated that he had received Dr. Ma's second opinion report and noted that his conclusions remained unchanged. He opined that Dr. Ma entirely ignored appellant's factors of employment, which contributed to appellant's multiple work-related conditions pertinent to his right knee.

In his March 1, 2016 report, Dr. Herring diagnosed severe right knee degenerative joint disease, ACL tear, and right knee medial meniscal tear. He reported the history of injury, as related by appellant, and opined that appellant's federal duties of squatting, stooping, kneeling, and going up and down stairs caused his right knee conditions. Dr. Herring concluded that, although the natural aging process would lead to the degenerative changes within the knee, the heavy work appellant had been performing for the same period of time over 26 years had aggravated the progression of the degenerative joint disease.

By decision dated March 30, 2017, OWCP denied modification of its prior decision.

On October 2, 2017 appellant again requested reconsideration and submitted a September 27, 2017 report from Dr. Brown. Dr. Brown noted his review of OWCP's March 30, 2017 decision and disagreed, arguing that although appellant was 66 years old, the findings on plain x-ray revealing degenerative arthritis of the right knee, were clearly not what one would expect to find absent appellant's factors of employment, which involved the performance of repetitive activity, that caused his right knee condition.

In an August 8, 2017 report, Dr. Herring reiterated his diagnoses and indicated that he disagreed with Dr. Ma's second opinion because he felt that appellant had suffered injury from repetitive work on top of the previous knee injury and that his work had accelerated the development of the right knee osteoarthritis. He explained that appellant had undergone a meniscus repair in 1991 and then continued to work and have subluxation of his knee and this type of activity could cause or hasten the development of osteoarthritis, which was well known. Dr. Herring opined that you would expect to see some natural aging process given his age and in light of the previous injury, but you could not dismiss or neglect to identify the work factors as contributing to the present degenerative condition. He concluded that it was medically reasonable to infer causation between appellant's job duties and the development of the ACL and meniscus tears and the acceleration of the severe degenerative joint disease (osteoarthritis) of the right knee.

By decision dated December 15, 2017, OWCP denied modification of its prior decision.

On January 2, 2018 appellant requested reconsideration of the December 15, 2017 decision.

In support of his request for reconsideration, appellant submitted a December 26, 2017 report from Dr. Brown, who argued that OWCP's prior decision was erroneous because the medical evidence was not properly reviewed by a physician. Rather, it was reviewed by nonmedical personnel who were unable to provide a medical opinion concerning the conflict of medical evidence between two physicians.

By decision dated January 10, 2018, OWCP denied appellant's request for reconsideration of the merits of his claim.

On March 16, 2018 appellant again requested reconsideration of the December 15, 2017 decision.

In support of his request for reconsideration, appellant submitted a March 8, 2018 report from Dr. Basiamh Khulusi, a Board-certified physiatrist, who diagnosed degenerative joint disease, right knee, acceleration and permanent aggravation, ACL tear, partial PCL tear, and bursitis of the right knee. Dr. Khulusi opined that appellant's previous right knee injury and surgery did not cause him any disability at all and he continued to do his regular work without change until 2015. She further opined that while the meniscectomy might have contributed to the condition of the right knee joint, that did not absolve the repeated trauma appellant had been exposed to while doing his activities on the job from also contributing to his right knee conditions.

Appellant further submitted a progress report dated November 27, 2018 from Dr. Brown.

By decision dated February 5, 2019, OWCP denied modification of its prior decision, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed right knee conditions and the accepted factors of appellant's federal employment. It noted that lifting up to 100 pounds while in the performance of duty was not accepted as factual.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, 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 specific condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

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

[3] *Supra* note 1.

[4] *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[5] *K.V.*, and *M.E., id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

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.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[7] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[8] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[9]

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.[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.

In his March 16, 2016 second opinion report, Dr. Ma diagnosed degenerative arthritis of the right knee status post 1992 meniscectomy and explained that it was very common for a patient who has had a previous meniscectomy to develop advanced arthritis about the knee, as appellant had. He opined that appellant's osteoarthritis of the right knee was not medically connected to appellant's employment either by direct cause or aggravation, but it was connected to his age and the surgery he underwent 20 years prior to the same knee. Dr. Ma determined that appellant had reached MMI and released him back to full duty. The Board finds that the weight of the medical evidence rests with the opinion of Dr. Ma.

Dr. Brown's reports failed to provide a detailed explanation on causal relationship. While he identified the specific employment factors alleged by appellant, he did not provide a pathophysiological explanation as to how those activities either caused or contributed to appellant's diagnosed conditions.[11] Additionally, Dr. Brown noted that findings on plain x-ray revealing degenerative arthritis of the right knee were clearly not what one would expect to find

[6] *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *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).

[7] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[8] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[9] *Id.*; *Victor J. Woodhams, supra* note 6.

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[11] *Supra* note 9.

absent appellant's factors of employment, but he did not provide any further explanation or details. He also asserted that appellant saw his private physician 20 years ago due to complaints of right knee discomfort and was told at that time that he had a right medial meniscal tear, but he chose not to file a claim although he felt that his condition was due to the performance of his work-related duties. The Board has consistently held that complete medical rationalization is particularly necessary when there are preexisting conditions involving the same body part,[12] and has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.[13] The Board finds that the reports from Dr. Brown are insufficient to meet appellant's burden of proof, as they do not provide a physiological explanation regarding the cause of appellant's diagnosed conditions.

In his reports, Dr. Herring diagnosed severe right knee degenerative joint disease, ACL tear, and right knee medial meniscal tear and concluded that, although the natural aging process would lead to the degenerative changes within the knee, the heavy work he had been doing for the same period of time over 26 years had aggravated the progression of the degenerative joint disease. While he opined that appellant's medical condition was a direct result of the accepted factors of his federal employment, the Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[14] Therefore, the Board finds that the reports from Dr. Herring are insufficient to establish appellant's claim.

Appellant was also followed by Dr. Khulusi, who diagnosed acceleration and permanent aggravation of degenerative joint disease, ACL tear, partial PCL tear, and bursitis of the right knee on March 8, 2018. Dr. Khulusi opined that while the 1991 meniscectomy might have contributed to the condition of the right knee joint, that did not absolve the repeated trauma appellant had been exposed to while doing his activities on the job from also contributing to his right knee conditions. Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship.[15] While the opinion supporting causal relationship does not have to reduce the cause or etiology of a disease or a condition to an absolute certainty, the opinion must be one of reasonable medical certainty and not speculative or equivocal in character.[16] Because Dr. Khulusi's opinions are speculative and equivocal in nature these opinions are not rationalized and are insufficient to meet appellant's burden of proof as to causal relationship.

[12] *E.g., K.R.*, Docket No. 18-1388 (issued January 9, 2019).

[13] *See, e.g., A.J.*, Docket No. 18-1116 (issued January 23, 2019); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *J.B.*, Docket No. 17-1870 (issued April 11, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *P.O.*, Docket No. 14-1675 (issued December 3, 2015).

[14] *See J.L.*, Docket No. 18-1804 (issued April 12, 2019).

[15] *See C.H.*, Docket No 19-0409 (issued August 5, 2019).

[16] *Id.*

As appellant has not submitted rationalized medical evidence sufficient to establish a back condition causally related to the accepted factors of his federal employment factors, the Board finds that he has not met his 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 his burden of proof to establish a right knee condition causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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