

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

C.W., Appellant)	
)	
and)	Docket No. 19-1025
)	Issued: June 18, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Bronx, NY, Employer)	
)	

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
JANICE B. ASKIN, Judge

JURISDICTION

On April 10, 2019 appellant, through counsel, filed a timely appeal from a January 30, 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 The Board notes that, following the January 30, 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.*

ISSUE

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

FACTUAL HISTORY

On June 26, 2018 appellant, then a 44-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained derangement of her right knee and internal derangement of her left knee causally related to factors of her federal employment. She attributed her condition to continuous lifting, bending, standing, and walking with a mailbag on her back. Appellant advised that she had initially become aware of her condition on April 18, 2017 and attributed it to her federal employment on March 5, 2018.

An April 12, 2017 x-ray of appellant's right knee showed tibial tuberosity and patellar spurs, but no fractures.

In a report dated April 30, 2018 and signed May 4, 2018, Dr. Michael Cushner, a Board-certified orthopedic surgeon, indicated that appellant was experiencing pain and soreness in the right knee with prolonged walking, bending, and her use of stairs. He noted that she was status post a right knee arthroscopy on March 23, 2018. Dr. Cushner advised that a March 5, 2018 magnetic resonance imaging (MRI) scan had shown a medial meniscus tear, a tibial plateau chondral defect with edema, and fluid in the semimembranosus tibial collateral ligament bursa. He diagnosed a medial meniscal tear of the right knee status post right knee arthroscopy.

In a report dated May 17, 2018, Dr. Cushner evaluated appellant for left knee pain that had begun two weeks earlier. He noted that an x-ray of the left knee obtained on May 4, 2018 revealed mild osteoarthritis. Dr. Cushner diagnosed internal derangement of the left knee and prescribed pain medication.

In a July 10, 2018 development letter, OWCP informed appellant that additional evidence was required to establish her claim. It requested that she submit a comprehensive report from a qualified physician that included a diagnoses and an opinion, supported by medical rationale, addressing how the claimed employment factors caused or aggravated a medical condition. OWCP afforded appellant 30 days to submit the requested evidence.

Thereafter, OWCP received a report dated May 3, 2017 from Dr. James Joseph, a Board-certified orthopedic surgeon, who described appellant's complaints of burning anterior right knee pain over the prior week primarily when she sat for extended periods, stood from sitting, or used stairs. Dr. Joseph noted that she had no history of a knee injury. He diagnosed right knee internal derangement and patellofemoral pain and provided an injection. On July 26, 2017 Dr. Joseph evaluated appellant for intermittent right knee pain and stiffness. On examination he found a positive McMurray's test. Dr. Joseph diagnosed internal derangement of the right knee and right knee patellofemoral pain. He administered an injection and recommended exercises as treatment. Dr. Joseph administered another steroid injection in the right knee on December 13, 2017.

In a report dated February 12, 2018, Dr. Cushner discussed appellant's complaints of right knee pain in the posterior area of the leg. On examination he found an inconsistent antalgic gait,

a positive McMurray's sign, medial tenderness, and effusion. Dr. Cushner diagnosed right knee pain and internal derangement, hamstring tendinitis, and lumbosacral strain.

A March 5, 2018 MRI scan of appellant's right knee revealed a tear and degenerative signal in the posterior horn of her medial meniscus, a lateral tibial plateau chondral defect with a degenerative subcortical marrow edema, and tibial collateral ligament bursa fluid.

In a March 23, 2018 operative report, Dr. Cushner indicated that he had performed a right knee partial meniscectomy, chondroplasty and abrasioplasty, and major synovectomy.⁴

A May 15, 2018 MRI scan of appellant's left knee revealed joint fluid, an ossicle of bone in the patellar tendon's proximal fibers, an enthesophyte at the insertion of the quadriceps tendon, some signal intensity with the posterior horn and body of the medial meniscus, and no fractures.

On May 29, 2018 Dr. Cushner provided findings on examination and diagnosed left knee pain and internal derangement. In a report dated June 6, 2018, he discussed appellant's complaints of bilateral knee pain. Dr. Cushner diagnosed a medial meniscal tear of the right knee, status post March 23, 2018 right knee arthroscopy, and left knee internal derangement.

In a July 3, 2018 note, Dr. Cushner advised that appellant was unable to work from July 3 to 4, 2018 and could return to work with restrictions on July 5, 2018.

On July 19, 2018 Dr. Cushner noted that appellant complained of right knee pain and difficulty with squatting, stairs, bending, and increased activity. He indicated that she had a history of osteoarthritis, which he advised "could have been related to working as a [m]ail [c]arrier doing prolong[ed] walking, bending, and heavy lifting for over 13 years." Dr. Cushner diagnosed right knee internal derangement and osteoarthritis, hamstring tendinitis, and left knee internal derangement

In a July 24, 2018 statement responding to OWCP's development letter, appellant described her duties as a mail carrier, noting that she walked up and down stairs, over uneven terrain, and performed twisting, bending, turning, and stooping, all of which placed pressure and weight on her feet. She noted that the heaviness of her satchel caused her to lean to her other side for balance, creating an abnormal posture, and placing pressure on her feet.

In a July 25, 2018 statement, appellant described her work duties and attributed her condition to walking, standing, delivering packages, and carrying heavy objects at work.

By decision dated August 20, 2018, OWCP denied appellant's occupational injury claim finding that the evidence of record was insufficient to establish a causal relationship between her diagnosed conditions and the accepted factors of her federal employment.

On September 20, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

⁴ A March 23, 2018 surgical pathology report of appellant's right knee arthroscopy signed by Dr. Amber Ebrahim, Board-certified in pathology, noted that appellant's final diagnosis based on appellant's right knee arthroscopic shavings was fibrocartilaginous and fibrosynovial tissue.

By decision dated October 19, 2018, OWCP denied appellant's request for a telephonic hearing as the request was untimely as it was not made within 30 days of the August 20, 2018 decision.⁵

An October 1, 2018 MRI scan of appellant's right knee revealed osteoarthritis of the medial joint space and a mild anterior cruciate ligament sprain.

On November 14, 2018 Dr. Sun Jin Kim, a Board-certified orthopedic surgeon, noted that he was treating appellant for right knee osteoarthritis and advised that he had performed a cortisone injection of the knee.

In a letter dated November 15, 2018, Dr. Nauka Desai, Board-certified in family medicine, indicated that appellant had pain and arthritis in her right knee and could require a knee replacement. She noted, "It is likely that [appellant's] job as a letter carrier with a route involving multiple stairs contributed to the worsening of this condition." Dr. Desai further found that appellant could not continue in her employment due to her pain and use of a cane to walk.

On January 23, 2019 appellant, through counsel, requested reconsideration of OWCP's August 20, 2018 decision.

By decision dated January 30, 2019, OWCP denied modification of its August 20, 2018 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 of FECA,⁷ 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.⁸ 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.⁹

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;

⁵ Appellant appealed to the Board. However, on November 26, 2018, counsel requested that her appeal be dismissed. By order dated January 18, 2019, the Board dismissed her appeal. *Order Dismissing Appeal*, Docket No. 19-0235 (issued January 18, 2019).

⁶ *Supra* note 2.

⁷ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

(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 identified employment factors.¹⁰

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.¹¹ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.¹² 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.¹³

ANALYSIS

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

In a report dated November 15, 2018, Dr. Desai noted that appellant had right knee pain and arthritis and might require a knee replacement. She indicated that it was likely that appellant's work as a letter carrier had contributed to appellant's condition. Dr. Desai's opinion that appellant's employment duties likely contributed to her right knee condition is speculative in nature. The Board has held that medical opinions which are equivocal or speculative are of diminished probative value.¹⁴ Consequently, the Board finds that Dr. Desai's opinion lacks the specificity and detail needed to establish appellant's claim.¹⁵

On July 19, 2018 Dr. Cushner discussed appellant's complaints of right knee pain and diagnosed internal derangement of the knees bilaterally, osteoarthritis, and hamstring tendinitis. He found that she had a history of osteoarthritis which could be related to her work as a mail carrier performing extended lifting, bending, and walking. Dr. Cushner's opinion that appellant's osteoarthritis could be due to her employment duties is speculative in nature and thus, as noted, is of limited probative value and is insufficient to meet her burden of proof to establish her claim.¹⁶

The remaining medical evidence of record fails to address causation. On May 3, 2017 Dr. Joseph noted that appellant had a history of right knee pain and diagnosed right knee internal derangement and patellofemoral pain. He provided the same diagnoses in a July 26, 2017 report. Dr. Joseph failed, however, to address the cause of the diagnosed conditions. The Board has held

¹⁰ *M.S.*, Docket No. 18-1554 (issued February 8, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹² *L.D.*, *id.*; see also *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹³ *N.M.*, Docket No. 19-0258 (issued May 8, 2020); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁴ *T.M.*, Docket No. 19-1414 (issued February 12, 2020); *Cecilia M. Corley*, 56 ECAB 662 (2005).

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

¹⁶ *D.B.*, Docket No. 19-0514 (issued January 27, 2020).

that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁷ Therefore, these reports are insufficient to establish appellant's claim.

On February 12, 2018 Dr. Cushner evaluated appellant for right knee pain and diagnosed right knee pain and internal derangement, hamstring tendinitis, and lumbosacral strain. He performed a right knee partial meniscectomy, chondroplasty, abrasioplasty, and synovetomy on March 23, 2018. In progress reports dated April 30 and May 4, 2018, Dr. Cushner diagnosed a right knee medial meniscal tear after arthroscopy. On May 17 and 29, 2018 he evaluated appellant for left knee pain and diagnosed internal derangement of the left knee. On June 6, 2018 Dr. Cushner diagnosed a right knee medial meniscal tear postsurgery and internal derangement of the left knee. On July 3, 2018 he found that appellant was unable to work from July 3 to 4, 2018 and could work with restrictions on July 5, 2018. On November 14, 2018 Dr. Kim diagnosed right knee osteoarthritis. Neither Dr. Cushner nor Dr. Kim addressed the cause of any of the diagnosed conditions. As noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁸

Appellant also submitted multiple x-rays and MRI scans of both her right and left knees. The Board has explained, however, that diagnostic studies standing alone lack probative value on the issue of causal relationship as they do not address whether the employment factors caused any of the diagnosed conditions.¹⁹ The diagnostic reports are therefore insufficient to establish appellant's claim.

Appellant has failed to submit rationalized medical evidence establishing causal relationship between her knee conditions and the accepted factors of her federal employment. Thus, she has not met her 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 a bilateral knee condition causally related to the accepted factors of her federal employment.

¹⁷ See *C.C.*, Docket No. 19-0442 (issued July 22, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁸ *Id.*

¹⁹ *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 18, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board