

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

E.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Memphis, TN, Employer**

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**Docket No. 18-1580
Issued: January 23, 2020**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 13, 2018 appellant, through counsel, filed a timely appeal from a June 19, 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 a bilateral knee condition causally related to the accepted factors of her 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 Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 22, 2016 appellant, then a 52-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that on or before November 25, 2014 she developed chondromalacia and an effusion of the right knee, left meniscal tear, patellar tendinitis, and osteoarthritis of both knees due to prolonged walking, standing, and climbing while casing and delivering mail. She stopped work on or about August 8, 2014 and did not return.

In support of her claim, appellant provided a report dated February 4, 2015 from Dr. Marilyn Watts, an attending retired Board-certified pediatrician, who opined that prolonged standing, walking, and climbing at work had aggravated preexisting degenerative and osteoarthritic changes of both knees.

By decision dated March 17, 2016, OWCP accepted that appellant performed prolonged standing, walking, and climbing in the performance of duty as alleged, but denied the claim finding that causal relationship had not been established.

On September 12 and October 14, 2016 appellant requested reconsideration. She submitted reports from Dr. Watts dated from April 14 to June 14, 2016, which noted a history of bilateral meniscal repairs on July 24, 2013 and increased bilateral knee symptoms with repetitive work activities on August 7, 2014. Dr. Watts diagnosed knee strains and sprains, and a torn left medial meniscus.

By decision dated November 17, 2016, OWCP denied modification of its March 17, 2016 decision finding that the additional medical evidence appellant had submitted did not differentiate between work-related and preexisting conditions and, therefore, did not establish that her knee conditions were causally related to the accepted federal employment factors. Appellant, through counsel, appealed to the Board.

By decision and order issued July 7, 2017,⁴ the Board affirmed the November 17, 2016 OWCP decision, finding that Dr. Watts had not explained how and why the accepted employment factors would cause the claimed bilateral knee conditions. Dr. Watts' opinion was, therefore, insufficient to meet appellant's burden of proof to establish causal relationship.

³ Docket No. 17-0808 (issued July 7, 2017).

⁴ *Id.*

On May 18, 2018 appellant, through counsel, requested reconsideration. In support of her request, appellant submitted a May 2, 2018 report from Dr. Neil Allen, a Board-certified internist and neurologist, retained by counsel to provide an opinion on causal relationship following a medical record review. Dr. Allen reviewed knee x-rays performed on July 23, 2012, November 12, 2013, and July 8, 2014, which showed bilateral osteoarthritis and chondromalacia. He opined that walking several miles per day, constant standing, climbing and descending several thousand stairs and curbs, and lifting while in the performance of duty had aggravated primary osteoarthritis of both knees as imaging studies demonstrated “repetitive wear” greater than expected from aging. Dr. Allen noted that a medical reference book and a published study on knee osteoarthritis supported this mechanism of causation. He concluded that appellant’s bilateral knee condition was directly aggravated by the physical demands of her position as a letter carrier. Dr. Allen noted that his medical opinion was supported by, but not based upon the medical literature he cited in his report.

By decision dated June 19, 2018, OWCP reviewed the merits of appellant’s claim and denied modification of the July 7, 2017 decision, finding that the medical evidence of record did not establish that her diagnosed condition of bilateral osteoarthritis of the knees was causally related to her accepted employment duties. It specifically found that the opinion of Dr. Allen was insufficient to establish an acceleration of appellant’s underlying condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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.⁶ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁸

⁵ *Supra* note 2.

⁶ *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

⁷ *M.E.*, *id.*; *K.B.*, Docket No. 17-1997 (issued July 27, 2018).

⁸ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Causal relationship is a medical question, which requires rationalized medical opinion evidence to resolve the issue.⁹ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.¹⁰ 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 factors.¹¹

In a 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 bilateral knee conditions causally related to the accepted factors of her federal employment.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's November 17, 2016 decision because the Board considered that evidence in its July 7, 2017 decision and found it insufficient for purposes of establishing causal relationship. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹³

The record contains a report dated May 2, 2018 from Dr. Allen attributing an aggravation of appellant's bilateral knee osteoarthritis to her employment duties. Dr. Allen opined that walking several miles per day, constant standing, climbing and descending several thousand stairs and curbs, and lifting while in the performance of duty had aggravated the arthritic changes in her knees bilaterally. He noted that these physical demands of her position directly caused her diagnosed conditions.

The Board finds that, while Dr. Allen provided an affirmative opinion on causal relationship, his opinion is insufficiently rationalized. Dr. Allen failed to provide an explanation pertaining to the mechanism of injury to establish that appellant's bilateral knee osteoarthritis had been aggravated or accelerated by the accepted work factors. Without explaining how physiologically the movements involved in appellant's employment duties caused or contributed to the arthritic process, his opinion on causal relationship is equivocal in nature and of limited

⁹ See *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *Supra* note 8.

¹¹ *Id.*

¹² See *P.J.*, Docket No. 18-1738 (issued May 17, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹³ See *B.R.*, Docket No. 17-0294 (issued May 11, 2018).

probative value.¹⁴ Although Dr. Allen opined that her preexisting bilateral knee osteoarthritis had progressed beyond what might be expected from the natural progression of that condition, he did not describe the pathophysiologic mechanism responsible for such acceleration.¹⁵ While he noted the physical activities performed by appellant as a letter carrier, he did not explain why those accepted factors of employment were sufficient to have caused her preexisting injury to have progressed beyond what might be expected from the natural progression of that condition.¹⁶ A well-rationalized opinion is particularly warranted when there is a history of preexisting condition, as in this case.¹⁷ As such, Dr. Allen's report lacks the specificity and detail needed to establish that appellant's bilateral knee conditions are a result of a work-related occupational exposure.¹⁸

The Board finds that the evidence of record lacks sufficient rationalized medical evidence establishing a causal relationship between the accepted factors of appellant's federal employment and her diagnosed aggravation of bilateral knee osteoarthritis. Thus, appellant has not met her burden of proof.

On appeal counsel contends that OWCP should have accepted the claim based on Dr. Allen's report. As noted above, Dr. Allen did not provide sufficient medical rationale to meet appellant's burden of proof.

Appellant may submit new evidence 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.

¹⁴ See *J.B.*, Docket No. 17-1870 (issued April 11, 2018).

¹⁵ *M.E.*, *supra* note 6.

¹⁶ *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

¹⁷ *M.E.*, *supra* note 6; *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 19, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2020
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge, concurring:

I concur with the denial of the claim as appellant has failed to meet her burden of proof, however, I disagree with giving any weight to Dr. Neil Allen, a Board-certified internist and neurologist, as he did not conduct an in person physician examination.¹

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

¹ See *S.M.*, Docket No. 18-1195 (issued January 6, 2020). (Alec J. Koromilas, dissenting).