United States Department of Labor
Employees' Compensation Appeals Board

D.T., Appellant	)	
and	)	**Docket No. 19-1375**
	)	**Issued: March 24, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Des Plaines, IL, Employer	)	

Appearances:
Erik B. Blowers, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 10, 2019 appellant, through counsel, filed a timely appeal from an April 25, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 counsel submitted additional evidence on appeal. 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 right knee conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On October 8, 2018 appellant, then a 48-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a medial meniscus tear of the right knee and a Baker's cyst due to factors of her federal employment, including pushing heavy equipment, turning and pivoting while sorting parcels, and walking back and forth on concrete floors while performing various tasks. She noted that she first became aware of her condition and first realized it was caused or aggravated by her federal employment on August 31, 2017. On the reverse side of the claim form the employing establishment noted that appellant did not stop work, but that she had been working limited duty due to a prior injury under OWCP File No. xxxxxx360.[4]

An April 15, 2017 magnetic resonance imaging (MRI) scan of appellant's right knee was interpreted by Dr. Rosemary Klecker, a Board-certified diagnostic radiologist, as displaying a partial tear at the menisci capsular junction of the posterior medial comer of the knee and partial peripheral tearing of the posterior horn medial meniscus centrally, and minimal chondromalacia patella.

In an April 18, 2017 medical report, Dr. David Barnes, an osteopathic physician specializing in family medicine, noted that appellant reported an injury to her knee on March 22, 2016 while performing her route as a letter carrier. Appellant had related that, while on her route, she felt a pop in her right knee and proceeded to finish her route. When she returned from her route, she reported her injury to her supervisor, and the next day she sought clinical medical treatment and was diagnosed with a strain and placed on light duty. Appellant indicated that her supervisors did not honor her work restrictions, and she continued treatment each week until May 2016, which is when she returned to full duty. In March 2017, she started a new route, which required her to frequently enter and exit her truck. This placed pressure on her knee and caused increasing pain. Dr. Barnes noted that appellant was currently on crutches and was unable to stand without them, and rated her pain a 9 out of 10.

Dr. Barnes conducted a physical examination of appellant's right knee. He thereafter noted that appellant's job duties were extremely physically demanding and included many repetitive motions that caused significant wear and tear. Dr. Barnes listed all of appellant's job duties, which he related he obtained from appellant's union website. These included retrieving mail, which could weigh over 10 pounds, from the mall distribution case and lifting and transporting it to the place it was sorted. Other job duties listed were bending and lifting trays of mail off of the floor and casing mail, which entailed 1.5 to 2.5 hours of continuous standing, twisting, turning, and reaching above the shoulder. Additional duties such as placing mail and parcels that weighed up to 70 pounds into a parcel hamper and then loading them into a truck required continuous twisting, turning, bending, lifting, and stooping, and carrying mail outside into mailboxes required constant

[4] Appellant's claim under OWCP File No. xxxxxx360, for a March 22, 2016 traumatic injury (Form CA-1) was accepted for right leg muscle and tendon strain, peripheral tear of the medial meniscus of the right knee, and synovial Baker's cyst of the right knee. Appellant's claims have not been administratively combined.

bending, twisting, stopping, lifting, and climbing. Dr. Barnes noted that all of these duties placed significant pressure on the feet, knees, and upper and lower body of mail carriers.

Dr. Barnes diagnosed a right knee meniscus tear and Baker's cyst and noted that these diagnoses were "unequivocally" related to appellant's March 22, 2016 employment injury. He related that originally appellant's condition was misdiagnosed as a sprain, and he further explained that over the course of the year, since the initial injury, the damage to her right knee only worsened.

In an August 24, 2017 report, Dr. Barnes indicated that appellant's knee pain recently increased, so she went on vacation and her knee felt much stronger and had an increased range of motion. He related that he intended to provide appellant with new work restrictions to increase her healing. A diagnosis of right knee strain was noted.

An August 31, 2017 narrative medical report from Dr. Barnes related that appellant presented with severe right knee pain, which worsened when she attempted to walk, and he noted her date of injury was March 22, 2016. Dr. Barnes also noted that, in his original report, he diagnosed appellant with a meniscal tear and a Baker's cyst in the right knee based on appellant's history, an examination, and MRI scan results, but that OWCP accepted a diagnosis of strain of unspecified muscles and tendons of the lower right leg. He requested that OWCP accept his original diagnosis.

An October 24, 2018 OWCP memorandum of record reflects that appellant's claim under OWCP File No. xxxxxx360 for traumatic injury on March 22, 2016 was in an accepted adjudicatory status.

In a November 5, 2018 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By decision dated December 12, 2018, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that appellant sustained an injury in the performance of duty, as alleged. It noted that, as appellant did not respond to its questionnaire, it was unable to determine the factual component of her claim. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 28, 2018 appellant, through counsel, requested reconsideration and submitted additional evidence.

In a December 3, 2018 narrative medical statement, Dr. Barnes indicated that appellant originally injured her knee on March 22, 2016 when she felt a pop in her right knee while performing her duties as a city carrier. Appellant was diagnosed with a knee strain and placed on light duty. She returned to full duty in May 2016, but still experienced pain. At the onset of March 2017, appellant started a new route where she frequently had to get in and out of a truck, which was very difficult on her knee. Dr. Barnes noted that on August 31, 2017 her pain was greatly exacerbated due to her work duties. He related that there was no conflict between what appellant stated in her CA-2 form and his medical opinion because both the employment factors on her form and the fact that her pain was greatly exacerbated by getting in and out of her truck collectively contributed to her injuries.

Dr. Barnes again stated that appellant provided him with a full description of her work duties and that he researched appellant's work duties on appellant's union website. He repeated all of the factors he previously listed and restated that appellant's job was extremely physically demanding and required many repetitive motions, which cause wear and tear. Dr. Barnes noted that the listed employing factors, which appellant engaged in on a daily basis, exposed her to constant pressure on her feet, knees, and upper body.

Dr. Barnes explained the physiological structure and function of the meniscus and stated that occupations involving sustained or repeated squatting are often implicated in a meniscus injury due to the degenerative process that accompanied prolonged knee flexion and attendant structural loads, and that most torn menisci resulted from activities that caused forceful or repetitive twists and rotation of the knees, such as pivoting, sudden stops, turns, and bending. He noted that at work appellant engaged in the very activities that created significant risk factors for meniscus tears, including constant bending, twisting, weight-bearing, sudden stopping, and rotational activities while casing mail, standing, walking, getting in and out of her truck, and lifting heavy parcels. Dr. Barnes concluded that appellant's injury was 100 percent causally related to her original March 22, 2016 injury, and that her work activities had continued to exacerbate her condition. He also noted that appellant's meniscus injury caused the development of her Baker's cyst.

In a January 17, 2019 sworn statement, appellant noted that she had been a city carrier for the last four years, and she stated that for 8 to 10 hours each day she was required to stretch, reach, twist her body, push, pull, lift, carry up to 90 pounds, climb flights of stairs, and stand for long periods of time. She was also required to exit her vehicle as frequently as 30 times per day and sometimes walk on uneven surfaces. Appellant noted that she was initially injured in March 2016 when she twisted her knee while on her route, but she continued to work, which aggravated her injury. At the end of most workdays, appellant experienced increased pain, swelling, and joint stiffness, and only when she did not work and remained sedentary did she not experience pain.

By decision dated April 25, 2019, OWCP modified its December 12, 2018 decision, finding that appellant had established that the alleged federal employment factors occurred as described; however, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between a diagnosed medical condition and the accepted factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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,[6] 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

[5] *Supra* note 2.

[6] *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).

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, 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; (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.[9]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[10] 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.[11] 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.[12]

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.[13]

ANALYSIS

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

In support of her claim, appellant submitted several reports from her treating physician, Dr. Barnes. In his December 3, 2018 narrative medical report, Dr. Barnes explained that appellant was injured on March 22, 2016 when she heard her knee pop, and that both appellant's continuation of her work after her original injury and the new route assigned to her in March 2017 contributed to the exacerbation of her original work-related injury. The record reflects that appellant's March 22, 2016 traumatic injury remains in an accepted status; however, it is unclear

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

[8] *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).

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

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

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

[12] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[13] *J.F.*, Docket No. 19-0456 (issued July 12, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

as to whether and or what compensation benefits appellant continues to receive arising from the initial injury, following the alleged aggravation of her accepted injury. It is also unclear as to whether additional medical evidence pertinent to the current claim has been submitted to OWCP File No. xxxxxx360. OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.[14] For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.[15]

The case must therefore be remanded to OWCP to administratively combine File Nos. xxxxxx360 and xxxxxx126. Following this and other such further development as it may deem necessary, OWCP shall issue a *de novo* decision.[16]

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: March 24, 2020
Washington, DC

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

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

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

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000). *D.M.*, Docket No. 19-0340 (issued October 22, 2019).

[15] *Id.*; *D.L.*, Docket No. 17-1588 (issued January 28, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

[16] *See T.M.*, Docket No. 18-0887 (issued February 21, 2019).