

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

L.C., JR., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Milford, CT, Employer**

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**Docket No. 20-0505
Issued: November 24, 2020**

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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 6, 2020 appellant, through counsel, filed a timely appeal from a November 1, 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 to consider 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 Appellant, through counsel, filed a timely request for oral argument. After exercising its discretion, by order dated November 20, 2020 the Board denied his request finding that his arguments could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 20-0505 (issued November 20, 2020).

ISSUE

The issue is whether appellant has met his burden of proof to establish that his bilateral hip, knee, and ankle conditions are causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 29, 2014 appellant, then a 65-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed an aggravation of his preexisting bilateral hip, knee, and ankle osteoarthritis conditions due to factors of his federal employment including walking, lifting, climbing, bending, twisting, stooping, and driving. He noted that he first became aware of his condition and its relationship to his federal employment on August 20, 2014. Appellant stopped work on August 8, 2014 and retired from the employing establishment effective November 30, 2014.

In support of his claim, appellant submitted an August 20, 2014 report from Dr. Amit Lahav, a Board-certified orthopedic surgeon, which detailed the history of appellant's medical treatment from 2006 and noted in general terms the requirements of appellant's duties as a letter carrier.

On January 23, 2015 OWCP referred the record and a statement of accepted facts (SOAF) to a district medical adviser (DMA) for an opinion as to whether appellant's job duties aggravated appellant's preexisting bilateral knee, hip, and ankle conditions.

By decision dated March 26, 2015, OWCP denied appellant's claim finding that the evidence of record failed to establish that his diagnosed conditions were caused or aggravated by the accepted factors of his federal employment.

On April 21, 2015 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. Counsel subsequently converted the request for oral hearing to a request for review of the written record by an OWCP hearing representative. In support thereof, he submitted a November 23, 2015 report by Dr. Lahav, who again summarized appellant's medical history and opined that there was a direct causal relationship between appellant's worsening arthritic conditions and his employment duties.

By decision dated February 8, 2016, OWCP's hearing representative affirmed the denial of appellant's claim. Appellant subsequently submitted a December 31, 2016 report by Dr. Lahav who diagnosed bilateral hip degenerative joint disease, and bilateral lower leg osteoarthritis and expanded on his prior opinion regarding causal relationship. On January 17, 2017 appellant, through counsel, requested reconsideration.

⁴ Docket No. 17-1811 (issued March 23, 2018).

By decision dated March 10, 2017, OWCP denied modification. On August 18, 2017 appellant, through counsel, filed a timely appeal with the Board.⁵ By decision dated March 23, 2018, the Board affirmed OWCP's March 10, 2017 decision finding appellant had not submitted rationalized medical evidence establishing that his bilateral hip, knees, and ankle osteoarthritis conditions were caused or aggravated by factors of his federal employment.

On March 1, 2019 appellant, through counsel, requested reconsideration and submitted additional evidence.

In a February 24, 2019 supplemental report, Dr. Lahav explained that arthritis was the loss of joint cartilage, and osteoarthritis was the loss of articular cartilage providing joint cushioning. He reported that the loss of the cushioning of the joint resulted in a chronic inflammatory process and decreasing viscosity of the joint lubricating synovial fluid. Dr. Lahav opined that the impact-loading activities appellant performed, including walking an average of seven miles per day, lifting packages up to 70 pounds, carrying a mail satchel weighing 35 pounds, constant bending, twisting, and stooping, and climbing approximately 280,000 stairs on his route, accelerated the deterioration of his joint cartilage joint surface leading to arthritis. He acknowledged that hip and knee joints were more susceptible to developing arthritis as one ages. While age was a factor in development of this condition, Dr. Lahav explained that appellant's job duties were also a factor to be considered as these duties were a contributing factor to the acceleration of the joint degradation. He also explained that there were other factors contributing to arthritis, including genetics, body habitus, dominance of one side of the body over the other, environmental factors, and traumatic injury, but opined that it was impossible to determine the percentage of each contributing factor to the development of appellant's arthritis. Dr. Lahav explained that ascending and descending stairs loaded three to six times the body's weight and was a major contributing factor to the progression of arthritis. In appellant's case, as a letter carrier, ascending and descending stairs with a full mail satchel added a minimum of 100 pounds to effective body weight, which was a contributing factor to the progression of arthritis. Dr. Lahav reported that the medical literature proved that impact lower extremity impact loading activities over time resulted in arthritic changes. He cited to the American Academy of Orthopedic Surgeons website which found climbing stairs to be an aggravating factor for arthritis. Moreover, Dr. Lahav concluded that there was a greater contribution to the increased degenerative joint wear the longer a person performed the impact-loading activities and that later in life these activities were performed. He concluded that since appellant was in the 64 to 66 years old age range when he performed his employment duties, his employment factors would have contributed to the degeneration of his joints.

By decision dated November 1, 2019, OWCP reopened the claim for merit review, but denied modification finding that Dr. Lahav's February 24, 2019 report was conclusory and insufficiently rationalized to establish appellant's claim.

⁵ Docket No. 17-1811 (issued March 23, 2018).

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while 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.⁷ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁸

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee 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 employment factors identified by the employee.⁹

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.¹⁰ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.¹¹ 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 the specific employment factors identified by the employee.¹²

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,

⁶ *Supra* note 2.

⁷ *E.S.*, Docket 18-1580 (January 23, 2020); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁸ *E.S., id.*; *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁹ *E.S., supra* note 7; *D.U.*, Docket No. 10-0144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Donald W. Wenzel*, 56 ECAB 390 (2005).

¹⁰ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹¹ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹² *S.K.*, Docket No. 18-1414 (issued April 29, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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 a decision.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's March 10, 2017 decision because the Board considered that evidence in its March 23, 2018 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.¹⁴

In support of his claim, appellant submitted a February 24, 2019 report from Dr. Lahav describing appellant's employment duties and how they were a contributing factor in aggravating appellant's preexisting bilateral lower extremity arthritis. Dr. Lahav accurately described the employment duties appellant performed and noted other contributing factors, including age, to the development of arthritis. He specified the physiologic effects of the forces generated by appellant's ascending and descending stairs, carrying a heavy mail satchel, constant bending, twisting, and stooping, and climbing approximately 280,000 stairs on his route. Dr. Lahav attempted to explain the pathophysiologic connection between these duties as well as other contributing factors, including age, aggravated appellant's bilateral hip degenerative joint disease, and bilateral lower leg osteoarthritis, due to the acceleration of joint degradation.

The Board finds that the reports of Dr. Lahav are sufficient to require further medical development of the claim as he described appellant's work duties and provided an explanation as to how these work duties could be a contributing factor in the aggravation of appellant's bilateral hip degenerative joint disease, and bilateral lower leg osteoarthritis. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹⁵ The Board thus finds that while not sufficiently rationalized, Dr. Lahav's report is of sufficient probative value to require further development of the case record by OWCP.¹⁶

It is well established that proceedings under FECA are not adversarial in nature, and that while appellant has the burden of proof to establish entitlement to compensation, OWCP shares

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹⁴ See *E.S.*, *supra* note 7; *B.R.*, Docket No. 17-0294 (issued May 11, 2018).

¹⁵ *T.F.*, Docket No. 19-1900 (issued October 27, 2020); *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983).

¹⁶ *J.J.*, Docket No. 19-0789 (issued November 22, 2019); *J.G.*, Docket No. 17-1062 (issued February 13, 2018). See also *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

responsibility in the development of the evidence.¹⁷ OWCP has an obligation to see that justice is done.¹⁸

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 osteoarthritic conditions are causally related to the accepted employment factors. If the physician opines that the diagnosed conditions are not causally related to the employment factors, he or she must explain with rationale how or why their opinion differs from that articulated by Dr. Lahav. 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 a decision.

¹⁷ *J.J., id. A.P.*, Docket No. 17-0183 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁸ *J.J., supra* note 16; *R.B.*, Docket No. 18-0162 (issued July 24, 2019); *William J. Cantrell, id.*

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with the decision of the Board.

Issued: November 24, 2020
Washington, DC

Christopher J. Godfrey, Deputy 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