

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

S.M., Appellant)	
)	
and)	Docket No. 19-0723
)	Issued: October 20, 2020
U.S. POSTAL SERVICE, COCONUT GROVE)	
POST OFFICE, Miami, FL, Employer)	
)	

Appearances:
Daniel B. Shapiro, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 19, 2019 appellant, through counsel, filed a timely appeal from a January 29, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the Federal Employees' Compensation Act³ (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 Appellant timely requested oral argument before the Board. By order dated July 17, 2020, the Board exercised its discretion and denied the request as the matter could be adequately addressed based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 19-0723 (issued July 17, 2020).

³ 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On February 27, 2018 appellant, then a 65-year-old retired clerk, filed an occupational disease claim (Form CA-2) alleging that she developed left knee osteoarthritis as a result of factors of her federal employment. She noted that she first became aware of her condition on June 13, 2007 and realized its relationship to her federal employment on August 1, 2017. On the reverse side of the claim form, T.C., a customer service supervisor for the employing establishment, indicated that appellant was retired and that she had no knowledge of appellant.

In an accompanying statement, appellant noted that she had worked as a full-time clerk at the employing establishment from 1974 until 2007. She indicated that she was on her feet basically all day walking on concrete floors and moving mail, packages, pallets, and tubs weighing up to 70 pounds. Appellant estimated that she bent at the knees and hips, stooped, squatted, and twisted hundreds of times each day, and lifted and carried well over 300 pounds of mail and packages a day. She reported that she also performed retail window work, which required bending and lifting from below the counter, reaching across the counter, and twisting and bending while carrying packages and mail. Appellant noted that she also helped to load trucks, which required standing, walking, bending, stooping, lifting, carrying, and squatting.

Appellant submitted several hospital records dated October 12, 2005. Operative reports indicated that appellant underwent left femoral valgus correction with osteotomy and bone grafting to the left femoral osteotomy and implantation of electrical bone growth stimulator and left knee arthroscopy, partial medial meniscal debridement, and medial femoral chondroplasty by Dr. Edward Lazzarin, an orthopedic surgeon. The operative reports noted preoperative diagnoses of valgus knee deformity with severe lateral arthritis of the left knee, medial meniscus tear, medial femoral chondromalacia, and reasonably good lateral compartment.

An October 12, 2005 left knee and femur x-ray examination report revealed severe degenerative changes of the left knee lateral compartment.

OWCP also received physical therapy prescription notes dated November 15, 2005 and January 5, 2006 by an unknown provider.

Appellant submitted hospital records dated October 18, 2006. An operative report revealed that appellant underwent removal of deep, painful hardware of the left femur by Dr. Lazzarin. The operative report noted a preoperative diagnosis of painful deep hardware of the left femur. A left femur x-ray examination report revealed that appellant was status post removal of screws and noted a diagnosis of left femoral osteotomy. A pathology report noted diagnosis of left femoral osteotomy.

On June 13, 2017 appellant underwent left knee replacement surgery. The operative report noted a preoperative diagnosis of severe left knee osteoarthritis.

Appellant submitted additional hospital records dated June 13, 2007, including a left knee x-ray examination report, which demonstrated placement of an expanded stem total knee arthroplasty, and a pathology report, which noted a diagnosis of left knee severe arthritis.

OWCP received a series of knee evaluation physical therapy examination notes dated for the period October 13, 2005 to July 23, 2007, which revealed diagnoses of severe left knee arthritis and left knee degenerative joint disease.

Appellant submitted additional reports by Dr. Lazzarin. In an orthopedic evaluation note dated December 15, 2008, Dr. Lazzarin indicated that she was doing well regarding her left knee after left knee replacement surgery. He reported that appellant now complained of pain in her right knee.

In an orthopedic evaluation note dated January 6, 2011, Dr. Lazzarin noted that appellant's left knee was holding up and that she was having more pain in the opposite knee.

Dr. Jeffrey L. Katzell, an orthopedic surgeon, reported in an August 1, 2017 narrative that appellant had a long-standing left knee problem as a consequence of her career as a full-time clerk for the employing establishment from 1974 to 2007. He indicated his understanding that she was required to be on her feet on concrete floors, pulling tubs of mail weighing up to 70 pounds, and walking back and forth with mail packages. Dr. Katzell indicated that appellant's knees were constantly bent, twisted, and used to squat. He reported that because of these activities, appellant began to have knee problems from repetitive overuse, which resulted in left knee surgeries. Dr. Katzell described the surgeries that appellant had undergone and noted that after these procedures and therapy, appellant continued to work. He noted that on June 13, 2007 appellant underwent total left knee replacement surgery and was unable to work after this surgery. Dr. Katzell noted that appellant currently complained that her left knee remained moderately stiff, moderately painful, and mildly swollen.

Examination of appellant's left knee revealed very marked lateral and medial joint line tenderness and swelling. Dr. Katzell also noted markedly antalgic gait when she walked and restricted range of motion. He indicated that a left knee x-ray examination revealed a semi-constrained total knee replacement and acceptable alignment with marginal osteophytosis still present. Dr. Katzell diagnosed left knee arthritis status post-arthroplasty. In response to questions by counsel, he opined that appellant's daily work activities, including lifting, walking, standing, bending, stooping, and climbing caused a permanent aggravation of appellant's left knee osteoarthritis. Dr. Katzell indicated that her cartilage damage became significant enough and her condition painful and debilitating to the point that she required a total left knee replacement, which is a permanent alteration of appellant's anatomy. He reported that "impact loading activities, including those experienced by [appellant] at work over a long career can and do accelerate arthritis because of the continuous walking, stooping, squatting, and the like involved." Dr. Katzell further explained:

"Arthritis is a loss of articular cartilage surface. It is the impact loading resulting from repeated local stresses that causes and accelerates the progression of arthritis through a process of chronic inflammation. Jobs such as [appellant's] job with the [the employing establishment] require constant and repetitive walking, standing,

squatting, stooping, climbing, bending, lifting, carrying, stair climbing, and twisting. These impact loading activities exerted repeated local stresses to her lower extremities.”

Dr. Katzell concluded that appellant’s high impact loading work activities contributed to the development and progression of her arthritis.

In a development letter dated March 14, 2018, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of medical and factual evidence necessary to support her claim and provide a questionnaire for her completion. OWCP specifically noted that evidence was needed to establish that appellant had filed her claim in a timely manner. A similar letter of even date requested additional information from the employing establishment. OWCP afforded both parties 30 days to submit the requested information.

In a letter dated April 13, 2018, counsel indicated that he was responding to OWCP’s March 14, 2018 development letter. He noted that appellant had submitted a May 1, 2017 statement detailing appellant’s repetitive work duties and that Dr. Katzell also addressed her specific work duties that contributed to and caused the progression of her left knee arthritis. Counsel contended that Dr. Katzell provided a detailed opinion supported by medical rationale as to how appellant’s work activities caused or aggravated appellant’s left knee arthritis.

Subsequently, on April 13, 2018 appellant submitted a completed questionnaire dated April 3, 2018. She noted that while she was aware of her diagnosis of arthritis at the time of her left total knee replacement surgery on June 13, 2007, she had not realized that her arthritis was related to her job until her examination with Dr. Katzell in 2017. Appellant noted that Dr. Katzell had informed her that although there may have been other factors that caused or contributed to her arthritis, there was no question that her job duties contributed to the aggravation and acceleration of her condition, resulting in total knee replacement.

In a May 18, 2018 letter, S.L., a health and resource management specialist for the employing establishment, requested that OWCP deny appellant’s claim because it was not timely filed within three years of the date of injury. She noted that appellant retired from federal service on August 1, 2007, but had not filed her claim until February 27, 2018.

The employing establishment submitted a Notice of Personnel Action (Form SF-50) dated August 1, 2007, which revealed that appellant had retired from federal service, and that her last day in pay status was July 6, 2007.

By decision dated May 24, 2018, OWCP denied appellant’s claim finding that she failed to file a timely claim within the requisite three-year time limit under section 8122(a) of FECA (5 U.S.C. § 8122(a)). It found that the date of last exposure was June 13, 2007 and that appellant had not filed her occupational disease claim until February 27, 2018.

On June 6, 2018 appellant, through counsel, requested a hearing before a representative of OWCP’s Branch of Hearings and Review, which was held on November 19, 2018.

Appellant submitted a narrative statement dated November 13, 2018. She noted that although she knew that she had left knee arthritis in 2007, she did not think that her work caused

or contributed to the condition because none of her doctors had mentioned it. Appellant indicated that many years later she was talking to a friend who had also worked at the employing establishment and had knee problems. She noted that her friend advised her to see a doctor, have a thorough examination, and tell the doctor about her 33 years working for the employing establishment. Appellant reported that she was examined by Dr. Katzell on August 1, 2017 and described her job duties as a clerk, including standing, walking, bending, stooping, lifting, carrying, and squatting. She noted that Dr. Katzell informed her that her job was a big factor in the acceleration of her left knee arthritis. Appellant asserted that that was the first time that she had any idea that her job had any responsibility in her left knee condition.

By decision dated January 29, 2019, an OWCP hearing representative affirmed the May 24, 2018 denial decision with modification. She determined that because appellant was not aware of or could not have reasonably been aware of the relationship between her diagnosed left knee condition and her employment until May 1, 2017, appellant's claim was timely filed. The hearing representative also found, however, that the medical evidence of record was insufficient to establish that appellant's left knee osteoarthritis was causally related to or aggravated by her accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including 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,⁵ 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.⁶ 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.⁷

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 employment factors identified by the claimant.⁸

⁴ *Id.*

⁵ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁹ 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 specific employment factors identified by the employee.¹⁰

ANALYSIS

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

In support of her claim, appellant submitted an August 1, 2017 narrative report from Dr. Katzell. He noted that appellant had worked as a full-time clerk for the employing establishment from 1974 to 2007. Dr. Katzell described appellant's work duties in detail and indicated that appellant's knees were constantly bent, twisted, and used to squat. He provided examination findings and diagnosed left knee arthritis status post-arthroplasty. Dr. Katzell opined that appellant's daily work activities caused a permanent aggravation of appellant's left knee osteoarthritis. He reported:

“Arthritis is a loss of articular cartilage surface. It is the impact loading resulting from repeated local stresses that causes and accelerates the progression of arthritis through a process of chronic inflammation. Jobs such as [appellant's] job with the USPS require constant and repetitive walking, standing, squatting, stooping, climbing, bending, lifting, carrying, stair climbing, and twisting. These impact loading activities exerted repeated local stresses to her lower extremities.”

The Board finds Dr. Katzell's affirmative opinion on causal relationship provided a complete factual history confirming the accepted employment factors and accurately noted appellant's medical history and course of treatment. The Board finds that his opinion, while not sufficiently rationalized to meet appellant's burden of proof, is sufficient, given the absence of opposing medical evidence, to require further development of the record as to whether appellant's left knee osteoarthritis was aggravated by the accepted factors of her federal employment.¹¹

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

⁹ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *G.M.*, Docket No. 19-0657 (issued September 13, 2019); *see also John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

done.¹² The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.¹³

The case will therefore be remanded to OWCP for further development of the medical evidence and a referral to an appropriate medical specialist for an examination and opinion on the issue of whether appellant sustained left knee osteoarthritis causally related to the accepted factors of her federal employment. The selected physician shall provide a rationalized opinion as to whether the diagnosed conditions are causally related to the accepted factors of appellant's federal employment. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why the opinion differs from that of Dr. Katzell. After such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the a January 29, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 20, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹² S.C., Docket No. 19-0920 (issued September 25, 2019).

¹³ 20 C.F.R. § 10.121.