United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 20-0813**
	)	**Issued: October 29, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Levittown, NY, Employer	)	

Appearances:
Bruce Didriksen, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

<u>Before:</u>
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 2, 2020 appellant, through her representative, filed a timely appeal from a February 14, 2020 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.

[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 expand acceptance of her claim to include additional medical conditions causally related to the accepted employment injury.

FACTUAL HISTORY

On July 24, 2018 appellant, then a 55-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed arthritis in both of her knees and a frayed tendon in her left ankle due to the factors of her federal employment, including constant walking, climbing stairs and hills, and heavy lifting. She noted that she first became aware of her conditions on February 21, 2017 and first realized they were caused or aggravated by factors of her federal employment on December 19, 2017. Appellant did not stop work. She indicated that she had previously filed a Form CA-2, but that the employing establishment had not filed it with OWCP.[3]

In a February 20, 2017 medical report, Dr. Dorothy Scarpinato, a Board-certified orthopedic surgeon, evaluated appellant for low back pain radiating down her right side. Appellant informed Dr. Scarpinato that she had encountered difficulty lifting and walking the stairs at work. Dr. Scarpinato referred to an x-ray of the lumbar spine and diagnosed: spondylolisthesis, lumbar region; spondylosis without myelopathy or radiculopathy, lumbosacral region; and a strain of the fascia and tendon of the lower back.

In a February 28, 2017 diagnostic report, Dr. Kapil Desai, a Board-certified diagnostic radiologist, performed a magnetic resonance imaging (MRI) scan of appellant's lumbar spine and diagnosed degenerative disc disease, facet arthrosis, and various subluxations. He found no cause for her right-sided radiculopathy.

Medical reports dated from May 22 to July 17, 2017, note that Dr. Scarpinato evaluated appellant for bilateral knee pain. On evaluation Dr. Scarpinato diagnosed unilateral primary osteoarthritis in appellant's right and left knee. She administered multiple steroid injections to appellant's knees and advised her to perform home exercise and ice treatments.

In a July 18, 2017 medical report, appellant informed Dr. Scarpinato that she had experienced a sharp pain in her left ankle for the past two years. She reported that the pain was not caused by an injury or trauma and stated that she now has difficulty walking. Appellant informed Dr. Scarpinato that she was a postal worker and that her left ankle pain increased with walking long distances. Dr. Scarpinato referred to an x-ray of the left ankle and diagnosed posterior tibial tendinitis, left leg and a calcaneal spur in the left foot.

Dr. Desai reported that a July 20, 2017 MRI scan of appellant's left ankle revealed a flatfoot deformity with arthritis, moderate plantar fasciitis with Baxter neuropathy, mild Achilles tendinosis and partial-thickness tearing, mild tenosynovitis of the extensor digitorum tendons and

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[3] The case record reveals that on January 2, 2018 appellant filed a Form CA-2 for the same conditions and provided the same description of employment factors. Appellant indicated that she initially became aware of her conditions on February 21, 2017 and related them to factors of her federal employment on December 19, 2017. OWCP received this claim form from the employing establishment on February 2, 2019.

tendinosis, and tenosynovitis of the posterior tibial tendon with multi-compartment flexor tenosynovitis. He also observed evidence of a prior lateral ankle sprain.

In medical reports dated from July 28, 2017 to April 9, 2018, Dr. Scarpinato continued to treat appellant for pain she experienced in her knees and left foot. Appellant informed her that she continued to work, but experienced difficulty moving around, walking distances, and climbing stairs. In a December 19, 2017 progress note, Dr. Scarpinato noted that her job duties as a postal carrier required her to carry and lift buckets and trays of mail, sort mail, walk long distances and slopes, and climb in and out of a truck multiple times a day. She listed appellant's diagnoses and opined that the type of work she performed was causally related to the worsening of the osteoarthritis in both of her knees and difficulty with physical activities. Dr. Scarpinato also performed additional steroid injections to treat appellant's bilateral knee osteoarthritis.

In a June 18, 2018 statement, appellant detailed her employment duties which consisted of lifting carrying buckets and trays of mail on her route and sorting the mail into cases. She noted that she loads and pushes mail trays to the dock where she then loads them onto her truck before departing on her route.

In a development letter dated August 1, 2018, OWCP advised appellant of the deficiencies of her claim and instructed her as to the factual and medical evidence necessary to establish her claim. It also provided a factual questionnaire for her completion and requested a narrative medical report from appellant's treating physician, which contained a detailed description of findings and diagnoses, explaining how her work activities caused, contributed to, or aggravated her medical conditions. OWCP afforded appellant 30 days to respond.

Dr. Jonathan Lerner, a Board-certified diagnostic radiologist, reported that a June 1, 2006 MRI scan of appellant's left knee revealed a maceration of the posterior horn, body segment and anterior horn of the lateral meniscus and a meniscal tear.

A diagnostic report with an illegible signature revealed that appellant underwent a June 30, 2008 MRI scan of her right knee which revealed a complex tear of the anterior horn and body of the lateral meniscus.

A September 17, 2014 MRI scan of appellant's left shoulder performed by Dr. Mark Decker, a Board-certified diagnostic radiologist, revealed severe degenerative changes.

In an August 15, 2018 medical report, Dr. Scarpinato noted a history of treatment relating to appellant's complaints of chronic pain in her lower back and bilateral knees, as well as difficulty walking long distances and on stairs. Appellant informed her that her employment duties required her to carry a postal bag and walk long distances in a specific amount of time, causing her difficulty. Dr. Scarpinato diagnosed bilateral osteoarthritis in both knees, left shoulder adhesive capsulitis, spondylolisthesis, lumbar region, spondylosis without myelopathy or radiculopathy, lumbosacral region, strain of muscle, fascia and tendon of lower back, left leg posterior tibial tendinitis, and a left foot calcaneal spur. She concluded, in her professional opinion, based on the diagnostic tests and physical examination, that appellant's medical conditions may have been caused by, and definitely aggravated by, her federal employment. Dr. Scarpinato explained that

the degenerative process that leads to the arthritis is caused by constant wearing of the joints and lower back by carrying heavy bags and walking long distances repetitively.

In an August 23, 2018 response to OWCP's development questionnaire, appellant again described her work duties consisting of taking buckets and trays of mail to her route, lifting them to her counter and reaching to sort the mail. She noted that she walks to retrieve additional mail and parcels for sorting which required additional lifting and sorting. Appellant then lifts the mail and prepares it for delivery by loading it to a cart that is pushed to the dock for loading onto her truck before departing for her route. She explained that her route takes seven and a half hours and she must perform additional climbing in and out of her truck, walking up hills and slopes and carrying baggage weighing up to 35 pounds on her shoulder. Appellant indicated that she has worked in her position for 19 years and that over the past 5 to 10 years the amount of mail she has had to process and deliver has steadily increased. She asserted that she had no additional hobbies that contributed to her conditions.

By decision dated September 4, 2018, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed medical conditions and the accepted factors of her federal employment.

On September 27, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a November 6, 2018 progress note, Dr. Scarpinato diagnosed bilateral osteoarthritis in both knees, left shoulder adhesive capsulitis, spondylolisthesis, lumbar region, spondylosis without myelopathy or radiculopathy, lumbosacral region, strain of muscle, fascia and tendon of lower back, left leg posterior tibial tendinitis and a left foot calcaneal spur. She clarified her previous statement, opining that appellant's medical conditions were caused by and definitely progressively aggravated by her federal employment. Dr. Scarpinato explained again that the degenerative process that leads to the arthritis is caused by constant wearing of the joints and lower back by carrying heavy bags and walking long distances repetitively over the years.

An oral hearing was held before an OWCP hearing representative on February 4, 2019. Appellant's representative detailed a 2003 left knee injury in which appellant fell in a sinkhole, as well as a 2006 meniscal tear, which were subsequently accepted by OWCP.[4] He reasoned that this information was not considered in OWCP's previous decision. Appellant explained that her work duties had become more demanding to the point that she was still walking a full day even with reasonable accommodations. The hearing representative suggested that appellant's physician clarify her opinion and held the case record open for 30 days for the submission of additional evidence. No additional evidence was received.

[4] Appellant previously filed a traumatic injury claim on March 24, 2003 for a left leg injury under OWCP File No. xxxxxx032. On May 25, 2005 OWCP accepted her claim for an effusion of the joint of the left lower leg. On March 28, 2008 it accepted appellant's claim for a recurrence. The Board notes that there is no evidence that OWCP accepted a claim for a 2006 meniscus tear.

By decision dated March 18, 2019, OWCP's hearing representative affirmed the September 4, 2018 decision.

On March 28, 2019 appellant, through her representative, requested reconsideration of OWCP's March 18, 2019 decision. In an attached March 20, 2019 progress note, Dr. Scarpinato again detailed appellant's employment duties and detailed her history of extensive conservative treatment over the years and noted her multiple diagnostic reports revealing multiple medical conditions. She explained that the type of work appellant undertakes, along with the consistent and repetitive duties, with reasonable medical certainty were consistent with the diagnoses of osteoarthritis in both knees as well as her ankle issues. Dr. Scarpinato explained that slipping and sliding in the snow and ice, stumbling on uneven terrain throughout her career, as well as her altered gait while carrying a heavy weighted satchel increased the stress on her knees and ankle and contributed to her diagnosed conditions. She diagnosed bilateral primary osteoarthritis in both knees, left leg posterior tibial tendinitis and a left foot calcaneal spur.

By decision dated June 26, 2019, OWCP denied modification of its March 18, 2019 decision.

OWCP continued to receive evidence. In a November 25, 2019 narrative medical report, Dr. Scarpinato detailed her history of treatment for appellant and diagnosed bilateral knee osteoarthritis, left shoulder adhesive capsulitis, lumbar region spondylolisthesis, lumbosacral region spondylosis, a lumbar back strain, left leg posterior tibial tendinitis, and a left foot calcaneal spur. She explained the cause of bilateral knee osteoarthritis and reasoned that prolonged walking and appellant's employment activities required the bones of her knees to wear on the cartilage, causing it to become progressively thinner and resulting in her osteoarthritis. Dr. Scarpinato then explained the cause of adhesive capsulitis and provided that appellant's left shoulder carried the weight of her loaded satchel for six hours a day, which prevented shoulder movement and caused the tissue of the shoulder to thicken. She also described the cause of lumbosacral spondylosis and opined that appellant's bending, twisting and lifting with regularity while working caused her vertebrae and/or the intervertebral discs in her spine to erode or break, causing her pain and discomfort. Dr. Scarpinato continued by explaining that lumbar region spondylolisthesis was caused by damage to bone or intervertebral discs and is often a byproduct of lumbosacral spondylosis. She opined that as degeneration continued, appellant's spinal components became more prone to misalignment and caused her condition. Dr. Scarpinato noted that when appellant lifted heavy objects at work the lower back was where the stress of the weight was focused. She reasoned that this repetitive lifting constantly expanded her back muscles beyond normal elasticity and caused her lumbar strain. Dr. Scarpinato discussed the cause of tendinitis and provided that each time a forward step is taken, the tendon along the ankle is stretched. She opined that appellant constantly climbed steps was especially demanding on her posterior tibial tendon and caused her left leg posterior tibial tendinitis. Dr. Scarpinato further explained that constant stress on a calcium deposit of a bone can cause a spur and concluded by stating that appellant's calcaneal spur was directly related to the constant stress on her heel from the ambulation and climbing that she performed during her employment duties.

On December 6, 2019 appellant requested reconsideration of OWCP's June 26, 2019 decision.

By decision dated February 14, 2020, OWCP denied appellant's claim for bilateral knee osteoarthritis, lumbar spondylosis, lumbar region spondylolisthesis, and a left foot calcaneal spur finding that the evidence of record was insufficient to establish whether the accepted employment factors caused or contributed to these diagnosed conditions.[5]

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[6]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[7] 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 claimant.[8] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[9]

ANALYSIS

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

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.[10] 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.[11] Herein, appellant has an accepted claim for an effusion of the joint of the left lower leg under OWCP File No. xxxxxx032. However,

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[5] By separate decision dated February 14, 2020, OWCP accepted appellant's claim for adhesive capsulitis of the left shoulder, a lumbar strain, and posterior tibial tendinitis, left leg. That decision was not adverse and therefore is not before the Board on the present appeal. *See* 20 C.F.R. § 501.3.

[6] *S.B.*, Docket No. 19-0634 (issued September 19, 2019).

[7] *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

[8] *R.P.*, Docket No. 18-1591 (issued May 8, 2019).

[9] *Id.*

[10] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

[11] *Id.*; *D.C.*, Docket No. 19-0100 (issued June 3, 2019); *N.M.*, Docket No. 18-0833 (issued April 18, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

the evidence pertaining to OWCP File No. xxxxxx032 are not part of the case record presented before the Board.

For a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record with OWCP File No. xxxxxx032 so it can properly determine whether appellant has submitted sufficient evidence to demonstrate that osteoarthritis in her knee was causally related to factors of her federal employment.

The Board further finds that the case is not in posture for decision as to whether her diagnosed conditions of lumbosacral spondylosis, lumbar region spondylolisthesis and calcaneal spur are causally related to the accepted factors of her federal employment.

In support of her claim, appellant submitted Dr. Scarpinato's November 25, 2019 narrative medical report in which she detailed her history of treatment for appellant related to pain she experienced in her lower back, knees, and left ankle. Dr. Scarpinato explained that the bending, twisting, and lifting appellant performed with regularity caused her vertebrae and/or the intervertebral discs in her spine to erode or break, causing her lumbosacral spondylosis. She continued by providing that lumbar region spondylolisthesis was caused by damage to bone or intervertebral discs and is often a byproduct of lumbosacral spondylosis. Dr. Scarpinato opined that as degeneration continued in appellant's spine, her spinal components became more prone to misalignment and caused her lumbar region spondylolisthesis. She also explained that constant stress on a calcium deposit of a bone can cause a spur. Dr. Scarpinato reasoned that appellant's calcaneal spur was directly related to the constant stress on her heel from the ambulation and climbing she performed during her employment duties.

The Board finds that, although Dr. Scarpinato's November 25, 2019 narrative medical report is not fully rationalized, it is relevant evidence in support of appellant's claim, as it explains the physiological process by which her accepted factors of federal employment caused or aggravated her diagnosed conditions. Dr. Scarpinato's November 25, 2019 narrative medical report therefore raise an uncontroverted inference of causal relationship between her claimed medical conditions and the accepted factors of her federal employment. Further development of appellant's claim is therefore required.[12]

On remand OWCP shall prepare a statement of accepted facts (SOAF) setting forth the employment factors which have been established and refer appellant to an appropriate second opinion physician for an examination and a rationalized medical opinion as to whether her accepted employment factors either caused or aggravated her diagnosed conditions.[13] If the second opinion disagrees with the explanation provided by Dr. Scarpinato, he or she must provide a fully-rationalized explanation explaining why their opinions are unsupported. After this and other such further development deemed necessary, OWCP shall issue a *de novo* decision.

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[12] *See A.T.*, Docket No. 19-1972 (issued June 25, 2020); *K.T.*, Docket No 19-1436 (issued February 21, 2020); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship,* Chapter 2.805.3e (January 2013); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2020 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 29, 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