United States Department of Labor
Employees' Compensation Appeals Board

R.D., Appellant	)	
and	)	**Docket No. 19-1974**
	)	**Issued: September 22, 2020**
U.S. POSTAL SERVICE, LAWRENCE POST OFFICE, Lawrence, MA, Employer	)	

Appearances:
John L. DeGeneres, Jr., Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 27, 2019 appellant, through counsel, filed a timely appeal from a May 6, 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] Together with his appeal request, appellant, through counsel, submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion, by order dated September 16, 2020, the Board denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 19-1974 (issued September 16, 2020).

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On June 27, 2017 appellant, then a 53-year-old letter carrier, filed a claim for an occupational disease (Form CA-2) alleging injury to his hips and right knee due to performing his work duties over the course of more than one workday. He advised that he first became aware of his claimed condition and its relation to his federal employment on April 3, 2017. Appellant did not stop work.

In support of his claim appellant submitted a December 19, 2016 statement in which he advised that he had worked as a letter carrier for the employing establishment since April 25, 1987. He noted that, for the past 2 years, he worked on a curb line driving mail route and that, for the 14 years prior to that, he worked the same park and loop mail route. Appellant reported that, for more than 29 years, he has spent an hour per day casing mail, a task which involves standing, walking, bending, squatting, stooping, twisting, and pivoting. He also carries mail in trays weighing 10 to 15 pounds each, and is required to lift, carry, sort, and separate parcels weighing up to 75 pounds each. Appellant indicated that his duties also include lifting and placing mail/parcels into heavy hampers which could weigh several hundred pounds when filled. He pushes hampers to his vehicle, and lifts and places mail/parcels into his vehicle before pushing the hampers back to the facility. Appellant indicated that, for his first 27 years as a letter carrier, he made approximately 400 deliveries per day, a task which involved walking 6 to 10 miles per day, sometimes on uneven surfaces. On an average day, he climbed and descended hundreds of steps, got in and out of his truck approximately 100 to 200 times, and carried over 20 to 25 pounds of mail in his satchel.

In a July 6, 2017 statement, appellant's immediate supervisor, who served as postmaster, indicated that appellant was employed as a basketball referee officiating high school games. He reported that appellant also aggressively partook in fitness training which included twisting and turning. The supervisor further noted that for years appellant had participated in recreational sports in conjunction with coaching youth sports.

Appellant submitted a December 30, 2009 medical report from Dr. Eugene Brady, a Board-certified orthopedic surgeon, who noted a previous unspecified injury to appellant's right lower leg and right knee surgery. Dr. Brady indicated that appellant was a basketball referee and he reported feeling a popping sensation in his right lower leg on December 27, 2009. He diagnosed right calf muscle strain. In an April 26, 2013 note, Dr. Brady diagnosed left knee pain and status post partial meniscectomy. In a May 30, 2013 note, he indicated that appellant remained disabled from work. On May 6, 2016 Dr. Brady indicated that appellant reported noticing right groin pain for several months "usually not when [appellant] was refereeing games, but sometimes afterwards." He noted that appellant reported working as a letter carrier and that his job mostly involved driving and delivering individual packages. Dr. Brady indicated that x-rays showed normal left hip and osteoarthritic changes in the right hip. He diagnosed osteoarthritis of the right hip.

On October 27, 2016 Dr. Justin W. Kung, a Board-certified radiologist, reviewed bilateral knee and hip radiographs taken on February 1, 2013 and May 6, 2016, respectively, and found that they demonstrated severe degenerative change in the right femoroacetabular compartment and mild degenerative change in the left femoroacetabular compartment. In a January 21, 2017 report, he advised that January 16, 2017 x-rays of appellant's knees and hips showed severe degenerative change in the right femoroacetabular joint and moderate degenerative change in the left femoroacetabular joint. Appellant also submitted an April 23, 2013 magnetic resonance imaging (MRI) scan of the left knee showing, *inter alia*, meniscus tears and mild medial and lateral femorotibial joint compartment degenerative thinning of articular cartilage. A May 21, 2013 operative report detailed the left knee arthroscopy and left partial medial meniscectomy performed on that date.

In a report dated April 3, 2017, Dr. Frank A. Graf, a Board-certified orthopedic surgeon, indicated that appellant reported that he had worked for the employing establishment for almost 30 years and noted that his duties included multiple hours of walking (with and without weight), walking up and down stairs, getting in and out of a postal vehicle, and multiple instances of bending, stooping, lifting, and carrying.[4] He advised that appellant's past medical history included bilateral hernia repair, work-related laminectomy discectomy at L4-5, and nonwork-related left knee arthroscopy. Dr. Graf noted that on December 27, 2009 appellant had reported feeling a popping sensation in his right leg while refereeing a basketball game. He reported examination findings and diagnosed progressive degenerative osteoarthritis of both hip joints and the right knee. Dr. Graf indicated that appellant had no indication of congenital hip disorders or childhood hip dysplasia and opined that appellant's work history was "causal to the development of osteoarthritis of both hips." He noted that the mechanism of injury was one of repetitive microtrauma.[5]

In an August 24, 2017 development letter, OWCP notified appellant that the evidence of record was insufficient to support his occupational disease claim and it requested that he submit additional factual and medical evidence. On the same date, it also requested information from the employing establishment. OWCP afforded both parties 30 days to respond.

In response, appellant submitted a positon description for his letter (city) carrier position. He also submitted a November 25, 2014 treatment note from Dr. Scott Masterson, Board-certified in physical medicine and rehabilitation, who indicated that appellant had no effusion, ecchymosis or deformities of left hip, and that appellant had normal strength and gait. On December 15, 2014 Dr. Masterson reported that appellant complained of increasing right lateral hip pain due to an aggravating incident when he was coaching a game. In a November 20, 2015 note, he indicated that August 12, 2015 x-ray testing showed moderate degenerative changes of right hip. On June 9, 2016 Dr. Masterson noted that appellant reported that he was told by an orthopedic specialist that

[4] Dr. Graf noted that appellant worked as a letter carrier for more than 29 years and then had a 2-year history working a curb line driving route.

[5] Dr. Graf also determined that appellant had 2 percent permanent impairment of his lower extremity due to his bilateral knee conditions, 50 percent permanent impairment of his right lower extremity due to his right hip condition, and 18 percent permanent impairment of his left lower extremity due to his left hip condition under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). *See* A.M.A., *Guides* (6th ed. 2009).

he would probably need right hip replacement in the future. In a June 27, 2017 note, he indicated that appellant went to the gym regularly and was still involved in sports with his children.

In a note dated July 13, 2017, Dr. Gregory K. Johnson, a Board-certified orthopedic surgeon, diagnosed intermittent acromioclavicular joint arthritis and impingement bursitis of the left shoulder and advanced arthritis of the right hip.

Appellant's immediate supervisor indicated in a September 7, 2017 statement that carriers rarely lifted anything close to 70 pounds and never have satchels weighing 35 pounds. He noted that appellant had a mounted route in which he delivered mail to curb line mailboxes. The supervisor advised that appellant exited the vehicle only to deliver packages too large for the mail receptacle and that he drove predominantly throughout the day (six hours of his eight-hour assignment). The other two hours of the day, appellant was on his feet casing mail or walking to deliver packages.

By decision dated December 14, 2017, OWCP denied appellant's occupational disease claim, finding that he had not established the alleged factors of his federal employment as there were discrepancies in the employment duties that he reported in written statements to OWCP and during examinations with attending physicians. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 20, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The request was later converted to a request for review of the written record.

Appellant subsequently submitted a February 5, 2018 statement in which he clarified that, for the past two years, he had worked a curb line driving mail route, but that for the 27 years before that he performed more strenuous work which involved walking 6 to 10 miles per day on uneven surfaces and making more than 400 deliveries of mail per day. On an average day during this period, he ascended and descended hundreds of stairs, got in and out of his truck approximately 100 to 200 times, and carried over 20 to 25 pounds of mail in his satchel. Appellant reported that he worked out at the gym two to three days per week and that, each basketball season (December through March), he refereed two nights per week. He indicated that he never had right knee surgery as had been erroneously reported, but that he had undergone two left knee arthroscopic surgeries. Appellant advised that on December 27, 2009 he felt a popping sensation in his right knee and felt some tightness and cramping. He noted that he was off work for periods of time during his 31-year career for different reasons including hernia surgery, two left knee surgeries, and back surgery.

Appellant submitted a March 13, 2009 note from Dr. Brady who diagnosed left knee pain, probable resolved strain, and status post arthroscopic partial medial meniscectomy of the right knee. In a February 1, 2013 note, Dr. Brady related that appellant was doing a lot of running while refereeing basketball games and might have overused his left knee the other day. He diagnosed left knee effusion. On March 4, 2013 Dr. Brady indicated that appellant had a history of an arthroscopic medial meniscectomy on the left knee approximately seven years prior and he noted that appellant continued to referee basketball games and work as a letter carrier. He reported that appellant also complained of some swelling in his right foot and that he might have metatarsalgia

or an early stress fracture given the fact that he refereed basketball games. Dr. Brady diagnosed left knee pain and right foot metatarsalgia.

In treatment notes dated March 16, 2011 through April 30, 2014, Dr. Masterson provided left hip examination findings which included no effusion, ecchymosis or deformities, normal strength and gait, and nontenderness to palpation. He also discussed appellant's back condition and diagnosed lumbar spondylosis without radiculopathy.

In an addendum report dated March 15, 2018, Dr. Graf indicated that appellant began working in 1987 and had been exposed to more than 30 years of the impact-loading activities due to appellant's duties as a letter carrier. He noted that appellant's statement indicated that appellant has walked over 51,000 miles in his postal career. Dr. Graf indicated that OWCP's definition of causation for acceleration of arthritis gives an example of a person who does substantial walking over a 15-year career. He noted that appellant had doubled that number. Dr. Graf opined that appellant's work activities as a letter carrier for more than 30 years "has been causal and contributed to [appellant's] bilateral hip osteoarthritis and right knee osteoarthritis."[6]

By decision dated July 30, 2018, OWCP's hearing representative modified the December 14, 2017 decision to reflect that appellant had established multiple employment factors.[7] However, she affirmed the denial of appellant's occupational disease claim finding that he had not submitted sufficient medical evidence to establish causal relationship between a diagnosed medical condition and the accepted employment factors. The hearing representative found that Dr. Graf's reports were not based on a complete and accurate factual background as he made no mention of appellant being assigned to a mounted route in 2014 or of the injuries appellant sustained while refereeing basketball or coaching a game.

On February 28, 2019 appellant, through counsel, requested reconsideration of the July 30, 2018 decision and submitted a February 28, 2019 memorandum arguing that the medical evidence already in the case file established appellant's claim.

Appellant also submitted a January 24, 2019 report from Dr. Graf who maintained that it was incorrect to say that he made no mention of the fact that appellant was assigned a driving route. Dr. Graf advised that on the second page of his April 3, 20l7 report he noted that appellant worked as a letter carrier for more than 29 years and then had a 2-year history working a curb line driving route. He opined the fact that appellant had been working the curb line driving route had no effect on his medical opinion on causal relationship because appellant was still required to load, pick up, push, and case mail, mount/dismount his vehicle to deliver packages, and return equipment and mail to the office. Dr. Graf indicated that, even on a curb line driving route, appellant experienced a significant amount of impact-loading activities on his hips and knees. He noted that it is incorrect to say that he made no mention of appellant sustaining injuries while refereeing or coaching basketball games. Dr. Graf advised that on the second page of his April 3,

[6] Appellant also submitted additional diagnostic testing reports, including a December 30, 2009 x-ray of the right leg and an August 12, 2015 MRI scan of the right hip.

[7] The hearing representative accepted that appellant's work duties for the first 27 years of his career included: extensive walking, ascending and descending numerous steps, getting in and out of his vehicle repeatedly, and carrying less than 35 pounds of mail in his satchel; and his work duties since 1987 involved standing, bending, squatting, walking, stooping, twisting, pivoting, pushing, carrying, and lifting less than 70 pounds.

2017 report he indicated that appellant reported feeling a popping sensation on December 27, 2009 while refereeing a basketball game. He posited that appellant's referee activities did not have a significant effect on his medical opinion because he applied a causation standard of no apportionment. Dr. Graf explained that, if the job factors contributed to the condition, causation was established regardless of whether or not other causes also contributed to the given condition. Therefore, other causes of injury, such as those sustained while refereeing or coaching a basketball game were not relevant.

Dr. Graf indicated that, for approximately 30 years, appellant performed the repetitive heavy physical impact-loading activities, involving the lower extremity joints, which resulted in continuous microtrauma throughout his right knee and hips. He explained that the ends of bones were encased in smooth (articular) cartilage and that osteoarthritis was the failure and loss of that articular cartilage (the gliding surface) of the joint. Dr. Graf indicated that it was repetitive impact-loading activities which caused microtrauma to the joint cartilage through an inflammatory process and which accelerated the deterioration of the joint. In the presence of this damage to the articular cartilage caused by the microtrauma of the impact-loading activities, chemicals called proteoglycans were released by the injured cartilage. Dr. Graf advised that these proteoglycans caused the inflammation which then led to the further breakdown of the articular cartilage, *i.e.*, osteoarthritis. The release of these proteoglycans into the synovial (lubricating) fluid in the joint also decreased the viscosity (thickness) of the fluid, impairing its ability to lubricate (reduce friction) with joint movement. Dr. Graf indicated that inflammation occurred where the synovial membrane joined the edge of the bony margins of the joint and caused new bone production at the margins of the joint. These osteophytes, also known as spurs, accelerated loss of the articular surface caused by microtrauma from impact-loading and constituted a permanent condition. Dr. Graf indicated that, as the articular surfaces of the joint wore away, the joint space permanently diminished.

Dr. Graf opined that, since appellant's hip arthritis progressed to end stage while performing his work activities, it was during this time that the articular surface of the joint continued to wear away the joint space, which continued to diminish, and his condition progressed to an end stage state which now required arthroplasty. He noted that, during this time, appellant's right knee cartilage and contralateral hip cartilage also diminished to an impairing level according to the A.M.A., *Guides*. Dr. Graf referenced appellant's medical records and reported history, and he noted that medical science accepts and supports the conclusion that microtrauma from impact-loading, arising from front repetitive motion activities such as bending, kneeling, lifting, climbing, stooping, twisting, squatting, and carrying, contribute to the development and progression of lower extremity arthritis.

Dr. Graf explained that there is no medically accepted definition of "the ordinary course" or "natural progression" of osteoarthritis. He noted that, up until about the mid-1900s, osteoarthritic disease was felt to be a natural by-product of the aging process with genetic factors being the determinative component. However, since that time, rheumatological research had determined that significant and oftentimes predominant environmental factors contributed to the development and progression of the disease. Dr. Graf noted that, with the advent of new drugs and new treatment options such as joint replacement, articular cartilage transfer, and injection therapy, the previous school of thought that osteoarthritic disease had a "natural progression" or "ordinary course" that inevitably led to crippling disability was completely discredited. He advised that current medical research supported that osteoarthritis was a disease that no longer had

a natural progression or ordinary course. To refer to a "natural course" of osteoarthritis was outdated, inaccurate, and inconsistent with the current state of medical knowledge.

By decision dated May 6, 2019, OWCP denied modification of its July 30, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[8] has the burden of proof to establish the essential elements of his or her claim, including the fact 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.[9] These are the essential elements of every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[10]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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.[11]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[12] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[13] 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 factor(s).[14]

ANALYSIS

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

---

[8] *Supra* note 2.

[9] *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[10] *K.V. and M.E.*, *id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

[11] *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[12] *W.M.*, Docket No. 14-1853 (issued May 13, 2020); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[13] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[14] *Id.*; *Victor J. Woodhams*, *supra* note 11.

Appellant submitted an April 3, 2017 report from Dr. Graf who indicated that appellant reported that he had worked for the employing establishment for almost 30 years and noted that his duties included multiple hours of walking (with and without weight), walking up and down stairs, getting in and out of a postal vehicle, and multiple instances of bending, stooping, lifting, and carrying.[15] Dr. Graf reported examination findings and diagnosed progressive degenerative osteoarthritis of both hip joints and the right knee. He indicated that appellant had no indication of congenital hip disorders or childhood hip dysplasia and opined that his work history was "causal to the development of osteoarthritis of both hips." Dr. Graf noted that the mechanism of injury was one of repetitive microtrauma.

In a March 15, 2018 report, Dr. Graf noted that appellant began working in 1987 and had been exposed to more than 30 years of impact loading activities due to his duties as a letter carrier. He noted that appellant's statement indicated that he had walked over 51,000 miles in his postal career. Dr. Graf indicated that OWCP's definition of causation for acceleration of arthritis gives an example of a person who does substantial walking over a 15-year career. He noted that appellant had doubled that number. Dr. Graf opined that appellant's work activities as a letter carrier for more than 30 years "has been causal and contributed to [appellant's] bilateral hip osteoarthritis and right knee osteoarthritis."

In his January 24, 2019 report, Dr. Graf maintained that it was incorrect to say that he previously made no mention of the fact that appellant was assigned a driving route and he opined that the fact that appellant had been working the curb line driving route had no effect on his medical opinion on causal relationship because he was still required to load, pick up, push, and case mail, mount/dismount his vehicle to deliver packages, and return equipment and mail to the office. He indicated that, even on a curb line driving route, appellant experienced a significant amount of impact-loading activities on his hips and knees. Dr. Graf noted that it is incorrect to say that he previously made no mention of appellant sustaining injuries while refereeing or coaching basketball games. He posited that appellant's referee/coaching activities did not have a significant effect on his medical opinion because he applied a causation standard of no apportionment which meant that, because job factors contributed to his condition, causation was established regardless of whether or not other causes also contributed to the condition. Dr. Graf indicated that, for approximately 30 years, appellant performed the repetitive heavy physical impact-loading activities, involving the lower extremity joints, which resulted in continuous microtrauma throughout his right knee and hips. He further discussed how trauma could cause or aggravate osteoarthritis and opined that, since appellant's hip arthritis progressed to end stage while performing his work activities, it was during this time that the articular surface of the joint continued to wear away the joint space and his condition progressed to an end stage state which now required arthroplasty. Dr. Graf referenced appellant's medical records and reported work history, and noted that medical science accepts and supports the conclusion that microtrauma from impact-loading, arising from front repetitive motion activities such as bending, kneeling, lifting, climbing, stooping, twisting, squatting, and carrying, contribute to the development and progression of lower extremity arthritis. He advised that current medical research supported that osteoarthritis was a disease that no longer had a natural progression or ordinary course.

[15] Dr. Graf noted that appellant worked as a letter carrier for more than 29 years and then had a 2-year history working a curb line driving route. He also indicated that on December 27, 2009 appellant had reported feeling a popping sensation in his right leg while refereeing a basketball game.

Proceedings under FECA are not adversarial in nature, and OWCP is not a disinterested arbiter.[16] The Board finds that, while Dr. Graf's reports are insufficient to meet appellant's burden of proof, they raise an uncontroverted inference of causal relationship between appellant's claimed medical conditions and the accepted factors of his federal employment. Further development of appellant's occupational disease claim is therefore required.[17] On remand OWCP shall prepare a statement of accepted facts and refer him to an appropriate Board-certified specialist for a second opinion examination and an evaluation regarding whether he sustained an occupational disease causally related to the accepted factors of his 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. Graf. Following any necessary further development, OWCP shall issue a *de novo* decision.

CONCLUSION

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

[16] *See B.B.*, Docket No. 18-1321 (issued April 5, 2019).

[17] *See C.M.*, Docket No. 17-1977 (issued January 29, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the May 6, 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: September 22, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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