

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

L.A., Appellant)	
)	
and)	Docket No. 20-0518
)	Issued: July 27, 2021
U.S. POSTAL SERVICE, MEDFORD POST OFFICE, Medford, MA, Employer)	
)	

Appearances:
 John L. De Generes, Jr., Esq., for the appellant¹
 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 January 7, 2020 appellant, through counsel, filed a timely appeal from a November 5, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the

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, through counsel, submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of the oral argument request, appellant asserted that oral argument should be granted because it would allow her to more completely explain the uncontroverted evidence which established her claim. The Board, in exercising its discretion, denies appellant's request for oral argument because this matter requires an evaluation of the medical evidence presented. As such, the Board finds that the arguments on appeal can adequately be addressed in a decision based on a review of the case record and that oral argument would further delay issuance of a Board decision and would not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

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.

ISSUE

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

FACTUAL HISTORY

On September 8, 2017 appellant, then a 57-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral knee osteoarthritis as the result of walking 15 miles per day while in the performance of duty. She did not stop work.

On September 1, 2017 Rachel E. Furnas, a physician assistant, diagnosed bilateral knee osteoarthritis and noted that appellant could return to light-duty work with restrictions on September 1, 2017. She completed a duty status report (Form CA-17) of even date wherein she related appellant's diagnosis of bilateral knee osteoarthritis and indicated that appellant could return to full-duty work on September 7, 2017.

In a September 7, 2017 report, Ms. Furnas indicated that appellant could return to work on September 7, 2017 with restrictions, which included limiting standing to three hours per day, walking two hours per day, stooping one hour per day, and limited use of stairs.

In a September 8, 2017 attending physician's report (Form CA-20), Ms. Furnas noted that appellant had a history of primary osteoarthritis of the bilateral knees and knee pain for many years. She diagnosed osteoarthritis and tricompartmental degenerative changes. In response to the question whether the condition was caused or aggravated by an employment activity, Ms. Furnas marked the box "Yes" and indicated "too much walking and climbing stairs." She also completed a Form CA-17 report on September 8, 2017, relating that appellant could return to full-time work with restrictions.

In a development letter dated October 25, 2017, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed, including a reasoned medical report from a physician providing an opinion on causal relationship. OWCP provided appellant with a questionnaire for completion. In a separate letter of even date, it asked the employing establishment to comment on the accuracy of her statements. OWCP afforded appellant and the employing establishment 30 days to submit the necessary evidence.

In a November 8, 2017 statement, J.W., an employing establishment manager, provided the physical requirements of appellant's letter carrier position. The requirements included lifting and carrying from 10 to 70 pounds for up to six hours per day, standing for up to eight hours per

³ 5 U.S.C. § 8101 *et seq.*

day, walking for up to six hours per day, bending/stooping for up to two hours per day, driving a vehicle for up to six hours per day, and climbing to include stairs for up to three hours per day.

By decision dated November 24, 2017, OWCP found that appellant had established the alleged factors of her federal employment, but she had not submitted any medical evidence that established a diagnosis in connection with the accepted factors of her federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 21, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP thereafter received a January 22, 2017 report wherein Dr. Arthur Haffner, a family medicine specialist, related that appellant had a long history of bilateral degenerative joint disease of the knees. Dr. Haffner diagnosed bilateral knee osteoarthritis, lateral compartment narrowing of the left knee, and medial compartment narrowing of the right knee.

In a February 3, 2017 report, Ms. Furnas noted appellant's longstanding history of bilateral knee pain. She related a diagnosis of localized osteoarthrosis of the right knee.

In an August 11, 2017 progress note, Dr. Toru Endo, Board-certified in internal medicine, noted that appellant was a postal worker, walked her routes daily, and was required to ascend and descend stairs. He also noted that appellant reported increased pain in her right knee, worsened with ambulation or prolonged standing. Dr. Endo diagnosed primary localized osteoarthritis of the knee, unspecified laterally, and recommended refraining from prolonged ambulation or standing.

A November 21, 2017 left knee x-ray read by Dr. Karen Shore, a radiologist, revealed tricompartmental degenerative changes.

In a progress note dated November 21, 2017, Dr. Chris Sambaziotis, a Board-certified orthopedic surgeon, related that appellant presented with bilateral knee pain that was intermittent, moderate, and had been present for almost a year. He indicated that the pain was aggravated with ambulation, stairs, and inclines. Dr. Sambaziotis noted that appellant worked as a mail carrier and had switched to a desk job due to her discomfort. He diagnosed moderate-to-advanced degenerative joint disease (DJD) of both knees and recommended left knee total replacement.

In a January 13, 2018 report, Dr. Justin W. Kung, a Board-certified radiologist, noted that he reviewed appellant's November 21, 2017 bilateral knee x-rays and determined that appellant had severe degenerative change in the right knee medial compartment and moderate degenerative change in the left knee medial compartment.

In a June 15, 2018 report, Dr. Byron V. Hartunian, a Board-certified orthopedic surgeon, noted that appellant had a mail route, which required walking for 15 miles a day in all kinds of weather and over all kinds of terrain while carrying a 35-pound satchel. He also noted that she had to lift, carry, or move up to 70 pounds, and that her work required repetitive twisting, bending, lifting, squatting, stooping, climbing, and reaching. Dr. Hartunian diagnosed joint arthritis primary right knee, with one millimeter cartilage interval at medial femorotibial joint, and primary

left knee with two millimeters cartilage interval at medial femorotibial joint. He opined that appellant's bilateral knee osteoarthritis was "likely" aggravated and accelerated by her work-related activities. Dr. Hartunian also related that appellant's bilateral knee arthritis was permanently aggravated by her work activities over 26 years, as her knee cartilage degraded as she worked to the point where she had significant loss of cartilage, which caused a permanent condition in her knee joints.

On June 19, 2018 OWCP received a statement from appellant describing her employment duties as a letter carrier for over 26 years.

On June 19, 2018 then-counsel for appellant requested that appellant's hearing request be converted to a review of the written record.

By decision dated August 29, 2018, OWCP's hearing representative affirmed the November 24, 2017 decision, as modified, finding that the medical evidence did not contain a sufficiently rationalized, non-speculative physician's opinion linking the bilateral knee condition to accepted factors of appellant's federal employment.

On August 7, 2019 appellant requested reconsideration.

In a July 31, 2019 report, Dr. Hartunian provided clarification regarding the cause of appellant's diagnosed conditions. He noted that he had used the term "likely" in one paragraph of his prior report, and opined that, "her work activities including lifting, walking and climbing, caused a permanent aggravation of her bilateral hip osteoarthritis." Dr. Hartunian noted that his ultimate statement was not qualified by the word "likely" and was an unequivocal statement in favor of causal relationship. He explained that, without appellant's work as a letter carrier, her condition would not have progressed as early and fast as it did, and there was no doubt that the high impact loading activities contributed to the development and progression of her arthritis. Dr. Hartunian also discussed whether appellant's preexisting condition had progressed beyond what might be expected from the natural progression of that condition. He explained that there was no medically-accepted definition of the "natural progression" of bilateral hip arthritis that was universally applicable to all persons in all situations. Dr. Hartunian related that, "Medicine knows that lower extremity arthritis of the hips and knees is multi-factorial with a number of contributing factors, including weight/body habitus, genetics, age, repetitive loading activities, trauma, disease and medication side effects amongst others. All of these contributors are well known and accepted by the medical community. There is no way to parse out the relative contributions of each. However, impact loading activities are a definite contributor." He further related that biomechanical research had shown that ascending stairs loads on the lower extremity joints approximately six times body weight. Dr. Hartunian explained that a letter carrier ascending stairs with a full mail satchel added approximately 100 pounds to effective body weight, and descending stairs approximately 200 pounds; therefore, appellant's job as a letter carrier was a definite contributing factor to the progression of her arthritis.

By decision dated November 5, 2019, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 period 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 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁸

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁹ 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.¹⁰ 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.¹¹

⁴ *Id.*

⁵ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *S.C.*, *id.*; *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 *S.C.*, *id.*; *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 *C.D.*, Docket No. 17-2011 (issued November 6, 2018); *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁹ *E.V.*, Docket No. 18-1617 (issued February 26, 2019); *A.M.*, Docket No. 18-0685 (issued October 26, 2018).

¹⁰ *E.V.*, *id.*

¹¹ *B.J.*, Docket No. 19-0417 (issued July 11, 2019).

ANALYSIS

The Board finds that appellant has not met her proof to establish bilateral knee conditions causally related to the accepted factors of her federal employment.

Appellant provided a January 22, 2017 report from Dr. Haffner, who diagnosed bilateral knee osteoarthritis, lateral compartment narrowing of the left knee, and medial compartment narrowing of the right knee, an August 11, 2017 progress note from Dr. Endo who diagnosed primary localized osteoarthritis of the knee, unspecified laterally, a November 21, 2017 report from Dr. Sambaziotis, who diagnosed moderate-to-advanced degenerative joint disease of both knees, and a January 13, 2018 report from Dr. Kung, who diagnosed severe degenerative change in the right knee medial compartment and moderate degenerative change in the left knee medial compartment. These physicians provided diagnoses, but did not offer an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹² As such, these reports are insufficient to establish appellant's claim.

In a June 15, 2018 report, Dr. Hartunian noted appellant's job requirements and opined that her bilateral knee osteoarthritis was "likely" aggravated and accelerated by her work-related activities. As such, his opinion was speculative.¹³ The Board finds that this report is insufficient to establish appellant's claim.

In a July 31, 2019 report, Dr. Hartunian indicated that he was clarifying his prior report. He noted that his June 15, 2018 report opined that the bilateral knee osteoarthritis was "likely" aggravated and accelerated by appellant's work activities. In his July 31, 2019 supplemental report, Dr. Hartunian opined that appellant's "work activities including lifting, walking, and climbing caused a permanent aggravation of her bilateral hip osteoarthritis." However, the Board notes that the July 31, 2019 report discusses "bilateral hip osteoarthritis" while appellant is claiming bilateral knee conditions. As such, the Board finds that Dr. Hartunian has not provided a clear and unequivocal opinion regarding causal relationship between appellant's bilateral knee conditions and the accepted factors of her federal employment. The Board has consistently held that, if the physician is opining that work activity caused a diagnosed medical condition, there must be a clear explanation as to the mechanism of injury and how the work activity caused the diagnosed medical condition.¹⁴ In this case, Dr. Hartunian initially gave a speculative opinion regarding the claimed bilateral knee condition, and subsequently discussed appellant's hip conditions, rather than the claimed bilateral knee condition. His opinion is therefore of limited probative value.

¹² See *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *L.G.*, Docket No. 20-0433 (issued August 6, 2020); *S.D.*, Docket No. 20-0413 (issued July 28, 2020); *S.K.*, Docket No. 20-0102 (issued June 12, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018)..

¹³ See *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *R.C.*, Docket No. 18-1695 (issued March 12, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

¹⁴ *W.R.*, Docket No. 20-1101 (issued January 26, 2021); *A.S.*, Docket No. 16-1028 (issued August 17, 2016).

OWCP received reports dated February 3 and September 1, 7, and 8, 2017 from Ms. Furnas, a physician assistant, who diagnosed bilateral knee osteoarthritis. Certain healthcare providers, such as physician assistants, are not considered “physician[s]” as defined under FECA.¹⁵ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁶

The record also contains reports summarizing diagnostic testing. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship, as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁷ Thus, these reports are insufficient to establish appellant’s claim.

As appellant has not submitted rationalized medical evidence explaining causal relationship between her bilateral knee conditions and the accepted factors of her federal employment, the Board finds that she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her proof to establish bilateral knee conditions causally related to the accepted factors of her federal employment.

¹⁵ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

¹⁶ Section 8101(2) of FECA provides that physician “includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.” 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (Lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also E.T.*, Docket No. 21-0014 (issued May 20, 2021); *K.W.*, 59 ECAB 271, 279 (2007).

¹⁷ *K.S.*, Docket No. 19-1623 (issued March 19, 2020); *M.J.*, Docket No. 19-1287 (issued January 13, 2020).

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2019 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 27, 2021
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