

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

_____)
K.R., Appellant)

and)

U.S. POSTAL SERVICE, EASTSIDE STATION,)
Buffalo, NY, Employer)
_____)

Docket No. 21-0083
Issued: June 3, 2021

Appearances:

*John L. DeGeneres, 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 October 28, 2020 appellant, through counsel, filed a timely appeal from a September 3, 2020 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.

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 the acceptance of her claim to include bilateral knee and left hip osteoarthritis causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On December 21, 2018 appellant, then a 66-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she injured her knees and left hip as a result of her federal employment duties. She noted that she first became aware of her conditions on January 11, 2018 and realized their relationship to her federal employment on September 28, 2018. Appellant stopped work on November 9, 2016. On the reverse side of the claim form the employing establishment indicated that she had retired effective February 24, 2017. OWCP assigned the claim OWCP File No. xxxxxx833.³

In a January 3, 2019 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit additional evidence and respond to its inquiries.

OWCP subsequently received medical evidence, including a September 28, 2018 letter by Dr. Kevin Scott, a Board-certified orthopedic surgeon. Dr. Scott reviewed appellant's medical records and her March 21, 2018 statement. He also noted her letter carrier work duties as she described, and discussed findings on physical and x-ray examination. Dr. Scott diagnosed status post right total hip arthroplasty, status post right total knee arthroplasty, left knee osteoarthritis, and left hip osteoarthritis. He advised that appellant suffered from degenerative osteoarthritis of her hips and knees. Dr. Scott opined that her conditions were permanently aggravated by her repetitive work duties. He explained that the loss of cartilage space was irreversible as the cartilage would not regrow from the diminished joint space objectively shown on x-ray. Dr. Scott noted that appellant underwent bilateral arthroscopies for medial meniscal tears on both the left and right sides. He related that there was a large body of scientific evidence supporting the fact that once a joint suffered from an injury such as a torn meniscus it was substantially more susceptible to the development of arthritis and that arthritis was more likely to reach an end stage more quickly than in an individual who had no previous injury. Dr. Scott noted that the cartilage in appellant's left hip was degraded to three millimeters (mm) and the cartilage in her left knee was degraded to one mm and, thus, the aggravation was permanent because arthritis never reverted to its prior condition, *i.e.*, once the cartilage loss was aggravated due to the biological and physical process described in his report, the condition of the joint by definition never goes back to any prior level of severity. It

³ Appellant has several prior claims. Under OWCP File No. xxxxxx647, OWCP accepted her traumatic injury claim (Form CA-1) for a Weber C left ankle sprain sustained on November 27, 2009. Under OWCP File No. xxxxxx547, it accepted appellant's occupational disease claim for left hip tendinitis, which noted a date of injury as April 14, 2011. A March 1, 2014 traumatic injury, under OWCP File No. xxxxxx405, was accepted for sprain of the left knee and leg. OWCP also processed appellant's traumatic injury claim for a January 25, 2013 right leg injury as a short form closure under OWCP File No. xxxxxx080. It also processed her traumatic injury claim for November 17, 2014 right clavicle and right elbow injuries as a short form closure under OWCP File No. xxxxxx120.

is forever and permanently deteriorated. Dr. Scott advised that the aggravation of appellant's right hip and right knee was obviously permanent as she underwent joint replacement surgery. He noted that the physical activities of her job over the relevant time period accelerated her arthritis as they involved continuous walking, stooping, squatting, lifting, and bending. Dr. Scott indicated that objective support for progression of the arthritic disease process and contribution of the offending impact-loading work activities was based on radiographic studies. He maintained that these records confirmed the progression of arthritic disease while appellant performed the offending work activities. Dr. Scott referenced medical literature in support of his opinion on the causal relationship between her work duties and degenerative osteoarthritis of her hips and knees. He concluded that appellant had 52 percent permanent impairment of her right lower extremity and 31 percent permanent impairment of her left lower extremity pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴

In response to OWCP's January 3, 2019 development letter, appellant submitted a March 21, 2018 statement in which she detailed her work duties over the years, as well as, her current daily work routine, which included casing, sorting, and delivering mail and parcels. She noted that these work duties involved walking, lifting, carrying, bending, squatting, reaching, twisting, pivoting, pushing, pulling, climbing, and kneeling.

By decision dated April 15, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that her medical diagnosed condition was causally related to the accepted employment factors. It noted that the medical evidence, including Dr. Scott's September 28, 2018 report, did not provide sound medical rationale explaining how the accepted employment factors aggravated or accelerated appellant's diagnosed medical condition.

On April 25, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a July 11, 2019 memorandum, appellant, through counsel, contended, among other things, that Dr. Scott's September 28, 2018 report was sufficiently rationalized to establish appellant's claim.

OWCP's hearing representative, in a September 6, 2019 decision, set aside the April 15, 2019 decision and remanded the case to OWCP for further development of the medical evidence. He found that Dr. Scott's September 28, 2018 affirmative opinion on causal relationship was not sufficiently rationalized, but it was sufficient to warrant further development of the issue whether appellant's diagnosed bilateral knee and left hip conditions were caused or aggravated by the accepted factors of her employment. The hearing representative remanded the case for OWCP to administratively combine OWCP File Nos. xxxxxx647, xxxxxx547, xxxxxx405, and the present case file, OWCP File No. xxxxxx833,⁵ and then refer her for a second opinion examination to

⁴ A.M.A., *Guides* (6th ed. 2009).

⁵ The record indicates that OWCP administratively combined OWCP File Nos. xxxxxx647, xxxxxx547, xxxxxx405, and xxxxxx833, with the latter serving as the master file.

determine if the accepted employment factors contributed to or aggravated her bilateral knee or left hip osteoarthritis.

On remand OWCP referred appellant for a second opinion examination, along with a statement of accepted facts (SOAF), a set of questions, and the medical record, to Dr. Michael Parentis, a Board-certified orthopedic surgeon, to determine the nature and extent of her claimed employment-related bilateral knee and left hip conditions.

In a November 1, 2019 report, Dr. Parentis noted appellant's history of injury and medical treatment, and reviewed the SOAF. He provided findings on physical examination. Dr. Parentis assessed that appellant had severe left knee medial compartment arthritis and most likely a degenerative meniscal tear. He advised that the only work-related condition was the left knee degenerative meniscal tear. Dr. Parentis noted that appellant already had severe arthritis as evidenced by x-rays performed after her injury. He advised that her current symptoms were related to her severe medial compartment arthritis and not by her left knee meniscus tear as she had severe arthritis as demonstrated by x-rays performed right after her injury. Dr. Parentis indicated that the left knee meniscal tear was likely still present and had reached maximum medical improvement (MMI). He diagnosed severe genetically driven medial compartment arthritis of the left knee and noted that the best treatment for the diagnosed condition was left knee total replacement. Dr. Parentis advised that appellant could not return to her regular job due to her severe knee arthritis, but she could perform a sedentary position with restrictions. He further advised that her work factors did not aggravate her left hip or bilateral knee arthritis. Dr. Parentis explained that appellant had underlying severe genetically-driven osteoarthritis in her knees. Additionally, appellant had mild aggravation of her left hip osteoarthritis, but since she was not working, the aggravation was not present. Dr. Parentis noted that she had full motion of her hip without pain on the date of his examination. He indicated that appellant had severe arthritis in her hip on examination right after her injury and severe arthritis in her right knee which was never injured at work. Dr. Parentis maintained that her work activities did not lead to her arthritis. He concluded that appellant's disability from work and need to undergo left knee total replacement were not work related.

By letter dated December 6, 2019, OWCP requested that Dr. Parentis review an updated SOAF⁶ and provide a supplemental report as he did not provide sufficient medical rationale to support his conclusions. It requested that he provide a rationalized opinion as to whether appellant's left hip and/or bilateral knee conditions were caused by her accepted work-related duties.

In an addendum report dated January 16, 2020, Dr. Parentis again reviewed appellant's medical records. He essentially reiterated the findings set forth in his November 1, 2019 report. Dr. Parentis opined that appellant's left knee medial meniscus tear was causally related to her accepted employment factors. He also opined that her preexisting left knee osteoarthritis was aggravated by her accepted work factors. Dr. Parentis found, however, that appellant's right knee and left hip osteoarthritis was not caused or aggravated by the accepted employment factors. He reasoned that there was no evidence of injury to her right knee or left hip. Dr. Parentis indicated

⁶ The December 6, 2019 updated SOAF indicated that appellant underwent right hip total replacement on March 24, 2009 and right knee total replacement on January 11, 2018.

that appellant's right knee and left hip osteoarthritis was genetically derived as evidenced by x-rays performed following her March 1, 2014 employment injury. He advised that her work-related left knee conditions had not resolved as x-rays revealed severe arthritis and she had pain. Dr. Parentis again recommended left knee total replacement. He again concluded that, while appellant could not perform her regular job, she could perform sedentary work with restrictions.

By decision dated February 19, 2020, OWCP found that the medical evidence of record was sufficient to establish that appellant's diagnoses of aggravation of preexisting left knee arthritis and meniscal tear of the left knee were causally related to the accepted factors of her federal employment. However, it found that the medical evidence of record was insufficient to establish right knee and left hip osteoarthritis was caused or aggravated by the accepted work factors based on Dr. Parentis' January 16, 2020 opinion.⁷

On May 13, 2020 appellant, through counsel, requested reconsideration. Counsel contended that Dr. Parentis' opinion was not entitled to the weight of the medical evidence as it only related to direct causation and did not offer an opinion addressing whether appellant's accepted employment factors resulted in permanent aggravation of her right knee and left hip osteoarthritis.

OWCP, in a July 30, 2020 letter, requested that Dr. Parentis clarify his opinion that appellant's right knee and left hip conditions were not work related because there was no specific injury to these body parts. It informed him that she had filed an occupational disease claim for a condition or illness that arose due to repeated factors of her employment. OWCP also requested that Dr. Parentis provide an opinion as to whether appellant was disabled from work commencing February 24, 2017, the effective date of her retirement from the employing establishment, due to her accepted employment-related conditions.

In a supplemental letter dated August 7, 2020, Dr. Parentis continued to opine that appellant's left hip and right knee arthritis was not aggravated by her employment duties because the condition was genetically driven and would have developed whether or not she had performed such work. He noted that he found no material changes. Dr. Parentis further noted that appellant's underlying left knee symptoms were related to her genetically-driven right knee and left hip arthritis. He advised that her retirement in 2017 was secondary to her osteoarthritis and not to her employment-related left knee meniscal tear. Dr. Parentis indicated that appellant would ultimately need right knee and left hip total replacements. He advised that her employment did not hasten her need for surgery. Dr. Parentis concluded that appellant would have reached this point no matter what occurred.

By decision dated September 3, 2020, OWCP denied modification of the February 19, 2020 decision denying expansion of the claim to include additional conditions.

⁷ By separate decision dated February 19, 2020, OWCP accepted appellant's claim for aggravation of preexisting left knee arthritis and left knee meniscal tear.

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.⁸

To establish causal relationship, the employee must submit rationalized medical opinion 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 accepted employment injury.¹⁰ 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.¹¹

ANALYSIS

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

OWCP accepted that appellant sustained an aggravation of her preexisting left knee arthritis and developed a meniscal tear of her left knee due to factors of her employment as a letter carrier. However, it denied the expansion of the acceptance of the claim to include right knee and left hip osteoarthritis, finding that the opinion of Dr. Parentis, serving as the second opinion physician, that her right knee and left hip conditions were not causally related to the accepted factors of her employment constituted the weight of the medical evidence. In a January 16, 2020 addendum report, Dr. Parentis advised that there was no causal relationship between appellant's right knee and left hip osteoarthritis and the accepted employment factors because she had no prior injury to the right knee or left hip. The Board finds his statement to be inaccurate as the SOAF and medical evidence of record indicates that OWCP had accepted her occupational disease claim under OWCP File No. xxxxxx547 for left hip tendinitis. As Dr. Parentis did not use the SOAF as the framework in forming his opinion, his opinion is of diminished probative value.¹² Further, he was subsequently asked by OWCP to clarify his opinion that appellant's right knee and left hip osteoarthritis was not work related because there was no specific injury to these body parts; however, in his August 7, 2020 supplemental report, he reiterated his opinion that the diagnosed

⁸ *D.T.*, Docket No. 20-0234 (issued January 8, 2021); *see T.E.*, Docket No. 18-1595 (issued March 13, 2019); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁹ *D.T.*, *id.*; *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

¹⁰ *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K.*, *id.*; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ *Id.*

¹² *Gary R. Sieber*, 46 ECAB 215, 225 (1994); *see also C.C.*, Docket No. 19-1948 (issued January 8, 2021); *Y.D.*, Docket No. 17-0461 (issued July 11, 2017).

right knee and left hip condition was genetically driven and not caused the accepted employment factors.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.¹³ Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁴ As Dr. Parentis did not base his report on an accurate factual history, the case will be remanded to OWCP for further development of the medical evidence.

On remand OWCP shall prepare an updated SOAF and obtain a supplemental opinion from Dr. Parentis, or a new second opinion physician who accepts all of the facts of the SOAF in responding to OWCP's questions. After such further development as necessary, OWCP 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 September 3, 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: June 3, 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

¹³ *C.R.*, Docket No. 20-1102 (issued January 8, 2021); *K.P.*, Docket No. 18-0041 (issued May 24, 2019).

¹⁴ *See F.K.*, Docket No. 19-1804 (issued April 27, 2020); *C.C.*, *supra* note 12; *B.W.*, Docket No. 19-0965 (issued December 3, 2019).