

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

J.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
North Reading, MA, Employer**

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**Docket No. 20-0504
Issued: October 21, 2021**

Appearances:

*John L. deGeneres, Jr., Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 6, 2020 appellant, through counsel, filed a timely appeal from a November 1, 2019 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 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 establish right knee osteoarthritis causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On September 21, 2018 appellant, then a 64-year-old retired mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed right knee osteoarthritis due to factors of her federal employment. She noted that she first became aware of her condition on October 21, 2016 and realized its relation to her federal employment on May 14, 2018. Appellant retired from the employing establishment, effective October 30, 2015.

In medical reports dated May 26 and December 8, 2004, Dr. Tamara L. Martin, a Board-certified orthopedic surgeon, evaluated appellant for right knee pain that began in March 2004. She reviewed x-ray scans of her knee that revealed minimal joint space narrowing on the right medial knee and diagnosed patellofemoral tendinitis. Dr. Martin recommended that appellant undergo a diagnostic arthroscopy to ensure she did not have a meniscal tear in her right knee.

In a January 18, 2006 medical report, Dr. Martin indicated that appellant underwent a right knee arthroscopy, a debridement of medial and lateral meniscal tears, an abrasion chondroplasty and an abrasion arthroplasty to treat a radial internal meniscus tear that was consistent with a traumatic-type injury. Appellant asserted that her injury was related to her federal employment duties requiring her to push heavy loaded carts up an incline. Dr. Martin also observed a medial meniscus posterior horn tear and some arthritic changes. She advised that appellant continue her physical therapy treatment for her knee condition.

Subsequent medical reports from Dr. Martin dated from March 15 to October 18, 2006, reviewed appellant's progress with physical therapy for her right knee and recommended that she receive a knee brace and consult with an orthopedic surgeon, to determine if she would be a candidate for surgical intervention.

In a November 15, 2011 medical report, Dr. Scott D. Martin, a Board-certified orthopedic surgeon, indicated that appellant was electing to undergo a right knee replacement to treat her right knee osteoarthritis. In a diagnostic report of even date, Dr. Varand Ghazikhanian, a Board-certified radiologist, conducted an x-ray scan of appellant's knees, and observed severe medial tibiofemoral osteoarthritis of the right knee and moderate medial tibiofemoral osteoarthritis of the left knee.

In a December 5, 2011 medical report, Dr. Christina Iacobo, a Board-certified internist, indicated that it was likely that appellant would need to undergo a right knee replacement due to increasing pain. On evaluation, she diagnosed right knee arthritis and agreed that appellant would require a total knee replacement.

In a March 22, 2013 medical report, John Macropoulos, a physician assistant, administered a cortisone injection to treat appellant's symptoms relating to her right knee osteoarthritic exacerbation.

In a January 22, 2014 medical report, Dr. Scott Martin evaluated appellant for osteoarthritis of the right knee and noted that she also had posterior pain in her left knee. He observed that her symptoms improved with an injection and recommended that she continue performing a non-impact loading exercise program to treat her condition. In a diagnostic report of even date, Dr. Chris Chung, a Board-certified radiologist, conducted an x-ray scan of appellant's knees, observing moderate-to-severe medial tibiofemoral osteoarthritis of the right knee and moderate medial tibiofemoral osteoarthritis of the left knee.

An October 26, 2016 discharge summary by Dr. Scott Martin indicated that he performed a total right knee arthroplasty on October 21, 2016 to treat appellant's right knee osteoarthritis.

In a May 15, 2017 statement, appellant described her history of employment dating back 16 years. She indicated that she began as a "part-time/flex" mail handler for her first three years, working full-time hours and overtime before assuming the role of a full-time regular mail handler. Appellant's employment duties involved being on her feet for approximately eight hours a day to move mail, packages, and tubs weighing up to 70 pounds. She assisted with loading and unloading mail trucks, which required additional standing, walking, bending, stooping, lifting, carrying, and squatting. Appellant also pushed carts weighing hundreds of pounds. She alleged that she performed very little physical activity outside of work. Appellant explained that she did not know when her arthritis began but, as she worked, her knee, elbow and shoulder became painful, causing her to seek medical treatment.

Dr. Byron V. Hartunian, a Board-certified orthopedic surgeon, in a September 4, 2018 narrative medical report, explained that he examined appellant and reviewed medical records regarding her treatment for arthritis in her right knee that culminated in her undergoing a right total knee replacement. He also reviewed her statement in which she detailed her employment duties. Dr. Hartunian noted that, while she did not recall a specific trauma to her right knee, appellant began experiencing pain in her right knee in 2004. On evaluation, he diagnosed end-stage degenerative arthritis status post right total knee replacement. Dr. Hartunian explained that appellant had been performing repetitive heavy physical activity for approximately 16 years through her employment duties, resulting in increased stresses through her right knee that causally contributed to the permanent progression of her arthritic condition. He indicated that the many hours of standing, pushing, pulling, twisting, and bending caused constant stress to her right knee on a daily basis. Dr. Hartunian opined that the physical requirements of appellant's federal employment were causally related to her right knee progressive arthritis, reasoning that, the physical requirements of her employment continually hastened and accelerated her right knee symptoms. He explained that impact loading and local stresses arising from repetitive motion activities from kneeling, lifting, climbing, stooping, twisting, squatting, and carrying contributed to the development of knee arthritis. Dr. Hartunian further explained that the arthritis of her right lower extremity was "ultimately a failure of articular cartilage resulting in progressive loss of the articular surface." He noted that as the articular surface wore away, the joint space diminished.

In a development letter dated November 8, 2018, OWCP requested that the employing establishment provide information, including comments from a knowledgeable supervisor, regarding appellant's occupational disease claim. It afforded the employing establishment 30 days to respond.

In a development letter dated November 14, 2018, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion to provide further details regarding the circumstances of her claimed injury. OWCP also requested a narrative medical report from appellant's treating physician, which contained a detailed description of findings and diagnoses, explaining how appellant's work activities caused, contributed to, or aggravated her medical conditions. It afforded her 30 days to respond.

In a December 10, 2018 memorandum, counsel noted that the evidence already of record was sufficient to require, at a minimum, further development of the claim. He cited a previous decision of the Board in which it found that Dr. Hartunian's narrative medical report in that claim was sufficient to require further development of the lower extremity osteoarthritis claim, comparing that claim with appellant's present claim. Counsel noted the dates from the beginning of her treatment for her right knee on May 26, 2004 up through her right knee surgery on October 26, 2016 and her subsequent follow-up treatments. This included dates for medical treatment, injections, surgeries, physical therapy, and diagnostic studies. Counsel referenced Dr. Hartunian's September 4, 2018 medical report and contended that it was sufficient to meet appellant's burden of proof to establish her claim.

Counsel submitted physical therapy reports dated from November 22, 2016 to January 5, 2017 detailing her treatment following her surgery to treat her right knee osteoarthritis.

In a November 30, 2018 response to OWCP's questionnaire, appellant explained that she did not have any prior right knee injuries and that she began treatment for her knee in 2004. She indicated that she did not engage in any other outside physical activities other than occasional trips to the movies and bingo as her health permitted. Appellant noted all of the times she was out from work or on limited duty due to work and non-work injuries to various body parts dating from 2001 to 2015.

In a December 3, 2018 letter, Dr. Hartunian repeated that the medical records he reviewed during his May 14, 2018 evaluation of appellant's right knee were sufficiently complete for him to provide his opinion on her condition. He further indicated that he had since reviewed additional medical evidence and appellant's recent statement which confirmed his initial opinion on causal relationship.

By decision dated December 18, 2018, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that her diagnosed right knee osteoarthritis was causally related to the accepted factors of her federal employment.

On January 3, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

On February 20, 2019 counsel requested that appellant's request for an oral hearing be converted to a review of the written record. He attached a February 20, 2019 memorandum in which he asserted that OWCP erred in its December 18, 2018 decision and argued that Dr. Hartunian's report was based on the review of 140 pages of medical evidence and an interview of appellant. Counsel further contended that it was improper for a non-medical lay employee of

OWCP to substitute their own judgment for Dr. Hartunian's report. He insisted that it also erred by failing to undertake any additional medical development of the claim, citing to previous Board decisions to support his memorandum.

By decision dated November 1, 2019, OWCP's hearing representative affirmed the December 18, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,³ 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.⁴ 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.⁵

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.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ 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.⁸ 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).⁹

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *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).

⁶ *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).

⁷ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁹ *Id.*; *Victor J. Woodhams*, *supra* note 6.

ANALYSIS

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

The issue in the present case is whether appellant has established causal relationship between her diagnosed right knee osteoarthritis condition and her accepted employment duties, including standing, walking, bending, stooping, lifting, carrying, and squatting, pushing and pulling as she worked with various mail containers and parcels. In his September 4, 2018 narrative medical report, Dr. Hartunian interviewed appellant and reviewed her statement detailing her various employment duties over her 16 years of employment. He utilized her medical records, noting her history of treatment of her right knee osteoarthritis beginning in 2004 that ultimately culminated in her undergoing a right total knee replacement in October 2016. Dr. Hartunian described appellant's duties as repetitive heavy physical activity and opined that this type of work resulted in increased stresses through her right knee that causally contributed to the permanent progression of her arthritic condition. On evaluation, he diagnosed end-stage degenerative arthritis status post right total knee replacement. Dr. Hartunian opined that the many hours of standing, pushing, pulling, twisting, and bending caused constant stress to appellant's right knee on a daily basis contributed to the development of knee arthritis. He explained that the physical requirements of her federal employment were causally related to her right knee progressive arthritis, reasoning that the physical requirements of her employment continually hastened and accelerated her right knee symptoms. Dr. Hartunian further opined that arthritis of appellant's right lower extremity was a failure of articular cartilage that resulted in progressive loss of the articular surface and that, as the articular surface wore away, the joint space diminished and caused the worsening of her condition.

The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹⁰

Dr. Hartunian is a Board-certified orthopedic surgeon who is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship. In his September 4, 2018 report, he demonstrated a comprehensive understanding of the medical record and case history. Dr. Hartunian provided a pathophysiological explanation explaining how appellant's job duties resulted in the progression of her right knee condition. Although his September 4, 2018 report is insufficient to meet appellant's burden of proof to establish her claim, it raises an uncontroverted inference between her diagnosed right knee condition and the accepted factors of her federal employment. Accordingly, Dr. Hartunian's medical opinion is sufficiently rationalized to require further development of appellant's claim.¹¹

¹⁰ *B.C.*, Docket No. 20-0498 (issued August 27, 2020); *L.P.*, Docket No. 18-1252 (issued June 4, 2020); *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983).

¹¹ *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹² OWCP has an obligation to see that justice is done.¹³

On remand, OWCP shall refer appellant to a physician in the appropriate field of medicine, along with the case record and a statement of accepted facts, for an examination and a rationalized medical opinion as to whether the accepted employment factors either caused or aggravated appellant's diagnosed condition.¹⁴ If the second opinion disagrees with the explanation provided by Dr. Hartunian, he or she must provide a fully-rationalized explanation explaining why the accepted employment factors were insufficient to have caused or aggravated her diagnosed right knee condition. After this and other such further development of the case record as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹² See *id.* See also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹³ See *B.C.*, *supra* note 10; *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁴ 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).

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 21, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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