



Federal Employees' Compensation Act<sup>3</sup> (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 his burden of proof to establish a bilateral knee condition causally related to the accepted factors of his federal employment.

### **FACTUAL HISTORY**

On September 22, 2017 appellant, then a retired 64-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that factors of his federal employment contributed to his bilateral knee osteoarthritis. He noted that he first became aware of this condition and its relationship to his federal employment on June 7, 2017. In a narrative statement dated March 30, 2017, appellant described his letter carrier duties as very physical. He began working for the employing establishment in 1980. Appellant retired in January 2014. He related that he was unsure as to the date his bilateral knee arthritis first developed and explained that he would slip, fall, trip, or stumble in the winter months at least a dozen times while delivering mail.

In support of his claim, appellant submitted medical evidence covering the period February 21, 1974 through June 7, 2017.

The record contains progress notes covering the period January 15 through July 21, 2015 from Dr. Ira K. Evans, a Board-certified orthopedic surgeon. Dr. Evans summarized appellant's medical history including that he was seen years ago for significant right knee lateral compartment osteoarthritis. He reviewed diagnostic tests, provided examination findings, and diagnosed right knee end-stage valgus patellofemoral osteoarthritis with effusion.

A December 3, 2015 x-ray revealed severe right knee lateral predominant degenerative changes with chondrocalcinosis and valgus deformity.

The record contains progress notes dated December 3, 2015 and April 21, 2016 from Dr. Andrew Albert Freiberg, a Board-certified orthopedic surgeon, who diagnosed bilateral knee primary osteoarthritis and noted a total right knee replacement surgery had been scheduled.

The record contains an April 21, 2016 x-ray, which revealed severe right knee degenerative changes and left knee meniscal chondrocalcinosis with mild tricompartmental degenerative change.

On May 10, 2016 appellant underwent right total knee arthroplasty.

In progress notes dated May 26, 2016, Kristin A. Wood, a certified nurse practitioner, reported that appellant underwent total right knee replacement surgery on May 10, 2016. She reviewed diagnostic test, provided examination findings, and diagnosed right knee osteoarthritis.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

The record contains a June 7, 2016 x-ray report, which noted right total knee arthroplasty, no evidence of hardware complication, and evidence of gout involving both popliteus tendons.

In a March 23, 2017 report, Dr. Justin W. Kung, a Board-certified radiologist, noted that he reviewed appellant's January 12, 2017 left knee x-ray and determined that appellant had mild degenerative change in the left knee medial compartment.

In a June 7, 2017 report, Dr. Bryon V. Hartunian, an orthopedic surgery specialist, reviewed appellant's employment history and duties, and noted that he had retired in January 2014. He provided examination findings and diagnosed status post right total knee replacement for end-stage degenerative arthritis and primary left knee joint arthritis with 3.0 millimeter cartilage interval at medial femorotibial joint. Appellant stated that his work duties required carrying a 35-pound satchel while walking seven to eight miles per day, occasional lifting/carrying of 70 pounds, entering and exiting a delivery truck 200 times daily, ascending and descending hundreds of stairs in all types of weather, and walking over different types of terrain. Dr. Hartunian noted that appellant's work also required repetitive twisting, bending, lifting, stooping, squatting, stair climbing, and reaching. He asserted that appellant's bilateral knee degenerative osteoarthritis was "likely" aggravated by his work activities as a letter carrier. Dr. Hartunian indicated that arthritis occurred due to chronic inflammation caused by repeated local stress on cartilage surfaces. He related, "With less resilience, the cartilage becomes more susceptible to wear and tear of the impact-loading activities, which in turn results in an accelerated loss of articular cartilage as a result of those activities. This is what happened to [appellant] as documented in his medical records." Dr. Hartunian explained that arthritis is caused by a well-described biological/chemical process where excessive impact loading and repeated stresses on the cartilage surface result in chronic inflammation resulting in a chemical change in the cartilage, most significantly the proteoglycans, which are responsible for cartilage resistance. He opined, in conclusion, that there was no doubt that the high-impact loading activities engaged in by appellant in his employment position contributed to the development and progression of his bilateral knee arthritis.

In a development letter dated November 3, 2017, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of medical and factual evidence necessary to support his claim and provided a questionnaire for his completion. OWCP specifically noted that evidence was needed to establish that appellant had filed his claim in a timely manner. A separate development letter of even date requested additional information from the employing establishment. OWCP afforded both parties 30 days to submit the requested information.

By decision dated December 13, 2017, OWCP denied appellant's claim, finding that he failed to file a timely claim within the requisite three-year time limit under section 8122(a) of FECA (5 U.S.C. § 8122(a)). It found that the date of last exposure was January 2, 2014 and that he had not filed his occupational disease claim until September 22, 2017.

On December 21, 2017 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was subsequently converted to a request for a review of the written record in lieu of a telephonic hearing.

Dr. Hartunian, in a report dated June 5, 2018, provided clarification regarding the cause of appellant's diagnosed bilateral knee osteoarthritis. He referred to OWCP's causation definition for acceleration of arthritis and the example given of 15 years of substantial walking, noting appellant's 34-year career and work activities caused and contributed to the diagnosed bilateral knee arthritis. Dr. Hartunian attributed the development and progression of appellant's bilateral knee arthritis to the high-impact loading work activities required by appellant's letter carrier job.

By decision dated August 17, 2018, OWCP's hearing representative affirmed the December 13, 2017 decision as modified. She determined that because appellant was not aware of and could not have reasonably been aware of the relationship between his diagnosed bilateral knee condition and his employment until March 30, 2017, appellant's claim was timely filed. The hearing representative also found, however, that the medical evidence of record was insufficient to establish that appellant's bilateral knee osteoarthritis was causally related to or aggravated by his accepted employment factors.

On July 31, 2019 appellant, through counsel, requested reconsideration. In support of his request, he submitted a July 17, 2019 addendum report by Dr. Hartunian and a June 17, 2019 report by Dr. Kung.

In his report dated June 17, 2019, Dr. Kung noted that he reviewed appellant's January 15, 2015 right knee x-ray and determined that appellant had severe degenerative change in the right knee lateral compartment.

Dr. Hartunian, in his July 17, 2019 addendum, explained that the use of the phrase "most likely" meant a certainty of 95 percent. He explained that he was aware of appellant's prior golf injury and gout diagnosis, which he explained did not negate the contribution of appellant's severe and repetitive impact loading work activities to the diagnosed bilateral knee osteoarthritis.

By decision dated October 25, 2019, OWCP denied modification.

On December 18, 2019 appellant, through counsel, requested reconsideration, asserting errors of law in the prior decision.

By decision dated March 18, 2020, OWCP denied modification.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty, as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment

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<sup>4</sup> *Supra* note 3.

injury.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>6</sup>

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.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> 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.<sup>9</sup> 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).<sup>10</sup>

### ANALYSIS

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

In support of his claim, appellant submitted a series of reports from Dr. Hartunian, including a June 7, 2017 report in which he diagnosed status post right total knee replacement for end-stage degenerative arthritis and primary left knee joint arthritis with 3.0 millimeter cartilage interval at medial femorotibial joint and opined that his bilateral knee osteoarthritis was caused or aggravated by his employment duties. In his reports, Dr. Hartunian demonstrated that he had a proper history of appellant's employment position as a letter carrier and recounted the specific duties that he performed over the course of his postal carrier. He correctly indicated that appellant's work required repetitive walking, bending, squatting, stooping, twisting, lifting, climbing, and reaching activities while carrying a mail satchel. In his June 5, 2018 addendum report, Dr. Hartunian explained that the job of a letter carrier, over a 34-year career, can and does

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<sup>5</sup> *M.R.*, Docket No. 19-1954 (issued March 1, 2021); *E.S.*, Docket 18-1580 (issued January 23, 2020); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>6</sup> *M.R.*, *id.*; *E.S.*, *id.*; *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *E.S.*, *supra* note 5; *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).

<sup>8</sup> *W.M.*, Docket No. 14-1853 (issued May 13, 2020); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *E.S.*, *supra* note 5; *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>10</sup> *Id.*; *Victor J. Woodhams*, *supra* note 7.

accelerate arthritis because of the continuous walking, lifting, and climbing, which had hastened appellant's osteoarthritis. He explained, physiologically, that there was no doubt that the high-impact loading activities appellant engaged in as a letter carrier contributed to the development and progression of his arthritic conditions. Dr. Hartunian provided a direct opinion that arthritis is caused by a well-described biological/chemical process where excessive impact loading and repeated stresses on the cartilage surface result in chronic inflammation resulting in a chemical change in the cartilage, most significantly the proteoglycans, which are responsible for cartilage resistance. He explained how the less resilient the cartilage becomes, the more susceptible it is to the wear and tear of the impact-loading activities, which in turn results in an accelerated loss of articular cartilage as a result of those activities. Likewise, in his July 17, 2019 supplemental addendum, Dr. Hartunian noted his awareness of appellant's prior golf injury and gout diagnosis, but opined that they did not negate the contribution of appellant's severe and repetitive impact loading work activities to the diagnosed bilateral knee osteoarthritis.

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.<sup>11</sup> While Dr. Hartunian's reports do not contain sufficient rationale to discharge appellant's burden of proof by the weight of the reliable, substantial, and probative evidence that his bilateral knee osteoarthritis was caused or aggravated by the accepted employment factors, these reports raise an inference of causal relationship sufficient to require further development of the case record by OWCP.<sup>12</sup>

It is well established that proceedings under FECA are not adversarial in nature and, while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>13</sup>

On remand OWCP shall refer appellant, a statement of accepted facts, and the medical record to an appropriate specialist. The physician shall provide a rationalized opinion as to whether the diagnosed bilateral knee conditions are causally related to the accepted factors of appellant's federal employment in his former position as a letter carrier. If the physician opines that the diagnosed conditions are not causally related, he or she must explain, with rationale, how or why his or her opinion differs from that of Dr. Hartunian. Following this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

### **CONCLUSION**

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

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<sup>11</sup> *A.D.*, Docket No. 20-0758 (issued January 11, 2021); *J.H.*, Docket No. 18-1637 (issued January 29, 2020). *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>12</sup> *See A.D., id.*; *T.K.*, Docket No. 20-0150 (issued July 9, 2020); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>13</sup> *S.B.*, Docket No. 20-1458 (issued March 5, 2021); *S.S.*, Docket No. 20-1141 (issued December 14, 2020); *A.P., supra* note 11; *Phillip L. Barnes*, 55 ECAB 426 (2004).

**IT IS HEREBY ORDERED THAT** the March 18, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: October 20, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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