

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

_____)	
R.G, Appellant)	
)	
and)	Docket No. 21-0812
)	Issued: February 28, 2022
U.S. POSTAL SERVICE, BROOKLINE POST OFFICE, Brookline, MA, Employer)	
_____)	

Appearances:
Daniel B. Shapiro, 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 May 4, 2021 appellant, through counsel, filed a timely appeal from a December 28, 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 over the merits of this case.

ISSUE

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

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 an 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.*

FACTUAL HISTORY

On February 1, 2019 appellant, then a 64-year-old retired³ letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed left knee osteoarthritis due to factors of his federal employment. He noted that he first became aware of his condition and its relationship to his federal employment on August 6, 2018.⁴

A December 6, 2005 x-ray of the right knee revealed right knee joint effusion and right knee osteoarthritis.

April 13, 2006 x-rays of the knees demonstrated status post tibial osteotomy.

September 7, 2006 x-rays of the knees revealed no interval changes.

An August 11, 2009 x-ray of the knees demonstrated trace knee joint effusion in the left knee and status post fixation plate and screws within the right proximal tibia of the right knee without evidence of hardware complication in the right knee.

In an April 2, 2017 medical note, Dr. Justin W. Kung, a Board-certified radiologist, noted that appellant's January 21, 2016 x-rays of the left knee revealed severe degenerative change of the medial compartment of the left knee.

In a May 18, 2017 statement, appellant noted that he had worked as a letter carrier for the employing establishment for 37 years. He explained that his routes were all walking routes that had at least 600 deliveries each day and that he was used to walking at least six to seven miles a day when delivering mail. Appellant further explained that he would ascend and descend thousands of stairs, steps, and curbs while lifting, carrying, and delivering several hundred pounds of mail and parcels each day on foot, in all kinds of weather. He noted that he cased mail for about two hours each day, which required him to stand on his feet the entire time. Appellant further described casing mail as involving repetitive bending at the hips and knees and back, squatting, reaching, walking, stopping, twisting, pivoting, lifting, carrying, pushing, and pulling tubs of mail. He explained that he usually worked overtime. Appellant noted that delivering mail required more repetitive walking, lifting, carrying, as well as bending, stooping, squatting, twisting, and pivoting. He asserted that his work was very physical and that he performed very little vigorous physical activity outside of work. Appellant contended that, although he was not sure when his arthritis began, his left knee increasingly became more painful beginning five years prior and worsened.

OWCP received a copy of appellant's letter carrier position description.

In a January 14, 2019 narrative report, Dr. Byron V. Hartunian, a Board-certified orthopedic surgeon, noted that he examined appellant on August 6, 2018 at which time he

³ A December 29, 2017 notification of personnel action (PS Form-50) indicated that appellant retired from the employing establishment, effective December 31, 2017.

⁴ The present claim was assigned OWCP File No. xxxxxx465 by OWCP. Appellant has a prior claim for a January 18, 2005 traumatic injury under OWCP File No. xxxxxx775, which was accepted for right knee sprain, right knee medial meniscus tear, and other joint derangement of the right lower leg. OWCP File Nos. xxxxxx465 and xxxxxx775 have been administratively combined, with the latter serving as the master file.

conducted a physical examination and diagnosed left knee arthritis. He indicated that, while x-rays of the left knee from September 7, 2006 did not demonstrate any significant joint space narrowing, a January 21, 2016 x-ray of the left knee revealed significant medial compartment degeneration. Dr. Hartunian reported that, while appellant sustained no work-related injury to his left knee, his previous work-related injury in 2005 to the right knee led to multiple procedures and put additional stresses on his left knee, causing further increase in the discomfort on that side. He explained that arthritis is a failure and loss of articular cartilage surface. Dr. Hartunian further noted that the impact loading resulting from repeated local stresses causes and accelerates the progression of arthritis through a process of chronic inflammation. He explained that chronic inflammation in turn results in an accelerated loss of articular cartilage in the affected area, most significantly the loss of proteoglycans, which are responsible for cartilage resilience and water content. Dr. Hartunian explained that as the water content and cartilage resilience diminishes due to the inflammation caused by the repeated work stresses, the cartilage is more susceptible to deterioration from impact loading activities. He further asserted that impact loading and local stresses from repetitive motion activities such as knee bending, kneeling, lifting, climbing, stooping, twisting, squatting, and carrying contribute to the development and progression of lower extremity arthritis.

Dr. Hartunian noted that appellant's work duties as a letter carrier required constant and repetitive walking, standing, squatting, stooping, climbing, bending, lifting, carrying, and twisting activities. He opined that these impact loading activities exerted repeated local stresses to his lower extremities. Dr. Hartunian explained that ascending stairs, for instance, places loads on the lower extremity joints approximately three times body weight while descending stairs puts loads on the lower extremity joints approximately six times body weight. He concluded that appellant's work duties as a letter carrier over many years placed repeated local stresses on his lower extremities and contributed to the progression, acceleration, and permanent aggravation of his left knee arthritis.

In a development letter dated February 27, 2019, OWCP notified appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a factual questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's alleged injury, including comments from a knowledgeable supervisor regarding the accuracy of his allegations and an explanation of any areas of disagreement. It afforded both parties 30 days to submit the requested evidence.

On March 6, 2019 OWCP referred appellant, along with a statement of accepted facts (SOAF) and a copy of the medical record, to Dr. Stanley Hom, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of his employment-related left knee condition.

In a March 12, 2019 response to OWCP's development questionnaire, appellant noted that he played golf approximately three to four times a week in the warmer months. He also indicated that he ran once a week and worked out three to four times per week. Appellant also performed yard work for around two hours each week March through November. He asserted that he only completed these activities as his health permitted.

In a March 13, 2019 letter, counsel argued that Dr. Hartunian considered all relevant facts and provided an adequate narrative of appellant's treatment, symptoms, diagnostic studies, and a description of the specific employment duties/activities, as well as a detailed opinion of causal relationship. He also contended that whether any outside work activities contributed to appellant's claimed condition was irrelevant.

In a June 28, 2019 report, Dr. Hom discussed appellant's factual and medical history and reported the findings of his physical examination. He noted that appellant complained of bilateral knee symptoms, greater on the right than on the left, and that he reported that his symptoms were aggravated with prolonged walking on "hard" ground surfaces. Dr. Hom indicated that appellant previously injured his right knee on January 15, 2005 when he slipped on a patch of ice, and initially returned to work in August 2006 after right knee surgery and was then transitioned to a shorter route using a mail push-cart. He related that appellant experienced the progression of his right knee symptoms with his work activities. Dr. Hom noted that appellant underwent right total knee replacement in October 2016 and returned to work in January 2017 with modified duties. He opined that his left knee arthritis was not related to his work activities. Dr. Hom explained that no occupational risk factors, such as lifting, standing, and walking, and moderate levels of physical activities, demonstrated strong or very strong evidence for the development of tibiofemoral knee joint osteoarthritis.

On September 5, 2019 OWCP determined that a conflict of medical opinion existed between Drs. Hartunian and Hom with regard to whether appellant sustained left knee arthritis due to the accepted factors of his federal employment. It referred appellant for an impartial medical evaluation with Dr. John H. Chaglassian, a Board-certified orthopedic surgeon serving as an impartial medical examiner (IME). OWCP provided Dr. Chaglassian with an updated SOAF, the medical record, and a series of questions.

In a September 25, 2019 report, Dr. Chaglassian reviewed the medical evidence of record, and noted that appellant had been diagnosed with left knee arthritis. He further noted that he had undergone right knee surgery on April 1, 2005, right total knee replacement on October 17, 2016, and subsequently retired from his job in 2017. Dr. Chaglassian reported essentially normal findings on physical examination. He opined that appellant's work duties as a letter carrier had not caused, precipitated, aggravated, or accelerated the development of his left knee arthritis. Dr. Chaglassian reasoned that appellant was predisposed to arthritis because of an inherited gene. He indicated that Dr. Hartunian had not shown a single article published in orthopedic journals that confirmed his opinion and asserted that his opinion was purely speculative with no professional basis, support, and merit. Dr. Chaglassian further explained that in the absence of any acute traumatic knee injury, the cause of arthritis is believed by most experts to be related to an inherited gene. He noted that arthritis is not related to a specific profession.

By decision dated October 7, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed left knee condition and the accepted factors of his federal employment. It found that the special weight of the medical evidence of record rested with Dr. Chaglassian's September 25, 2019 impartial medical evaluation report.

On October 16, 2019 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. He also submitted a series of medical literature on hip/knee osteoarthritis.

A hearing was held on February 5, 2020.

By decision dated March 27, 2020, OWCP's hearing representative affirmed the October 7, 2019 decision.

On September 28, 2020 appellant, through counsel, requested reconsideration and submitted an August 11, 2020 narrative report from Dr. Robert W. Macht, a general surgeon, as well as a July 30, 2020 statement from appellant. Counsel contended that Dr. Macht's report established causal relationship and explained the deficiencies in Drs. Hom and Chaglassian's reports. He argued that their reports were not sufficiently rationalized.

In a July 30, 2020 statement, appellant recounted the specific duties that he performed over the course of his employment as a letter carrier.

In his August 11, 2020 narrative report, Dr. Macht detailed appellant's history of injury and treatment and noted that his work activities consisted of repetitive walking, climbing steps, bending, kneeling, squatting, stooping, and twisting. He noted that the x-rays of his left knee demonstrated that he developed left knee osteoarthritis sometime between August 11, 2009 and January 21, 2016. Dr. Macht noted that appellant limped during this time and ultimately required right knee replacement surgery on October 17, 2017. He explained that since he could not fully weight bear with his right knee, he put additional stress on his left knee, particularly the medial compartment, which is the largest weight bearing surface of a knee. Dr. Macht noted that the additional weight and stress appellant's work placed on his legs was borne more by the left leg due to the right knee injury and pain, hastening the development of the osteoarthritis on the left. He explained that osteoarthritis is a result of destabilization and degradation of the articular cartilage of the joint along the subchondral bone and the joint capsule, and that repeated stress from repetitive impact loading activities accelerates the progression of osteoarthritis through chronic inflammation. Dr. Macht opined that the inflammation associated with the repetitive and frequent duties performed by appellant during the course of his work as a letter carrier permanently aggravated and accelerated the process of degradation of his left knee joint.

Dr. Macht noted that he agreed with Dr. Hartunian's opinion on causal relationship, which was further supported by the current peer-reviewed medical literature on the topic. He disagreed with Drs. Hom and Chaglassian's reports, noting that their conclusions were contrary to current medical understanding of osteoarthritis. Dr. Macht cited to a peer-reviewed article which found that "work involving kneeling and/or squatting is causally associated with an increased risk of osteoarthritis of the knee." He concluded that the combination of the original work-related accident to his right knee and the work-related stress on his legs exacerbated the development of left knee osteoarthritis.

By decision dated December 28, 2020, OWCP denied modification of its March 27, 2020 decision. It again accorded Dr. Chaglassian's opinion the special weight of the medical evidence.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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,⁶ 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.⁷ 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.⁸

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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 employment factors identified by the employee.⁹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ 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.¹¹ 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.¹²

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall

⁵ *Supra* note 2.

⁶ *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

⁸ *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *T.D.*, Docket No. 20-0921 (issued November 12, 2020); *M.S.*, Docket No. 18-1554 (issued February 8, 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).

¹⁰ *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *T.H.*, 59 ECAB 388, 393 (2008); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹² *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

make an examination.¹³ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹⁴ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently rationalized and based upon a proper factual background, must be given special weight.¹⁵

When OWCP obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in medical opinion, and the specialist's opinion requires clarification or elaboration, OWCP must secure a supplemental report from the specialist to correct the defect in the original report.¹⁶

ANALYSIS

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

In his September 25, 2019 report, Dr. Chaglassian, the IME, found that appellant's left knee arthritis was not causally related to the accepted employment factors. He explained that appellant was predisposed to arthritis because of an "inherited gene." In addition, Dr. Chaglassian noted that he strongly disagreed with Dr. Hartunian's opinion on causal relationship as it was purely speculative with no professional basis, support, and merit. He maintained that appellant would develop arthritis, which was progressive in nature, because of his "inherited gene," not because he was a letter carrier. Dr. Chaglassian, however, did not provide adequate medical rationale to explain the basis for his conclusion that appellant's accepted employment duties did not cause or aggravate appellant's left knee arthritis. He simply noted that his left knee arthritis was due to an "inherited gene" as opposed to the accepted employment factors, as related in the SOAF. Dr. Chaglassian did not explain how appellant's left knee arthritis was solely due to nonoccupational factors.¹⁷ The Board has held that any contribution to appellant's condition by the accepted employment factors would render his condition compensable.¹⁸ Thus, the Board finds that Dr. Chaglassian failed to explain, with rationale, why his findings differed from Dr. Hartunian's.

¹³ 5 U.S.C. § 8123(a); *C.F.*, Docket No. 20-0222 (issued December 21, 2020); *M.W.*, Docket No. 19-1347 (issued December 5, 2019); *C.T.*, Docket No. 19-0508 (issued September 5 2019); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

¹⁴ *S.S.*, Docket No. 19-1658 (issued June 24, 2019); *C.W.*, Docket No. 18-1536 (issued June 24, 2019).

¹⁵ *M.W.*, *supra* note 13; *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

¹⁶ *R.T.*, Docket No. 20-0081 (issued June 24, 2020); *Raymond A. Fondots*, 53 ECAB 637, 641 (2002); *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232 (1988); *Ramon K. Ferrin, Jr.*, 39 ECAB 736 (1988).

¹⁷ *See R.B.*, Docket No. 20-0109 (issued June 25, 2020); *F.K.*, Docket No. 19-1804 (issued April 27, 2020); *J.T.*, Docket No. 15-1923 (issued December 16, 2015).

¹⁸ *See F.K., id.*; *J.B.*, Docket No. 17-2021 (issued August 8, 2018); *G.G.*, Docket No. 17-0504 (issued August 8, 2017); *Beth C. Chaput*, 37 ECAB 158 (1985) (it is not necessary to show a significant contribution of employment factors to a diagnosed condition to establish causal relationship).

To be entitled to special weight, an IME’s opinion must contain clear, persuasive rationale on the critical issue in the claim.¹⁹ Furthermore, the Board has held that when an IME fails to provide medical reasoning to support his conclusory statements about a claimant’s condition, it is insufficient to resolve a conflict in the medical evidence.²⁰ When the IME’s opinion requires clarification or elaboration, OWCP must secure a supplemental report to correct the defect in his or her original report.²¹ Accordingly, the case will be remanded to OWCP for a fully-rationalized opinion from Dr. Chaglassian, based upon an updated SOAF, regarding whether appellant sustained a left knee condition causally related to the accepted work factors. If Dr. Chaglassian is unable to clarify or elaborate on his original report or if his supplemental report is also vague, speculative, or lacking in rationale, OWCP must submit the case record and a detailed SOAF to a new IME for the purpose of obtaining his or her rationalized medical opinion on the issue.²² Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹⁹ *R.T.*, *supra* note 16; *A.R.*, Docket No. 17-1358 (issued February 1, 2018).

²⁰ *R.T.*, *id.*; *K.C.*, Docket No. 19-1251 (issued January 24, 2020).

²¹ *M.N.*, Docket No. 21-0318 (issued August 19, 2021); *Talmadge Miller*, 47 ECAB 673 (1996); *Harold Travis*, 30 ECAB 1071, 1078 (1979); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810(11)(c)(1)-(2) (September 2010).

²² *T.H.*, Docket No. 21-0207 (issued December 22, 2021); *R.H.*, Docket No. 17-1903 (issued July 5, 2018); *Harold Travis*, *id.*

ORDER

IT IS HEREBY ORDERED THAT the December 28, 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: February 28, 2022
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