

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

_____)	
G.S., Appellant)	
)	
and)	Docket No. 22-0036
)	Issued: June 29, 2022
U.S. POSTAL SERVICE, BERKELEY)	
DETACHED DEL UNIT POST OFFICE,)	
Berkeley, CA, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 11, 2021 appellant, through counsel, filed a timely appeal from an August 13, 2021 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.³

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.*

³ The Board notes that, following the August 13, 2021 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

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 May 9, 2019 appellant, then a 40-year-old sales and service distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on April 12, 2019 she sustained patellofemoral pain syndrome in both knees as a result of standing for excessive hours while in the performance of duty. She stopped work on May 2, 2019.

Appellant submitted an April 26, 2019 letter by Dr. Naoko Ikeda, an osteopath and family medicine specialist, who indicated that appellant was seen in her office on that date and was unable to work on April 20 and 27, 2019.

In a May 9, 2019 letter, appellant explained that on April 8, 2019 the stools from the “hot case” were removed. She indicated that on April 12, 2019 her legs began to hurt after working excess hours of 12 or more and continuously standing. Appellant noted that on April 15 and 19, 2019 she informed the employing establishment that her legs hurt and that she was unable to work.

In a state workers’ compensation form and report dated May 13, 2019, Dr. Steven Kaminski, an emergency medicine specialist, indicated that appellant was examined for complaints of bilateral knee pain due to prolonged standing. On physical examination of the left knee he observed no tenderness and full range of motion. Examination of appellant’s right knee revealed tenderness in the undersurface of the patella and full range of motion. Dr. Kaminski diagnosed bilateral knee pain.

In a report dated May 15, 2019, Dr. Michael Hebrard, a Board-certified physiatrist, indicated that appellant was evaluated for complaints of sharp, stabbing pain across the knees down to the legs. He noted that appellant had worked as a distribution window clerk for the last 13 years. On physical examination of appellant’s knees, Dr. Hebrard observed crepitus on passive range of motion of the knee and tenderness to palpation of the medial and lateral joint lines of both knees. Patellar compression test, McMurray’s test, and J-signs were positive bilaterally. Dr. Hebrard diagnosed other internal derangement of the knees. He reported that appellant used to be able to do her job from a seated position, but was forced into an altered work environment when the stool, which she used to sit on, was taken away. Dr. Hebrard opined that appellant’s current diagnosis was consistent with prolonged squatting, bending, and standing on hard surfaces in the course of her employment.

In a May 15, 2019 letter, an employing establishment customer service supervisor controverted the claim, asserting that appellant did not sustain an injury at work, but was upset about changes at the employing establishment.

In a May 16, 2019 letter, an employing establishment health and resource management specialist requested that OWCP consider appellant’s traumatic injury claim as a claim for occupational disease because she described events that occurred over time.

On May 20, 2019 OWCP provided the definitions of an occupational disease and traumatic injury claim to appellant and asked her to clarify the type of injury she was claiming. Appellant responded that she believed that she was claiming an occupational disease because the injury was sustained over a period of time. She described her daily work activities as standing continuously for 2.5 hours to manually sort mail, standing while working at the window, and standing and walking back and forth when scanning parcels. Appellant noted that previously she would sit on a stool to sort mail, but her supervisor had removed all stools from the work area where hot cases were done. She explained that she attributed her injury to standing for long periods of time, but on April 12, 2019 her legs suddenly felt numb and she could not sit any longer.

In a May 20, 2019 development letter, OWCP advised appellant of the deficiencies of her claim. It noted that appellant was claiming a medical condition as a result of prolonged standing while sorting mail, working at the window, and scanning parcels. OWCP requested additional factual and medical evidence and provided a questionnaire for her completion. It afforded appellant 30 days to submit the requested information.

In reports and work excuse notes dated May 21 and June 6, 11, and 26, 2019, Dr. Hebrard indicated that appellant was seen for follow-up examination regarding her knees. He provided examination findings and diagnosed internal derangement of the left and right knees.

On June 21, 2019 appellant accepted a part-time, modified-duty job offer as a sales service and distribution associate.

By decision dated July 22, 2019, OWCP denied appellant's claim. It accepted the implicated federal employment factors, but found that she had not submitted evidence containing a medical diagnosis in connection with the factors. OWCP, therefore, concluded that the requirements had not been met for establishing an injury as defined by FECA.

On August 2, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 24, 2019.

In reports dated August 12, September 30, and November 12, 2019, Dr. Hebrard noted appellant's complaints of continued pain and discomfort over the knees. He provided examination findings and diagnosed other internal derangements of the left and right knee. In the September 30, 2019 report, Dr. Hebrard indicated that appellant's job duties included going from sitting to standing position, squatting and bending, going up and down, reaching, handling, and sorting mail on hard surfaces. He explained that the combination of squatting, bending, and twisting at the waist while completing her occupational demands culminated in an increased amount of pain on the day that she was sorting mail while standing and caused an increased amount of stress to the patellofemoral joint of her knees.

By decision dated November 29, 2019, OWCP's hearing representative affirmed the July 22, 2019 decision with modification. She accepted that appellant was diagnosed with internal derangement of the knees, but denied the claim, finding insufficient medical evidence to establish that her bilateral knee condition was causally related to the accepted employment factors.

On January 24, 2020 appellant, through counsel, requested reconsideration.

In a January 7, 2020 report, Dr. Hebrard indicated that he evaluated appellant for complaints of pain and discomfort over both knees. He conducted an examination and diagnosed internal derangement of the left and right knees. Dr. Hebrard opined that appellant's condition developed during the course of her employment and explained that the crouching and squatting led to an increased amount of stress along the weight bearing surface of the knee.

By decision dated April 16, 2020, OWCP denied modification of its prior decision.⁴

On January 15, 2021 appellant, through counsel, requested reconsideration and submitted additional evidence.

On July 15, 2020 appellant underwent magnetic resonance imaging (MRI) scans of both knees. A left knee MRI scan demonstrated intrasubstance degeneration of the posterior horn and body of the medial meniscus, mild mucoid degeneration of the anterior cruciate ligament (ACL), mild tendinosis of the quadriceps and patellar tendons and low-grade tricompartmental chondrosis. A right knee MRI scan revealed intrasubstance degeneration of the posterior horn and body of the medial meniscus, mild mucoid degeneration of the ACL, mild tendinosis of the quadriceps and patellar tendons and low-grade tricompartmental chondrosis.

In reports dated June 8 through October 19, 2020, Dr. Hebrard recounted appellant's complaints of pain, stiffness, and discomfort in both legs and knees and provided examination findings. He diagnosed other internal derangement of both knees and chondromalacia patellae of both knees. Dr. Hebrard noted that MRI scans were consistent with low-grade tricompartmental chondrosis of the patellofemoral knee compartments bilaterally. He explained that chondrosis was a breakdown of the weight bearing articular cartilage of both knees and was consistent with the fact that appellant's job involved prolonged standing and weight bearing activities on hard surfaces.

By decision dated April 15, 2021, OWCP denied modification of its prior decision.

On May 25, 2021 appellant, through counsel, requested reconsideration.

In reports and work restriction notes dated March 15 and May 11, 2021, Dr. Hebrard recounted appellant's complaints of pain and discomfort over the knees and both legs. He provided physical examination findings and diagnosed other internal derangements of both knees and chondromalacia patellae of both knees. Dr. Hebrard explained that standing and walking on hard surfaces was causing an increased amount of stress to the weight-bearing surface of the knees. He recounted that appellant's job had already been causing problems on her knees due to standing on hard surfaces, but the stool took the pressure off of her knees. Dr. Hebrard indicated that, when the employing establishment took the stools away, appellant had to stand longer than she normally stood, which precipitated an acceleration to the weight-bearing surface of the knee.

By decision dated August 13, 2021, OWCP denied modification of its prior decision.

⁴ On July 21, 2020 appellant, through counsel, appealed the April 16, 2020 decision to the Board. In a January 15, 2021 letter, counsel requested to withdraw the appeal. In an order dated February 26, 2021, the Board dismissed the appeal. *Order Dismissing Appeal*, Docket No. 20-1400 (issued February 26, 2021).

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including 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 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, a claimant must submit: (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) rationalized medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁹

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.¹¹

ANALYSIS

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

In support of her claim, appellant provided narrative reports from Dr. Hebrard dated May 15, 2019 through May 11, 2021. In his initial May 15, 2019 report, Dr. Hebrard noted that appellant had worked as a distribution window clerk for the past 13 years and recounted her complaints of pain in her knees and legs. He provided examination findings and diagnosed other

⁵ *Supra* note 2.

⁶ *D.D.*, Docket No. 19-1715 (issued December 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *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); *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).

⁹ *T.M.*, Docket No. 20-0712 (issued November 10, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

¹⁰ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

internal derangement of the bilateral knees. In subsequent reports, Dr. Hebrard opined that appellant's medical condition was directly related to her employment. He explained that appellant's job duties included going from sitting to standing position on a frequent basis, squatting and bending, going up and down, reaching, handling, and sorting mail on hard surfaces. In reports and work restriction notes dated March 15 and May 11, 2021, Dr. Hebrard explained that the combination of squatting, bending, and twisting at the waist while completing her occupational demands culminated in an increased amount of pain on the day that she was sorting mail while standing and caused an increased amount of stress to the patellofemoral joint of her knees. He further explained that standing and walking on hard surfaces was causing an increased amount of stress to the weight-bearing surface of the knees. Dr. Hebrard recounted that appellant's job had already been causing problems on her knees due to standing on hard surfaces, but when the employing establishment removed the stools, appellant had to stand longer than she normally stood, which precipitated an acceleration to the weight-bearing surface of the knee.

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

The Board finds that, while Dr. Hebrard's reports are insufficient to meet appellant's burden of proof, they raise an uncontroverted inference of causal relation between her diagnosed bilateral knee condition and the accepted factors of her employment.¹⁴ Dr. Hebrard described appellant's employment duties, which included standing for long periods of time, referenced objective diagnosis reports, and provided an explanation as to how prolonged standing on hard surfaces at work caused a breakdown of appellant's weight-bearing articular surface of both her knees. The Board has 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.¹⁵ While Dr. Hebrard's opinion is insufficiently rationalized to establish causal relationship, it is sufficient to require OWCP to further develop the medical evidence.¹⁶

The case shall therefore be remanded to OWCP. On remand OWCP shall prepare a statement of accepted facts concerning appellant's working conditions and refer the case to a specialist in the appropriate field of medicine, consistent with OWCP's procedures, to determine

¹² See e.g., *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71.

¹³ See *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹⁴ See *M.G.*, Docket No. 21-879 (issued November 19, 2021); *C.W.*, Docket No. 17-1293 (issued February 12, 2018); see also *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹⁵ *J.N.*, Docket No. 20-1287 (issued October 26, 2021); *J.C.*, Docket No. 20-0882 (issued June 23, 2021).

¹⁶ *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

whether appellant's employment duties caused or aggravated her bilateral knee condition.¹⁷ If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why their opinion differs from that of Dr. Hebrard. Following this, and any other 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.

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2021 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: June 29, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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



James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹⁷ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluation of Medical Evidence*, Chapter 2.810.9.b(1) (June 2015).