United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 21-0550**
	)	**Issued: March 7, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Omaha, NE, Employer	)	

Appearances:
Appellant, pro se
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 February 22, 2021 appellant filed a timely appeal from a January 22, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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.

FACTUAL HISTORY

On May 5, 2020 appellant, then a 54-year-old postal carrier, filed an occupational disease claim (Form CA-2) alleging that he suffered a torn left meniscus due to factors of his federal employment, including repetitive and prolonged walking for 8 to 10 hours per day for seven years. He further noted that he switched his delivery route after he realized that his knee was injured.

[1] 5 U.S.C. § 8101 *et seq*.

Appellant underwent meniscus surgery in 2016 and alleged that his knee condition has worsened. He noted that he first became aware of his condition on January 1, 2010 and first realized that it was caused or aggravated by his federal employment on April 20, 2020. Appellant did not stop work.

In an attached statement, appellant explained that about 10 years prior he realized that the route he was walking was causing pain in his left knee, noting that the route contained 100 houses with four to five steps. He walked this route for five years before switching to a different route with fewer steps. Appellant reported that changing his route helped with his knee pain, but that the pain was still present. In June 2016, he was involved in a motorcycle accident that forced him to miss six weeks of work due to a broken clavicle and two broken ribs he sustained in the accident. Four weeks after his accident, appellant underwent surgery to repair a torn meniscus in his left knee. He did not file a workers' compensation claim at that time because he was already off from work and did not want to have to go back in to take more time off from work for his knee. Appellant subsequently returned to work two weeks later. In the fall of 2019 his knee pain returned slowly and was now constant.

In an April 7, 2015 diagnostic report Dr. Tariq Suwan, a Board-certified radiologist, performed an x-ray scan of appellant's left knee and noted that it was unremarkable.

In an April 16, 2015 diagnostic report, Dr. Mark Fritze, a Board-certified diagnostic radiologist, performed a magnetic resonance imaging (MRI) scan of appellant's left knee, observing degenerative changes of the medical meniscus.

Dr. Brennen Lucas, a Board-certified orthopedic surgeon, in an April 29, 2015 medical report, evaluated appellant for complaints of left knee pain, swelling, and stiffness. Appellant noted that his pain began approximately five weeks earlier without an injury. Dr. Lucas reviewed the April 7 and 16, 2015 diagnostic studies of appellant's left knee which found degenerative changes of the medial meniscus. He diagnosed left knee pain, left internal derangement of the knee, and left derangement of the medial meniscus. Dr. Lucas expressed concern that appellant may have sustained a small medial meniscus tear and administered a corticosteroid injection to appellant's left knee to treat his symptoms.

In an April 27, 2020 medical note, Malissa Paxton, a physician assistant, explained that appellant underwent an MRI scan on April 23, 2020 that revealed a probable tear of his left meniscus. She opined that his job detail of walking aggravated his pain daily.

In a May 12, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afforded both parties 30 days to respond.

In an April 7, 2015 medical report, Dr. Kurt Hesse, Board-certified in family medicine, evaluated appellant for pain in his low back and left knee. On examination, he diagnosed low back pain and left knee pain and prescribed medications to treat appellant's symptoms.

In a July 13, 2015 medical report, appellant informed Dr. Lucas that he was experiencing pain in his left knee and of his employment duties involved excessive walking to carry mail. On review of an MRI scan of appellant's left knee and examination, Dr. Lucas diagnosed left internal derangement of the knee, left derangement of the medial meniscus and left knee pain. He arranged for appellant to undergo surgery to treat his condition.

In an April 20, 2020 medical report, Ms. Paxton noted that appellant previously underwent meniscus surgery in 2016 and that he was now experiencing pain in his left knee. Appellant reported that he suffered no injury to his knee and opined that his condition was work related. Ms. Paxton diagnosed chronic left knee pain[2] and ordered that he undergo an MRI scan for further evaluation.

In an April 23, 2020 diagnostic report, Dr. Kamran Ali, a Board-certified radiologist, performed an MRI scan of appellant's left knee, observing findings of appellant's previous medial meniscus surgery. He recorded increased T2 signal along the inferior articular surface of the posterior horn of the medial meniscus that was suspicious for a possible retear. Dr. Ali also noted that prior surgical changes could also appear like this.

In a May 7, 2020 medical report, Gregory Knoblauch, a physician assistant, evaluated appellant for a possible retear of his left meniscus. Appellant informed Mr. Knoblauch that he previously underwent an arthroscopy and partial medial meniscectomy five years prior and that he recently underwent an MRI scan that revealed a retear of his medial meniscus. Mr. Knoblauch diagnosed a retear of the left knee medial meniscus and degenerative arthritis of the left knee medial compartment/patellofemoral joint.

In a May 18, 2020 e-mail response to OWCP's development questionnaire, T.G., appellant's supervisor, noted that she did not have reason to dispute his claim as she was not his supervisor at the time of his first surgery. She detailed his current workload in which he worked eight plus hours a day, casing mail for three to four hours and spending four to five hours walking and standing to deliver mail. T.G. explained that appellant was previously on an overtime desired list, which had him working additional hours, but had since removed himself from the list a couple of months ago. Appellant had returned to working eight hours per day and reported that he did not want to sit in the office performing limited-duty work, asserting that he would rather perform his regular carrier assignments.

In a May 19, 2020 response to OWCP's development questionnaire, appellant advised that his left knee injuries began in 2010 and had since continued to hinder his ability to perform his job. His job consisted of walking, going up and down stairs, twisting, turning, lifting, squatting, and being on his feet for six to seven hours daily. Appellant explained that he had been performing these duties for 16.5 years and that he did not sustain a specific injury that caused his conditions.

By decision dated June 25, 2020, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between a diagnosed medical condition and the accepted factors of his federal employment. It

[2] Ms. Paxton's medical report diagnosed chronic right knee pain; however, this appears to be a typographical error.

concluded therefore that the requirements had not been met to establish an injury as defined under FECA.

On July 28, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

Appellant submitted a copy of Mr. Knoblauch's May 7, 2020 medical report.

In a June 1, 2020 operative report, Dr. Bradley Bruner, a Board-certified orthopedic surgeon, performed an arthroscopic left partial medial meniscectomy, an arthroscopic left loose body removal and an arthroscopic left chondroplasty to treat appellant's left medial meniscus tear.

Dr. Bruner reported on June 11, 2020 that he evaluated appellant following his June 1, 2020 left knee surgical procedure. He diagnosed a medial meniscus tear of the left knee, loose body of the left knee, and possible deep vein thrombosis of the left lower extremity.

In a September 16, 2020 statement, appellant detailed his employment duties over the past 17 years in which he walked approximately four to five miles a day, lifted packages, walked up and down stairs, bended, squatted, and stood for long periods of time. He alleged that these activities caused him to tear his meniscus twice. Appellant attached an information sheet explaining that postal workers were susceptible to repetitive stress injuries due to their employment duties.

In a September 23, 2020 medical report, Dr. Bruner recounted his treatment of appellant for a retear of appellant's left medial meniscus. He opined that appellant's condition was a direct result of appellant's work for the employing establishment over the past 17 years where appellant carried mail for approximately 10 miles per day.

In a September 24, 2020 duty status report (Form CA-17), Dr. Bruner diagnosed a tear of the left medial meniscus and advised that appellant was able to perform his normal work duties as of July 13, 2020.

By decision dated October 21, 2020, an OWCP hearing representative vacated the June 25, 2020 decision and remanded the case for further development.

On remand OWCP routed the case file, along with a statement of accepted facts (SOAF), to Dr. Michael J. Johnson, a Board-certified orthopedic surgeon, for an evaluation and review of the medical evidence of record as to whether appellant sustained a left knee condition causally related to the accepted factors of his federal employment. In his January 7, 2021 narrative medical report, Dr. Johnson indicated that he reviewed the SOAF as well as the medical evidence of record. He reviewed appellant's employment duties, history of left knee pain and left knee surgeries in 2016 and 2020. Dr. Johnson diagnosed a left knee medial meniscus tear in 2015, a left knee medial meniscus tear in 2020 and left knee grade III chondromalacia. Referring to page 370 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[3] he opined that, while there was "some evidence" of kneeling and squatting,

[3] A.M.A., *Guides* (6th ed. 2009).

the A.M.A., *Guides* did not mention standing or walking as a job task risk for a medial meniscus tear. Dr. Johnson therefore concluded that appellant's medial meniscus tears were secondary to appellant's preexisting, unrelated, degenerative chondromalacia and his age, but not his employment duties. Referring to page 364 of the A.M.A., *Guides*, he explained that there was "insufficient evidence" support a relationship between appellant's occupation and his diagnosed left knee arthritis/chondromalacia. Consequently, Dr. Johnson opined that appellant's chondromalacia was caused by a combination of appellant's age and genetics, not his employment tasks.

By *de novo* decision dated January 22, 2021, OWCP again denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that his diagnosed medical condition was causally related to the accepted factors of his federal employment.

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,[4] 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.[5] 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.[6]

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.[7]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[8] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a

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

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

[6] *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).

[7] *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).

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

complete factual and medical background.[9] 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 factors.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted factors of his federal employment.

Dr. Bruner, in his September 23, 2020 medical report, recounted his treatment for a retear of appellant's left medial meniscus and opined that appellant's condition was a direct result of his employment duties over the past 17 years where he carried mail for approximately 10 miles per day. While he provided an affirmative opinion on causal relationship, he did not offer any medical rationale sufficient to explain why he believes that appellant's employment duties could have resulted in or contributed to appellant's diagnosed condition. Without explaining how walking approximately 10 miles per day caused or aggravated his diagnosed medical condition, Dr. Bruner's September 23, 2020 medical report is of limited probative value.[11]

Dr. Bruner's remaining medical evidence consisted of medical reports dated June 1 and 11, 2020 in which he indicated that he performed an arthroscopic left partial medial meniscectomy, an arthroscopic left loose body removal, and an arthroscopic left chondroplasty to treat appellant's left medial meniscus tear and subsequently conducted a follow-up evaluation of his repaired knee. He also submitted a September 24, 2020 Form CA-17 wherein he diagnosed a tear of the left medial meniscus and advised that appellant was able to perform his normal work duties as of July 13, 2020. However, Dr. Bruner did not offer an opinion on causal relationship in any of these reports. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[12] For this reason, Dr. Bruner's remaining medical evidence is insufficient to meet appellant's burden of proof.

Dr. Lucas, in medical reports dated April 29 and July 13, 2015, reviewed appellant's complaints of pain in his left knee and appellant's employment duties involving walking to carry mail. He reviewed diagnostic studies of appellant's left knee, expressed concern that appellant may have sustained a small medial meniscus tear, but did not offer an opinion on causal relationship. As noted above, medical evidence that does not offer an opinion regarding the cause

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

[10] *Id.*; *Victor J. Woodhams, supra* note 7.

[11] *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

[12] *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

of an employee's condition is of no probative value on the issue of causal relationship.[13] Consequently, Dr. Lucas medical reports are insufficient to meet appellant's burden of proof.

On April 7, 2015 Dr. Hesse evaluated appellant for his complaints of pain in his low back and left knee diagnosed low back pain and left knee pain. The Board has consistently held that a diagnosis of "pain" does not constitute the basis for payment of compensation, as pain is a symptom not a specific diagnosis.[14] As Dr. Hesse did not offer a valid diagnosis, his April 7, 2015 medical report is insufficient to establish appellant's claim.

Appellant submitted multiple diagnostic studies. The Board has held, however, that diagnostic reports standing alone lack probative value on the issue of causal relationship as they do not address the relationship between accepted employment factors and a diagnosed condition.[15] For this reason, these diagnostic reports are insufficient to meet appellant's burden of proof.

Appellant also submitted medical evidence by physician assistants. However, certain healthcare providers such as physician assistants, physical therapists, nurses, and social workers are not considered physicians as defined under FECA.[16] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

The remaining medical evidence consisted of Dr. Johnson's January 7, 2021 second opinion narrative medical report wherein he opined that appellant's conditions were caused by a combination of appellant's age and genetics and not his employment tasks. As his report is well-rationalized and based on examination and an accurate history of the employment injury, the Board finds that Dr. Johnson's report constitutes the weight of the medical evidence.[17]

As appellant has not submitted rationalized medical evidence establishing that his left medial meniscus tear is causally related to the accepted factors of his federal employment, the Board finds that he has not met his burden of proof to establish his claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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[13] *Id*.

[14] *T.S.*, Docket No. 20-0343 (issued July 15, 2020); *D.H.*, Docket No. 19-0931 (issued October 2, 2019); *R.R.*, Docket No. 18-1093 (issued December 18, 2018); *A.C.*, Docket No. 16-1587 (issued December 27, 2016); *Robert Broome*, 55 ECAB 339 (2004).

[15] *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

[16] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); *see M.F.*, Docket No. 17-1973 (issued December 31, 2018); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[17] *See B.B.*, Docket No. 20-1187 (issued November 18, 2021).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 7, 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