

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

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| S.A., Appellant |) | |
| |) | |
| and |) | Docket No. 22-0674 |
| |) | Issued: November 28, 2022 |
| DEPARTMENT OF THE NAVY, NAVAL |) | |
| SUBMARINE BASE KINGS BAY, |) | |
| Kings Bay, GA, Employer |) | |

Appearances:
Capp P. Taylor, 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, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On March 3, 2022 appellant, through her representative, filed a timely appeal from a February 2, 2022 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 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.*

³ The Board notes that, following the February 2, 2022 decision, OWCP received additional evidence. 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 expand the acceptance of her claim to include bilateral knee osteoarthritis as causally related to the accepted March 18, 2013 employment injury.

FACTUAL HISTORY

On April 1, 2013 appellant, then a 53-year-old insulator, filed a traumatic injury claim (Form CA-1) alleging that on March 18, 2013 she strained her neck, arm, and back when stretching to reach a valve while in the performance of duty. OWCP accepted the claim for sprains of the neck and back, thoracic region. It paid appellant wage-loss compensation.

X-rays of the knees performed on April 12, 2014 revealed osteoarthritis of the medial joint space.

In a report dated February 13, 2017, Dr. Maxwell Steel, a Board-certified orthopedic surgeon and OWCP referral physician, diagnosed cervical and thoracic sprain, cervical and thoracic spondylosis, bilateral knee osteoarthritis, and status post right total knee arthroplasty. He opined that appellant had “age-related degenerative changes in the cervical and thoracic spine which most likely were aggravated by her work.” Dr. Steel further found that she had preexisting and unrelated knee conditions and might require a left total knee arthroplasty if her osteoarthritis progressed.

On March 1, 2017 OWCP expanded its acceptance of the claim to include an aggravation of age-related cervical disc degeneration and an aggravation of age-related thoracic back degeneration.

In a report dated September 2, 2020, Dr. Robert R. Reppy, an osteopath, evaluated appellant for pain in the neck, mid-back, and bilateral knees. He noted that her cervical and thoracic pain began on March 18, 2013 when she stretched to reach a valve and that her pain had increased in August 2014 “when her knees buckled on her while walking to the bathroom at work.” Dr. Reppy noted that appellant’s knee conditions had not been accepted even though she had undergone a right total knee arthroplasty on December 15, 2014. He advised that the failure to accept her knee conditions was “in error.” Dr. Reppy diagnosed an aggravation of age-related cervical and thoracic disc degeneration, knee degenerative joint disease, chondrocalcinosis, a calcified lateral left knee meniscus, end-stage arthritis of the left knee, and status post total knee arthroplasty of the right knee.

On September 16, 2020, in response to OWCP’s questions, Dr. Reppy repeated his previous diagnoses from his September 2, 2020 report and noted that two orthopedic surgeons had found that appellant’s knee conditions were employment related. He attributed her knee conditions to “years of kneeling and crawling on hard steel and concrete surfaces to access the crawl spaces of submarines to apply insulation.” Dr. Reppy opined that the March 18, 2013 employment injury was the “direct and proximate cause of [appellant’s] diagnoses and conditions.”

On February 16, 2021 appellant, through her representative, requested that OWCP expand the acceptance of her claim to include the diagnoses provided by Dr. Reppy.

In a report dated July 14, 2021, Dr. Reppy discussed appellant's complaints of pain in her cervical and thoracic spine and bilateral knees, worse on the left. He repeated his diagnoses as in his prior reports.

In a report dated November 29, 2021, Dr. Max Lincoln, a Board-certified orthopedic surgeon, noted that appellant had been diagnosed "with bilateral knee osteoarthritis approximately nine plus years ago." He referenced August 22, 2014 and July 18, 2016 reports finding that the condition was not traumatic in origin, but was instead due to her work duties. Dr. Lincoln reviewed appellant's job description and opined that her work duties caused bilateral osteoarthritic conditions which were "far more than normal wear and tear or the aging process." He opined that "the aforesaid work factors contributed to the diagnosed conditions of bilateral osteoarthritis of both knees and the need for the total right knee replacement."

On December 6, 2021 appellant, through her representative, requested that OWCP expand the accepted of the claim to include bilateral knee osteoarthritis. OWCP received an August 12, 2014 report, wherein Dr. Paul D. Shirley, a Board-certified orthopedic surgeon, related a history of appellant's knee buckling at work when she walked to the bathroom. He noted that her work duties required walking, climbing, pushing, carrying, and squatting and that she believed that these activities "caused this arthritis that led to [appellant's] knee giving away that led to the buckling and meniscal tear." Dr. Shirley diagnosed bilateral end-stage knee osteoarthritis and recommended joint replacement.

In a July 19, 2016 report, Dr. Richard D. Heekin, a Board-certified orthopedic surgeon, related that he had treated appellant since May 2014 and was familiar with her work duties and position description. He diagnosed severe bilateral knee osteoarthritis and noted that on December 15, 2014 he had performed a right total knee arthroplasty. Dr. Heekin opined that appellant's job duties from 2002 through 2014 caused wear and tear on the knees more than with the normal aging process. He found that the described duties "contributed to the diagnosed condition of bilateral osteoarthritis of both knees and the need for the total right knee replacement."

In a development letter dated December 6, 2021, OWCP advised appellant that the medical evidence submitted failed to address how her bilateral knee condition was causally related to her March 18, 2013 employment injury, accepted for cervical and thoracic spine conditions. It indicated that it appeared her condition was related to two other occupational disease claims that she had filed for both knees. OWCP noted that appellant could file an occupational disease claim (Form CA-2) if it was a different occupational condition. It requested additional factual and medical information, including a factual statement describing the development of the condition and a reasoned report from her physician explaining how her condition was related to the March 18, 2013 employment injury. OWCP afforded appellant 30 days to submit the necessary evidence.

On December 28, 2021 appellant's representative advised that her condition had been diagnosed after she had filed an occupational disease claim and indicated that the current file number was more appropriate. He again requested that OWCP expand the accepted conditions.

Appellant submitted physical therapy reports dated November and December 2021.

By decision dated February 2, 2022, OWCP denied appellant's request to expand the acceptance of her claim to include bilateral knee osteoarthritis as causally related to her March 18, 2013 employment injury.

LEGAL PRECEDENT

When an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁴

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁵ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁶ 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 employment injury.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include bilateral knee osteoarthritis as causally related to the accepted March 18, 2013 employment injury.

In support of her claim, appellant submitted September 2 and 16, 2020 reports from Dr. Reppy. Dr. Reppy noted that she had a history of her knees buckling in August 2014 and had undergone a right total knee arthroplasty on December 15, 2014. He diagnosed degenerative joint disease of the knees, chondrocalcinosis, a calcified lateral left meniscus, end-stage arthritis of the left knee, and status post total knee arthroplasty of the right knee. In his September 16, 2020 report, Dr. Reppy attributed appellant's knee condition to crawling and kneeling on hard surfaces over applying insulation in submarines. He asserted that the diagnosed conditions were caused by the accepted March 18, 2013 employment injury. However, Dr. Reppy did not provide a rationalized explanation of how the accepted March 18, 2013 employment incident physiologically caused or aggravated the additionally diagnosed knee condition. Consequently, his reports are of limited probative value and are insufficient to meet appellant's burden of proof.⁸

⁴ *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁵ *W.N.*, Docket No. 21-0123 (issued December 29, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁶ *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *Id.*

⁸ *See N.C.*, Docket No. 21-0934 (issued February 7, 2022); *H.T.*, Docket No. 20-1238 (issued July 12, 2021).

On July 19, 2016 Dr. Heekin diagnosed severe bilateral knee osteoarthritis and advised that he had performed a right total knee arthroplasty on December 15, 2014. He attributed appellant's bilateral osteoarthritis of the knees and her need for a right total knee arthroplasty to performing her job duties from 2002 through 2014. On November 29, 2021 Dr. Lincoln opined that the performance of her job duties had caused bilateral osteoarthritic conditions and resulted in the need for her right total knee replacement. The issue, however, is whether appellant has met her burden of proof to establish that she sustained a bilateral knee condition due to her accepted March 18, 2013 employment injury. Dr. Heekin and Dr. Lincoln attributed her condition to her work duties, rather than her accepted March 18, 2013 employment injury. However, they did not provide a rationalized opinion explaining how appellant's knee condition was causally related to the March 18, 2013 traumatic injury. Without an opinion supported by medical rationale explaining how the diagnosed conditions are related to the accepted employment injury, their opinions are of limited probative value.⁹ This evidence is, therefore, insufficient to establish expansion of the claim.

On August 12, 2014 Dr. Shirley noted that appellant's knees had buckled at work when she walked to the bathroom and that she believed that her work duties, including walking, climbing, and squatting, had caused knee arthritis that resulted in her knees buckling and a meniscal tear. He diagnosed bilateral end-stage knee osteoarthritis. While Dr. Shirley noted appellant's belief that her condition was related to her employment, he did not provide his own opinion regarding causation. A physician's report is of little probative value when it is based on a claimant's belief rather than the physician's independent judgement.¹⁰ This report is, therefore, also insufficient to establish expansion of the claim.

Appellant submitted physical therapy reports; however, the Board has held that physical therapists are not considered physicians as defined under FECA and therefore are not competent to render a medical opinion.¹¹ These reports therefore lack probative value and are insufficient to establish expansion of the claim.

As the medical evidence of record is insufficient to establish causal relationship between appellant's bilateral knee osteoarthritis and the accepted March 18, 2013 employment injury, the Board finds that appellant has not met her burden of proof.

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.

⁹ See *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁰ See *J.G.*, Docket No. 20-1471 (issued June 23, 2021); *K.B.*, Docket No. 17-0682 (issued July 24, 2017).

¹¹ 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). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *R.L.*, Docket No. 20-0284 (issued June 30, 2020); see also *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

CONCLUSION

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include bilateral knee osteoarthritis causally related to the accepted March 18, 2013 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 28, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board