United States Department of Labor
Employees' Compensation Appeals Board

J.R., Appellant	)	
and	)	**Docket No. 22-0272**
	)	**Issued: September 15, 2022**
U.S. POSTAL SERVICE, BROOKHOLLOW POST OFFICE, Dallas, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On December 10, 2021 appellant filed a timely appeal from an October 12, 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 medical condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On February 6, 2018 appellant, then a 66-year-old city carrier, filed an occupational disease claim (Form CA-2), but did not specify an injury or illness. He noted that he first became aware of his condition and first realized it relation to his federal employment on September 22, 2017. In

[1] 5 U.S.C. § 8101 *et seq*.

a statement submitted with his CA-2, appellant indicated that he began his employment with the employing establishment as a letter carrier in 1991 mostly on park and loop routes, and that he was no longer able to perform his duties. He noted that he is unable to stand in one place for extended periods and that walking and climbing are also a problem. Appellant recounted that management and co-workers noticed that he limped when he walked, which appellant explained was due to pain. He filed the CA-2 to "find out what is available for me to heal." Appellant stopped work on September 22, 2017.

Appellant submitted a work capacity evaluation (Form OWCP-5c) dated November 21, 2017 from Dr. Edward Wolski, a Board-certified family practitioner, who noted that appellant was totally disabled for one month due to a decrease in range of motion and tenderness.

In a February 12, 2018 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of evidence needed and provided a questionnaire for his completion. By separate development letter of even date, OWCP requested additional information from the employing establishment. It afforded both parties 30 days to respond.

In reports dated November 6 and December 9, 2017, Dr. Wolski treated appellant for bilateral knee pain. Appellant reported working as a letter carrier for 26 years casing mail approximately two hours a day while standing and pivoting to the right and left on his knees, placing mail in trays, squatting to put trays into a gondola, lifting parcels from the gondola and placing them in his truck, mounting and dismounting his truck multiple times a day, and working approximately 10 to 12 hours of overtime a week. Dr. Wolski opined that the shearing, torsional, and compressive forces due to prolonged standing, squatting, pivoting, dismounting his truck, and climbing stairs aggravated the degenerative joint disease of both knees. He diagnosed tears of the medial meniscus of both knees, aggravation of osteoarthritis of bilateral knees, and aggravation of internal derangement of both knees causally related by appellant's work duties.

X-rays of the left and right knee dated November 6, 2017 revealed small joint effusion of traumatic or inflammatory origin and minimal lateral compartment marginal osteophytic ridging. A November 10, 2017 magnetic resonance imaging (MRI) scan of the right knee revealed advanced medial compartment osteoarthritis with free edge tear of the medial meniscus, extensive full thickness articular cartilage loss, edema, full thickness patellar cartilage loss, and small joint effusion. An MRI scan of the left knee of even date revealed advanced medial compartment osteoarthritis with medial meniscal tear, extensive full thickness cartilage loss, edema, multifocal areas of partial and full thickness patellar and trochlear cartilage loss, moderate joint effusion, and mucoid degeneration of the anterior cruciate ligament (ACL).

In response to the development letter, appellant submitted a statement dated February 28, 2018 claiming work-related injuries to both knees. He explained that his daily routine over 27 years of preparing and delivering mail and parcels on his route required walking, climbing steps, entering and exiting a vehicle, bending and lifting, all of which contributed to the development of his bilateral knee condition.

On April 4, 2018 OWCP referred appellant, the case record and a statement of accepted facts (SOAF) for a second opinion examination with Dr. George Wharton, a Board-certified

orthopedic surgeon. It requested that Dr. Wharton evaluate whether appellant developed bilateral knee conditions causally related to the accepted factors of his federal employment.

In a May 31, 2018 report, Dr. Wharton discussed appellant's factual and medical history and reported physical examination findings. Examination of the knees revealed degenerative osteoarthritis in both knees, varus instability in both knees, left side worse than right, significant medial instability of the medial collateral ligament on the left side, restricted range of motion of both knees, and varus deformity of both knees, left side worse than right. Dr. Wharton diagnosed osteoarthritis and medial meniscus tears of both knees. He opined, based on reasonable medical probability, appellant's bilateral knee osteoarthritic changes were more likely a preexisting and age-related disease of life. Dr. Wharton indicated that the MRI scan showed findings consistent with degenerative changes present in the articular surfaces as well as degenerative meniscus tear, which are typical of chronic age-related osteoarthritis. He opined that the diagnosed bilateral knee conditions were not caused by his employment duties. Dr. Wharton indicated that "[i]n all likelihood the bilateral knee osteoarthritic changes could have occurred with or without performing his usual job duties as a city carrier." He opined that it was "more likely that [appellant's] diagnosed bilateral knee degenerative osteoarthritis [had] a congenital component and less likely that it was caused or contributed by direct causation, aggravation, precipitation, [or] acceleration" by his employment duties. Dr. Wharton further found no evidence of aggravation of appellant's preexisting or underlying degenerative osteoarthritis by his employment duties. He asserted that osteoarthritis in the knees was commonly seen in older individuals. A June 14, 2018 functional capacity evaluation revealed that appellant could work in a light physical demand level.

By decision dated July 19, 2018, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that his diagnosed bilateral knee condition was causally related to the accepted factors of his federal employment.

OWCP received additional evidence. In a Form OWCP-5c dated December 19, 2017, Dr. Wolski noted that appellant was totally disabled for one month due to a decrease in range of motion and tenderness. In an August 14, 2018 disability narrative, he noted a history of injury and appellant's complaints of bilateral knee pain, swelling, and weakness. Dr. Wolski advised that appellant was totally disabled from August 14 through September 20, 2018. On January 17, 2019 he diagnosed tear of the medial meniscus of both knees, aggravation of osteoarthritis of both knees and internal derangement of both knees. Dr. Wolski opined that the shearing, torsional, and compressive forces due to prolonged standing, squatting, pivoting, dismounting his truck, and climbing stairs aggravated the degenerative joint disease of both knees.

Appellant was treated by Chad Dugas, a nurse practitioner from December 19, 2017 through September 21, 2018 for osteoarthritis of the bilateral knees and internal derangement of the left knee. Dr. Julian Crutchfield, a chiropractor, treated appellant from January 16 through August 14, 2018 for internal derangement of the bilateral knees and osteoarthritis of the bilateral knees. On September 21, 2018, Nathan Mahanirananda, a physician assistant, diagnosed bilateral osteoarthritis of the knees and patellae and bilateral meniscus tears of the knees.

On May 20, 2019 appellant requested reconsideration.

By decision dated July 26, 2019, OWCP denied modification of the decision dated July 19, 2018.

OWCP received additional evidence. Mr. Dugas continued to treat appellant from September 21, 2018 through February 27, 2020, and diagnosed bilateral primary osteoarthritis of the knees.

Dr. Brian Rogers, an occupational medicine specialist, treated appellant from November 13, 2019 through April 16, 2020 and diagnosed tear of the medial meniscus of the right and left knees, bilateral primary osteoarthritis of the knees, and internal derangement of the right and left knees. He opined with reasonable medical certainty that appellant's injuries were work related. Dr. Rogers further indicated that the severity of the degeneration of the knees could "only be explained by occupational overuse required by his job." On April 16, 2020 he opined that appellant's claim should be accepted for bilateral post-traumatic osteoarthritis of the knees.

On April 20, 2020 appellant requested reconsideration.

By decision dated June 8, 2020, OWCP denied modification of the decision dated July 26, 2019.

OWCP received additional evidence. Mr. Dugas, a nurse practitioner, treated appellant on May 27, 2020 and indicated that appellant's condition was unchanged since the last evaluation.

On May 19, 2021, Dr. Juan L. Zamora, a Board-certified family practitioner, related that appellant worked as a letter carrier for 27 years and his employment duties included casing mail on a concrete floor for two hours a day, pushing gondolas and transports full of mail weighing 200 to 300 pounds, lifting heavy trays of mail, parcels, and packages, carrying mailbags weighing up to 35 pounds, walking on uneven terrain, repetitive climbing in and out of his work vehicle, delivering mail to over 300 businesses daily, and working overtime walking and delivering mail and parcels. He reviewed Dr. Wharton's second report dated May 31, 2018 and disagreed with his findings noting that appellant's job duties as a letter carrier over 27 years was a direct cause of the acceleration of his bilateral knees natural wear, which produced permanent damage including a meniscus tear and osteoarthritis, more than expected for an individual in his age group. Dr. Zamora explained that lifting, carrying, and manipulating medium-to-heavy loads for extended periods of time lead to muscle fatigue which reduced joint integrity increasing the susceptibility to musculoskeletal injuries. He advised that although appellant's conditions may consist of some effects from age there was a clear causation of work to musculoskeletal injuries. Dr. Zamora further noted that cumulative exposure to lifting, bending, and squatting while carrying heavy loads and performing these maneuvers repetitively over time increases the risk of developing meniscus tears and osteoarthritis in his knees. He opined that these diagnoses were a direct and causal result of repetitive stress and overexertion from standing, walking, bending, twisting, squatting, lifting, pushing, carrying consistent with being a letter carrier. On June 2, 2021 Dr. Zamora diagnosed bilateral primary osteoarthritis of the knees and tear of the medial meniscus of the left and right knee.

On May 24, 2021, Dr. Edward Amadi, a chiropractor, diagnosed work-related bilateral primary osteoarthritis of the knees and tear of the medial meniscus of the right and left knees.

A May 26, 2021 MRI scan of the left knee revealed tricompartmental osteoarthritis with severe medial, moderate patellofemoral, mild lateral compartment osteoarthritis, knee effusion with synovitis, intraligamentous ACL mucinous cyst, posterior horn tear of the medial meniscus and loose bodies in the posterior/central knee. An MRI scan of the right knee of even date revealed tricompartmental osteoarthritis, complex tearing of the maceration of the body and posterior horn of the medial meniscus, small knee effusion, and mild synovitis.

On June 2, 2021 appellant requested reconsideration.

By decision dated June 10, 2021, OWCP denied modification of the decision dated June 8, 2020.

OWCP received additional evidence. On February 17, 2020, Dr. Gregg T. Podleski, a Board-certified orthopedic surgeon, noted appellant's history as a letter carrier and diagnosed acute medial meniscus tear of the right and left knees and degenerative joint disease of the left and right knees. He recommended intra-articular injections.

Dr. Jack M. Thomas, a Board-certified orthopedist, evaluated appellant on June 17, 2021 and diagnosed sprain of the medial collateral ligament of the right and left knees and bilateral primary osteoarthritis of the knees. He opined that throughout appellant's career as a postal employee he sustained repetitive injury of the knee joints, which led to degenerative arthritis.

On July 7, 2021 Dr. Zamora clarified his opinion of causal relationship dated June 2, 2021 pursuant to the OWCP decision dated June 10, 2021. He disagreed with the second opinion physician Dr. Wharton and found his statement that the "bilateral knee osteoarthritic changes could have occurred with or without performing his usual job duties as a city carrier" contradictory and non-conclusive. Dr. Zamora reported that appellant's job duties as a letter carrier over 27 years were the direct cause of acceleration of his bilateral knees natural wear producing permanent damage including meniscus tear and osteoarthritis. He explained that the integrity of the joints and supporting joint structure rely on the strength of muscles surrounding the joint and lifting, carrying, and manipulation of medium-to-heavy loads for extended periods of time lead to muscle fatigue. Dr. Zamora noted that these factors were all a part of appellant's job duties as fatigue reduces joint integrity increasing susceptibility to musculoskeletal injuries within the joint structure and was the causation of the bilateral knee osteoarthritic and medial meniscus tear. He opined that appellant's cumulative exposure to lifting, bending, and squatting while carrying heavy loads and performing maneuvers repetitively over time led to the development of meniscus tear and osteoarthritis in the knees. Dr. Zamora indicated that Dr. Wharton failed to consider the overall totality of appellant's job duties on his bilateral knee condition.

On July 14, 2021 appellant requested reconsideration.

On October 8, 2021, Dr. Michael Castro, a chiropractor, diagnosed bilateral primary osteoarthritis of the knees and tear of the medial meniscus of the right and left knees.

By decision dated October 12, 2021, OWCP denied modification of the decision dated June 10, 2021.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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[3], 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.[4] These are the essential elements of each and every compensation claim, regardless of whether the claim is based upon a traumatic injury or an occupational disease.[5]

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.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[7] 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 claimant.[8] 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.[9]

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

---

[2] 5 U.S.C. § 8101 *et seq*.

[3] *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] 20 C.F.R. § 10.115; *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *See T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[7] *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[8] *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[9] *E.W.*, *supra* note 3; *Gary L. Fowler*, 45 ECAB 365 (1994).

make an examination.[10] 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.[11] When there exists 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 well rationalized and based upon a proper factual background, must be given special weight.[12]

ANALYSIS

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

A conflict in medical opinion evidence exists between Dr. Zamora, appellant's treating physician, and Dr. Wharton, OWCP's second opinion physician, regarding whether appellant developed bilateral osteoarthritis of the knees and tears of the medial meniscus of both knees causally related to the accepted factors of his federal employment.

Dr. Zamora, appellant's treating physician, opined that the performance of appellant's job duties including casing mail on a concrete floor, pushing gondolas and transports full of mail, lifting heavy trays of mail, carrying mailbags, walking on uneven terrain, and repetitive climbing led to the development of meniscus tears and osteoarthritis in appellant's knees. He opined that the cumulative exposure to lifting, bending, and squatting while carrying heavy loads repetitively over time compromised the integrity of the knee joints and supporting joint structure causing bilateral knee osteoarthritis and medial meniscus tear. Dr. Zamora explained that these diagnoses were a direct and causal result of repetitive stress and overexertion of appellant's areas of complaints from standing, walking, bending, twisting, squatting, lifting, pushing, carrying consistent with being a letter carrier.

By contrast, Dr. Wharton, the second opinion physician, opined in his May 31, 2018 report that appellant's bilateral osteoarthritis of the knees and tears of the medial meniscus of both knees were not related to his work activities. He opined that appellant's bilateral knee osteoarthritic changes were more likely preexisting and consistent with chronic age-related osteoarthritis. Dr. Wharton opined that the diagnosed bilateral knee conditions were congenital in nature and less likely caused, contributed by direct causation, aggravation, precipitation, or acceleration by his employment duties.

Dr. Zamora provided a rationalized description of how the accepted work factors caused or contributed to the diagnosed bilateral osteoarthritis of the knees and tears of the medial meniscus of both knees. Dr. Wharton, however, opined that there was no causal relationship between the identified employment factors and appellant's bilateral osteoarthritis of the knees and tears of the

[10] 5 U.S.C. § 8123(a); *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).

[11] 20 C.F.R. § 10.321.

[12] *M.W.*, *supra* note 10; *C.T.*, *supra* note 10; *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

medial meniscus of both knees. The Board, therefore, finds that a conflict in medical opinion exists regarding whether he developed bilateral osteoarthritis of the knees and tears of the medial meniscus of both knees due to the factors of his federal employment.

OWCP's regulations provide that, if a conflict exists between the medical opinion of the employee's physicians and the medical opinion of a second-opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination, pursuant to section 8123(a) of FECA.[13] The Board will thus remand the case to OWCP for referral to an impartial medical specialist regarding whether appellant has met his burden of proof to establish that he developed bilateral osteoarthritis of the knees and tears of the medial meniscus of both knees due to factors of his federal employment.[14] Following this and any such other further development as may be deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

[13] 5 U.S.C. § 8123(a); *M.W., supra* note 10.

[14] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the October 12, 2021 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: September 15, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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