United States Department of Labor
Employees' Compensation Appeals Board

K.M., Appellant	)	
and	)	**Docket No. 22-0299**
	)	**Issued: September 1, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Santa Clarita, CA, 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 22, 2021 appellant filed a timely appeal from a December 17, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (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] The Board notes that, following the December 17, 2021 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.*

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 26, 2021 appellant, then a 49-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a left knee condition due to factors of his federal employment, including walking 13 miles a day. He stated that he first became aware of his condition and that it was related to his federal employment on October 1, 2020. Appellant stopped work on October 21, 2021.

In support of his claim, appellant submitted a statement dated August 23, 2021 attesting that since 2003 he had his own postal route, which required walking approximately 13 miles a day. He also alleged that he told his supervisor that his knees were getting bad and that he was instructed to file an occupational disease claim. Appellant subsequently saw a doctor on August 17, 2021.

In a letter dated August 19, 2021, Jonathan Leong, a physician assistant, related that appellant's job required him to walk 10 to 12 miles a day, which contributed to his knee pain. He diagnosed mild-to-moderate degenerative arthritis of the left knee.

In a magnetic resonance imaging (MRI) report dated October 5, 2021, Dr. Steven K. Hansen, a Board-certified diagnostic radiologist, related appellant's diagnoses as extensive chronic medial meniscus tear with associated grade III articular cartilage degeneration and moderate joint effusion; and prepatellar bursitis and evidence of infrapatellar fat pad impingement.

In a development letter dated November 3, 2021, OWCP advised appellant of the deficiencies in his claim. It noted the type of factual and medical evidence needed and afforded him 30 days to submit the necessary evidence.

In response, OWCP received a report dated November 3, 2021 from Dr. George Nevatt, a family medicine specialist. Dr. Nevatt noted appellant's history that he walked 12 to 13 miles a day to perform his work duties. He diagnosed chronic degenerative meniscus tear, left knee; pain, right knee; and prepatellar bursitis, left knee.

By decision dated December 17, 2021, OWCP accepted the implicated employment factors but denied appellant's claim as causal relationship was not established between a diagnosed medical condition and the accepted employment factors. It concluded, therefore, that the requirements had not been met to establish an injury and/or a medical condition causally related to the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 FECA, that the claim was timely filed within the applicable time

[3] *Id*.

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, 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.[7]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[8] 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.[9] 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, is sufficient to establish causal relationship.[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.

Appellant submitted a medical report dated November 3, 2021 from Dr. Nevatt wherein he noted the accepted factor of appellant's employment and diagnosed a chronic degenerative meniscus tear, left knee; pain, right knee; and prepatellar bursitis, left knee. However, Dr. Nevatt did not provide his own medical opinion explaining the cause of appellant's diagnosed conditions.

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[4] *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *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).

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

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

[10] *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *Gary L. Fowler*, 45 ECAB 365 (1994).

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.[11] As such, this report is insufficient to establish appellant's claim.

In an MRI scan report dated October 5, 2021, Dr. Hansen diagnosed appellant's left knee conditions as extensive chronic medial meniscus tear with associated grade III articular cartilage degeneration and moderate joint effusion; and prepatellar bursitis and evidence of infrapatellar fat pad impingement. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and a diagnosed condition.[12] For this reason, Dr. Hansen's report is insufficient to meet appellant's burden of proof.

OWCP received a letter dated August 19, 2021 from Mr. Leong, a physician assistant, which related that appellant's job required him to walk up to 12 miles a day and contributed to his knee pain. Mr. Leong noted appellant's diagnosis as left knee degenerative arthritis. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.[13] Consequently, Mr. Leong's report will not suffice for purposes of establishing entitlement to FECA benefits.[14]

As the medical evidence of record is insufficient to establish causal relationship between appellant's left knee condition and the accepted factors of his federal employment, the Board finds that he has not met his 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.

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.

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[11] *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

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

[13] 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *see also M.F.*, Docket No. 19-1573 (issued March 16, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *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).

[14] *See B.A.,* Docket No. 22-0213 (issued July 26, 2022) (physician assistants are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 1, 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