

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish a left knee condition causally related to the accepted March 16, 2017 employment incident.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On October 24, 2018 appellant, then a 56-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he aggravated a previous work-related left knee injury due to factors of his federal employment, explaining that on March 16, 2017 he was delivering mail while hiking through deep snow, when he experienced pain in his left knee. He noted that he first became aware of his condition and first realized its relation to his federal employment that day. Appellant stopped work on March 16, 2017. OWCP assigned the claim OWCP File No. xxxxxx592.

Appellant had previously filed a traumatic injury claim (Form CA-1), assigned OWCP File No. xxxxxx234, for a left knee injury sustained on January 3, 2015 when he slipped and twisted his knee on a resident's steps while delivering mail in icy conditions. On March 7, 2016 OWCP accepted this claim for a cystic meniscus, posterior horn of medial meniscus of the left knee; and a sprain of the lateral collateral ligament of the left knee.

In a February 13, 2018 letter, Dr. William Krywicki, a Board-certified orthopedic surgeon, noted his history of treatment for appellant's left knee in relation to the January 3, 2015 employment incident when he slipped on ice and twisted his knee while delivering mail. He subsequently evaluated appellant on May 9, 2017 relating that appellant informed him that he had been experiencing more pain in his left knee since March 15 or 16, 2017. Appellant explained to Dr. Krywicki that, after a large snowstorm, he was required to wear boots and walk differently through the snow in order to deliver his mail. Dr. Krywicki diagnosed stage III arthritic progression and opined that appellant's left knee condition was a direct progression of the January 3, 2015 traumatic injury. He explained that appellant previously had a ligament injury and that his stage III arthritic changes of the left knee were caused by the added stress of walking through a snowpack, which created stresses and torsions to his left knee.

In an undated statement, appellant recounted the events of his previous January 3, 2015 employment incident where he slipped while carrying mail in the performance of duty and injured his left knee. He explained that on March 16, 2017 he aggravated his left knee by walking through deep snow on his mail route. Appellant described the conditions after a blizzard on March 16, 2017 and stated that he had to wear additional clothing and walk with a different motion in order to deliver his mail. His left knee began to hurt about mid-route and his condition gradually worsened.

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<sup>3</sup> Docket No. 22-0266 (issued September 27, 2022); Docket No. 20-1542 (issued April 9, 2021).

In response to OWCP's development questionnaire, appellant submitted a November 16, 2018 statement and indicated that his claim was a traumatic injury claim, rather than an occupational disease claim.

By decision dated December 3, 2018, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish the implicated employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP received additional evidence. On March 21, 2017 Dr. Diane Ciaglia, an osteopath Board-certified in family medicine, noted that appellant reported favoring a knee while walking in the snow and that he thought it could have been arthritis. On evaluation, she diagnosed pain in an unspecified knee.

Dr. Krywicki, in a December 10, 2018 letter, again recounted his history of medical treatment for appellant's left knee in relation to appellant's January 3, 2015 employment injury and subsequent March 16, 2017 employment incident. He opined, within a reasonable degree of medical certainty, that his findings of arthritic wear were a direct progression of appellant's January 3, 2015 employment injury. Dr. Krywicki further explained that appellant was able to navigate on dry surfaces, but walking through the snow on March 16, 2017 caused appellant to change his walking pattern and created a torsional motion that aggravated his arthritis.

On January 2, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a May 2, 2019 report, Dr. Krywicki opined that the aggravation of appellant's degenerative left knee arthritis related to the findings in a February 2015 magnetic resonance imaging (MRI) scan demonstrating a complex tear of his medial meniscus and articular surface damage to the femoral condyle and tibial surface related to his January 3, 2015 employment injury. He attached an article on osteoarthritis.

An oral hearing was held on May 7, 2019. Counsel explained that appellant's claim was for a traumatic injury and not an occupational disease.<sup>4</sup>

In a May 23, 2019 report, Dr. Krywicki opined within a reasonable degree of medical certainty that appellant's disability occurred as a result of aggravation to the left knee on March 16, 2017. He noted that the progression of arthritis to a level stage III or stage IV on x-ray required a total knee replacement. Dr. Krywicki opined with a reasonable degree of medical certainty that the disability from work that started on March 16, 2017 was the direct and expected progression of arthritis in appellant's left knee that related back to the January 2015 employment injury.

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<sup>4</sup> Appellant testified that on March 13, 14, and 15, 2017 his locality experienced an extraordinary amount of snow and he did not work because the roads were not passable. When he returned to work on March 16, 2017 the mail was backed up and he was responsible for two- and three-day mail deliveries in one day. Appellant testified that on March 16, 2017 he reported his injury to his supervisor, who instructed him to file a recurrence claim (Form CA-2a) under OWCP File No. xxxxxx234.

By decision dated July 19, 2019, OWCP's hearing representative found that appellant's claim actually was a claim for an occupational disease rather than a traumatic injury and affirmed the December 3, 2018 decision, finding that there were sufficient inconsistencies in the evidence that cast serious doubt on the validity of appellant's claim.

On November 25, 2019 appellant, through counsel, requested reconsideration of OWCP's July 19, 2019 decision. Appellant submitted additional evidence, including a February 7, 2020 statement in which he asserted that the date used on his Form CA-2 was used in error and that he was given no guidance or assistance in filing his claim. He asserted that the employing establishment ignored his statements about the weather being the reason he used a sick day the day before the alleged March 16, 2017 injury and that the snow on the ground was the reason he aggravated his left knee.

By decision dated February 25, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim.

On August 20, 2020 appellant appealed to the Board. By decision dated April 9, 2021, the Board set aside the February 25, 2020 decision and remanded the case for further proceedings. The Board found that OWCP improperly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a). The Board determined that appellant submitted a February 7, 2020 statement that constituted relevant and pertinent new evidence with regard to whether he sustained a traumatic injury on March 16, 2017. The Board further instructed OWCP to administratively combine OWCP File No. xxxxxx592 and OWCP File No. xxxxxx234.<sup>5</sup>

By decision dated July 1, 2021, OWCP denied modification of the February 25, 2020 decision.

On December 7, 2021 appellant appealed to the Board. By decision dated September 27, 2022, the Board reversed in part and set aside in part the July 1, 2021 decision and remanded the case for further development. The Board found that appellant met his burden of proof to establish a traumatic incident in the performance of duty on March 16, 2017. The Board further found that the case was not in posture for decision regarding whether he established a diagnosed medical condition causally related to the accepted March 16, 2017 employment incident and instructed OWCP to evaluate the medical evidence.<sup>6</sup>

By decision dated February 16, 2023, OWCP denied appellant's traumatic injury claim, finding that the medical evidence submitted was insufficient to establish a diagnosed medical condition causally related to the accepted March 16, 2017 employment incident.

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<sup>5</sup> *Supra* note 3. OWCP then administratively combined OWCP File No. xxxxxx592 and OWCP File No. xxxxxx234, with the latter serving as the master file.

<sup>6</sup> *Id.*

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>7</sup> 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,<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>11</sup>

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.<sup>12</sup> 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 incident identified by the employee.<sup>13</sup>

### **ANALYSIS**

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

Initially, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's July 1, 2021 decision, which was considered by the Board in its

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<sup>7</sup> *Supra* note 2.

<sup>8</sup> *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).

<sup>9</sup> *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).

<sup>10</sup> *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).

<sup>11</sup> *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>12</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>13</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

September 27, 2022 decision. Findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.<sup>14</sup>

In a February 13, 2018 letter, Dr. Krywicki noted his history of treatment for appellant's left knee in relation to the January 3, 2015 employment incident when appellant slipped on ice and twisted his knee while delivering mail. He evaluated appellant on May 9, 2017 for increased pain in his left knee since March 15 or 16, 2017, after a large snowstorm which necessitated his wearing boots and walking differently through the snow in order to deliver his mail. Dr. Krywicki diagnosed stage III arthritic progression and opined that appellant's left knee condition was a direct progression of the January 3, 2015 employment injury. He explained that appellant previously had a ligament injury and that the stage III arthritic changes of appellant's left knee were caused by the added stress of walking through a snowpack, which created stresses and torsions to his left knee. Dr. Krywicki, in a December 10, 2018 letter, opined, within a reasonable degree of medical certainty, that his findings of arthritic wear were a direct progression of appellant's January 3, 2015 employment injury and stated that appellant's walking through the snow on March 16, 2017 caused appellant to change his walking pattern and created a torsional motion that aggravated his arthritis.

The Board finds that Dr. Krywicki's February 13 and December 10, 2018 letters, when read together, are sufficient to require further development of the medical evidence.<sup>15</sup> Dr. Krywicki, in these reports, provides a pathophysiological explanation as to how walking through the snow on March 16, 2017 caused appellant to change his walking pattern and created torsional motion with the left knee that aggravated his arthritis. The Board has long 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. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.<sup>16</sup> Accordingly, Dr. Krywicki's medical opinion is sufficient to require further development of appellant's claim.<sup>17</sup>

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.<sup>18</sup> OWCP has an obligation to see that justice is done.<sup>19</sup>

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<sup>14</sup> *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

<sup>15</sup> *C.S.*, Docket No. 22-1087 (issued May 1, 2023); *see I.S.*, Docket No. 20-0216 (issued August 15, 2022).

<sup>16</sup> *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein.

<sup>17</sup> *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>18</sup> *See id.* *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>19</sup> *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

On remand, OWCP shall refer appellant, the medical record, and a statement of accepted facts to a specialist in the appropriate field of medicine for an examination and a rationalized medical opinion as to whether the accepted March 16, 2017 employment incident either caused or aggravated his diagnosed conditions.<sup>20</sup> If the second opinion physician disagrees with the explanations provided by Dr. Krywicki, he or she must provide a fully-rationalized explanation explaining why the accepted March 16, 2017 employment incident was insufficient to have caused or aggravated his diagnosed ligament injury and stage III arthritic changes of the left knee. After this and other such further development of the case record 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 February 16, 2023 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: December 4, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>20</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.5b (January 2013); C.C., Docket No. 19-1631 (issued February 12, 2020).