

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

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| <b>R.W., Appellant</b>                       | ) |                             |
|  | ) |                             |
| <b>and</b>                                   | ) | <b>Docket No. 22-1385</b>   |
|  | ) | <b>Issued: July 6, 2023</b> |
| <b>U.S. POSTAL SERVICE, CHARLESTON</b>       | ) |                             |
| <b>PROCESSING &amp; DISTRIBUTION CENTER,</b> | ) |                             |
| <b>North Charleston, SC, Employer</b>        | ) |                             |
| _____  | ) |                             |

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 29, 2022 appellant, through counsel, filed a timely appeal from an August 11, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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 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.

<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 medical condition causally related to the accepted factors of his federal employment.

## FACTUAL HISTORY

On August 20, 2021 appellant, then a 58-year-old bulk mail clerk, filed an occupational disease claim (Form CA-2) alleging that he developed osteoarthritis in the hips and knees and degenerative disc disease in his lower back due to factors of his federal employment, including walking and standing on concrete for extended periods of time, continuous bending, twisting, and lifting of heavy trays of mail, and the operation of machines six days a week for 15 years. He indicated that he first became aware of his conditions on November 1, 2020 and realized their relation to factors of his federal employment on March 1, 2021. Appellant did not stop work.

Appellant submitted an undated statement indicating that he first noticed pain and stiffness in his back and hips the previous year but ignored it, believing that it was caused by his sleeping position. He related that his condition worsened and caused difficulty sitting, sleeping, and performing his work duties. Appellant asserted that the cause of his conditions was due to the years of walking and standing on concrete with constant bending and twisting. He related that an orthopedic specialist examined him and administered injections to his back and hip, but he continued to have difficulty walking long distances and performing his work duties.

An April 16, 2021 magnetic resonance imaging (MRI) scan report of appellant's right hip noted an impression of mild degenerative changes at the right hip with no evidence of avascular necrosis (AVN) to the femoral head, fraying of the labrum without a discrete tear, and right hamstring tendon complex tendinopathy with low-grade partial avulsion of the tendon fibers. An MRI scan report of even date of his left hip noted an impression of severe osteoarthritis of the left hip, marked bone marrow edema in the femoral head greater than acetabulum which may relate to the osteoarthritis, suspicious for inflammatory arthritis, an appearance not typical for AVN in the left femoral head, a torn left acetabular labrum, and a bone fragment suggesting a displaced acetabuli *versus* avulsion fracture from the acetabulum.

In a June 29, 2021 visit note, Dr. Christopher Merrell, Board-certified in physical medicine, noted that he performed a physical examination and diagnosed left hip joint pain, osteoarthritis of the hip, and lumbosacral spondylosis without myelopathy. He indicated that appellant reported that his chronic bilateral knee pain began with severe knee osteoarthritis that he developed while in the service. Dr. Merrell reviewed x-ray and MRI scan reports, ordered facet injections, and related that appellant has chronic low back pain, bilateral knee osteoarthritis, and hip pain which may require joint replacement.

In an August 25, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the additional evidence needed to establish his claim and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor. It afforded both parties 30 days to respond.

Thereafter, appellant submitted an undated note from Dr. John Hulvey, Jr., a Board-certified sports medicine practitioner, indicating that he had been treating appellant for several years for chronic bilateral knee pain secondary to advanced osteoarthritis. Dr. Hulvey noted that despite treating with physical therapy, anti-inflammatories, injections, and platelet-rich plasma, his pain continued to worsen.

OWCP also received an April 25, 2002 position description and a March 22, 2019 work standard description.

In an August 27, 2021 letter, an employing establishment supervisor, Y.R., controverted appellant's claim, asserting that he had not asked for assistance due to his alleged conditions and had not provided any information or documentation. She related that his job duties included: lifting trays weighing up to 20 pounds for up to seven hours a day; pushing all-purpose containers or trucks up to 20 feet every 30 to 45 minutes; and bending to lift or push trays and bins. Y.R. asserted that appellant requested to be on the volunteer overtime list, chose to work a sixth day each week, and was given 15-minute breaks and a lunch each day.

An August 31, 2021 disability statement from the Department of Veterans Affairs indicated that appellant has service-connected disabilities, including right knee patellofemoral osteoarthritis with limited extension (40 percent disability), right shoulder residuals of acromioclavicular joint injury with arthritis and mild impingement (20 percent disability), left knee osteoarthritis (10 percent disability), and hypertension (10 percent disability).

In a September 8, 2021 work status report, Dr. Merrell diagnosed left hip joint pain and returned appellant to regular-duty work the following day.

By decision dated October 4, 2021, OWCP denied appellant's claim, finding that he had not submitted sufficient evidence to establish the implicated factors of employment. Consequently, it found that he had not met the requirements to establish an injury as defined by FECA.

On October 20, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on February 15, 2022.

By decision dated April 7, 2022, OWCP's hearing representative modified the October 4, 2021 decision to find that appellant had established the implicated employment factors. However, the claim remained denied because the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted factors of his federal employment.

On May 19, 2022 appellant, through counsel, requested reconsideration of the April 7, 2022 decision and submitted additional evidence.

In a May 6, 2022 report, Dr. Neil Allen, a Board-certified internist and neurologist, indicated that he reviewed appellant's medical records and contacted him for a statement. Appellant related that he was a mail processing clerk for approximately 15 years when he began to experience worsening pain in his back, hips, and knees, and his duties included a quarter mile walk and loading and unloading large trays of mail into a 150-foot-long processing machine. Dr. Allen noted that appellant engaged in continuous standing, walking, bending, pushing, pulling

lifting, and twisting while loading mail trays for two-hour periods before a 15-minute break, repeated 8 to 10 hours per day, six days per week. He observed that appellant underwent a total left hip arthroplasty in November 2021 and had service-related bilateral knee injuries in 1991, for which he underwent total right knee reconstruction. Dr. Allen diagnosed acceleration of bilateral osteoarthritis of the hips, acceleration and aggravation of bilateral osteoarthritis of the knees, and acceleration of lumbar spondylosis.

Dr. Allen explained that arthritis is a failure and loss of articular cartilage surface and opined that the repetitive motions of appellant's duties exacerbated his low back, right hip, and bilateral knee symptoms and resulted in local stress and the breakdown of the articular cartilage of his bilateral hips and knees and degeneration of the facet joints of his lumbar spine. The repetitive loading resulted in mechanical stress on the joint surfaces, which caused chronic inflammation and chemical changes in the cartilage that accelerated the degradative process, specifically by activation of degradative enzymes aimed at destruction of the proteoglycan, which is responsible for cartilage resilience. Dr. Allen concluded that appellant's osteoarthritis developed over time and was aggravated and accelerated by his occupational exposure, which required persistent loading of his lumbar spine and bilateral lower limbs and caused cartilage loss in his hips and knees, and sclerosis in his lumbar spine. He further opined that the aggravation of appellant's conditions was permanent and, in the absence of adequate rest, was accelerated and aggravated beyond what would be expected from age-related degradation.

By decision dated August 11, 2022, OWCP modified its April 7, 2022 decision to find that the evidence of record was sufficient to establish a medical diagnosis. The claim remained denied, however, because the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted factors of his federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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>4</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>5</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>6</sup>

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<sup>3</sup> *Id.*

<sup>4</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>5</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>6</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).

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.<sup>7</sup>

To establish causal relationship between the condition and the employment factors, the employee must submit rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 the specific employment factor(s) identified by the employee.<sup>9</sup> The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>10</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>11</sup>

### ANALYSIS

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

In his May 6, 2022 report, Dr. Allen noted that appellant's work duties included: walking, bending, pushing, pulling, lifting, twisting, and dumping large trays of mail into a mail processing machine. He indicated that appellant underwent a total left hip arthroplasty in November 2021 and had service-related bilateral knee injuries in 1991, after which he underwent total right knee reconstruction. Dr. Allen diagnosed acceleration of bilateral osteoarthritis of the hips, acceleration and aggravation of bilateral osteoarthritis of the knees, and acceleration of lumbar spondylosis. He opined that the repetitive motions of appellant's duties resulted in local stress and breakdown of the articular cartilage of his bilateral hips and knees and degeneration of the facet joints of his lumbar spine. Dr. Allen explained that the repetitive loading and mechanical stress on the joint surfaces caused chronic inflammation and chemical changes in the cartilage that accelerated the

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<sup>7</sup> *T.D.*, Docket No. 20-0921 (issued November 12, 2020); *M.S.*, Docket No. 18-1554 (issued February 8, 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).

<sup>8</sup> *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 7.

<sup>10</sup> *D.R.*, Docket No. 19-0954 (issued October 25, 2019); *James Mack*, 43 ECAB 321 (1991).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

degradative process by activation of degradative enzymes aimed at destruction of the proteoglycan, which is responsible for cartilage resilience. He concluded that appellant's osteoarthritis developed over time, was beyond expected age-related degradation, and was aggravated and accelerated by his occupational exposure due to persistent loading of his lumbar spine and bilateral lower limbs, which caused cartilage loss in his hips and knees and sclerosis in his lumbar spine.

Dr. Allen's May 6, 2022 provided a pathophysiological explanation as to how the accepted factors of employment caused the diagnosed back, hip, and knee conditions. While Dr. Allen's report is not completely rationalized to meet appellant's burden of proof to establish his claim, it is, sufficient to require further development of his claim.<sup>12</sup>

The Board notes that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.<sup>13</sup> It has an obligation to see that justice is done.<sup>14</sup>

The case must, therefore, be remanded for further development of the medical evidence. On remand, OWCP shall refer appellant, a statement of accepted facts (SOAF), and the medical evidence of record to a specialist in the appropriate field of medicine. The referral physician shall provide a rationalized opinion on whether the diagnosed conditions are causally related to the accepted employment factors. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why his or her opinion differs from that of Dr. Allen. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### CONCLUSION

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

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<sup>12</sup> *D.V.*, Docket No. 21-0383 (issued October 4, 2021); *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *H.T.*, Docket No. 18-0979 (issued February 4, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018); *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 11, 2022 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: July 6, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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