

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

G.L., Appellant

and

**U.S. POSTAL SERVICE, PITTSBURGH POST
OFFICE, Pittsburgh, PA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 23-0093
Issued: June 1, 2023**

Appearances:

*Alan J. Shapiro, Esq., 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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 31, 2022 appellant, through counsel, filed a timely appeal from an October 4, 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish bilateral knee conditions causally related to the accepted factors of her federal employment.

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 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.*

FACTUAL HISTORY

On June 7, 2022 appellant, then a 30-year-old postal clerk, filed an occupational disease claim (Form CA-2) alleging leg, knee, foot, and arm injuries due to factors of her federal employment as a career employee. She noted that she first became aware of the conditions on May 18, 2022 and of its relation to her federal employment on June 3, 2022.

By development letter dated June 14, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. Appellant was also requested to provide a narrative report from a physician containing a detailed description of findings and a diagnosis, as well as a medical explanation of how the work factors caused or aggravated a medical condition. OWCP afforded her 30 days to respond.

Appellant submitted her completed responses to the development questionnaire on June 15, 2022. She indicated her belief that lengthy standing and walking on hard flooring, as well as repetitive lifting and sweeping of mail and trays in the performance of duty caused her conditions.

An unsigned magnetic resonance imaging (MRI) scan report of the left knee dated June 3, 2022 found: intact menisci, cruciate, and collateral ligaments; focal high-grade chondral fissure of the deep flexion zone lateral femoral condyle; and mild patellofemoral compartment chondrosis.

Appellant submitted a work status note dated June 23, 2022 signed by Dr. Anthony Nicolas, a Board-certified rheumatologist and internist, which recommended that she transition to light-duty work and that she avoid activities involving continuous standing for long hours and/or excessive lifting that would place undue stress on her joints.

In a letter dated July 21, 2022, the employing establishment controverted appellant's claim, contending that the medical documentation submitted did not establish that her claim was "remotely" related to her employment.

By decision dated August 1, 2022, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive medical evidence.

On June 23, 2022 appellant was seen by Dr. Nicolas. She related that, since her last appointment, she had noticed swelling in multiple joints whereas previously it was limited only to her left foot. Appellant further related intermittent swelling in her hands, knees, shoulders, ankles, and wrists, and that the swelling was random, but typically occurred at work after standing for long hours and bending or squatting repeatedly. She indicated that the swelling healed after a period of rest. Dr. Nicolas reviewed an MRI scan report of appellant's left knee dated June 3, 2022 and assessed arthralgia, quadriceps tendonitis, and patellar maltracking. He also noted a low suspicion for systemic autoimmune rheumatic disease, and he related that she had

“good reason” for mechanical arthralgia secondary to her demanding work which required prolonged hours of standing on hard surfaces, frequent bending, and squatting. Dr. Nicolas also opined that appellant’s current work schedule would likely lead to early osteoarthritis.

In a report dated July 18, 2022, Dr. Nicolas related that appellant continued to complain of bilateral knee pain, worsened by movement or activity and improved with rest. Appellant also noted that she began physical therapy. Dr. Nicolas assessed quadriceps tendonitis, polyarthralgia, and patellar maltracking. He opined that appellant’s polyarthralgia was very likely mechanical, secondary to her demanding work duties that involved prolonged standing on hard surfaces with repeated squatting/bending, and no opportunity to sit during her shifts to take pressure off her knees.

In a work status note dated July 18, 2022, Dr. Christine Mackey, an internist, recommended that appellant transition to light-duty work.

In a letter dated July 25, 2022, Dr. Nicolas opined that the clinical evidence of appellant’s bilateral quadriceps tendonitis and polyarthralgia were “most likely” caused by repetitive work-related mechanical strain on her joints and periarticular soft tissue. He further related that examples of such a strain included prolonged standing without breaks, repeated bending, and squatting.

On August 22, 2022 appellant requested reconsideration.

On August 29, 2022 appellant was seen by Dr. Stephen J. Rabuck, a Board-certified orthopedic surgeon where she related bilateral knee pain with greater pain in the left knee. She indicated that her knee pain worsened after walking on concrete floors at work. Dr. Rabuck diagnosed left knee pain, right knee pain, primary osteoarthritis of left knee, and primary osteoarthritis of right knee. In a work status note of even date, he released appellant to return to light-duty work with restrictions.

OWCP also received a September 12, 2022 request for light duty signed by Jessica Yohe, a certified physician assistant. The request noted a diagnosis of bilateral knee osteoarthritis.

Appellant filed claims for compensation (Form CA-7) on September 6, 2022 claiming disability from work from July 30 through August 26, 2022.

On September 26, 2022 appellant filed an additional occupational disease claim (Form CA-2). She noted that she had sustained foot, arm, and knee swelling and pain, bilateral quadriceps tendonitis, polyarthralgia, fissuring articular cartridge of the left knee, chondral fissuring of the lateral femoral condyle, and restricted popliteal angles on both knees due to factors of her federal employment. Appellant reiterated the dates that she first became aware of the conditions and realized their relation to her federal employment.

By decision dated October 4, 2022, OWCP modified its August 1, 2022 decision to find that appellant had established diagnosed bilateral knee conditions in connection with the accepted employment incident. However, it further found, that the medical evidence of record was insufficient to establish causal relationship between the diagnosed bilateral knee conditions and the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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, 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 predicated 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: (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 by the claimant.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, 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.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

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish bilateral knee conditions causally related to the accepted factors of her federal employment.

³ *Id.*

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

⁷ *D.S.*, Docket No. 21-1388 (issued May 12, 2022); *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *D.S. id.*; *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

⁹ *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

Appellant submitted progress notes from Dr. Nicolas dated June 23 and July 18, 2022. In both reports, Dr. Nicolas reviewed the MRI scan report of her left knee dated June 3, 2022 and assessed arthralgia, quadriceps tendonitis, and patellar maltracking. In the June 23, 2022 report, he related that appellant had “good reason” for mechanical arthralgia secondary to her demanding work which required prolonged hours of standing on hard surfaces, frequent bending, and squatting. Dr. Nicolas also indicated a low suspicion for systemic autoimmune rheumatic disease, and he opined that her current work schedule would likely lead to early osteoarthritis. In his July 18, 2022 report, he opined that appellant’s polyarthralgia was very likely mechanical, secondary to her demanding work duties. In a letter dated July 25, 2022, Dr. Nicolas opined that her bilateral quadriceps tendonitis and polyarthralgia were “most likely” caused by repetitive work-related mechanical strain on her joints and periarticular soft tissue. However, the Board has held that medical opinions that are speculative or equivocal are of diminished probative value.¹⁰ These reports are, therefore, insufficient to establish causal relationship.

Appellant also submitted a work status note dated June 23, 2022 from Dr. Nicolas, and a July 18, 2022 note from Dr. Mackey which recommended transitioning to light-duty work, but did not provide an opinion regarding diagnosis or causal relationship. 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 These reports from Dr. Nicolas are, therefore, insufficient to establish appellant’s claim.

On August 29, 2022 appellant was seen by Dr. Rabuck who diagnosed left knee pain, right knee pain, primary osteoarthritis of left knee, and primary osteoarthritis of right knee. A signed work status note of even date allowed appellant to return to work at light duty with restrictions. These reports do not offer an opinion on causal relationship and thus are insufficient to establish her claim.¹²

OWCP also received a request on September 12, 2022 for temporary light-duty assignment, which indicated a diagnosis of bilateral knee osteoarthritis, signed by Ms. Yohe, a physician assistant. However, certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered “physician[s]” as defined under FECA and their reports do not constitute competent medical evidence.¹³ This evidence is, therefore, of no probative value and is insufficient to establish the claim.

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.5(c)(3); *D.S.*, Docket No. 20-0384 (issued October 8, 2020); *H.A.*, Docket No. 18-1455 (issued August 23, 2019).

¹¹ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *Supra* note 10.

¹³ *H.S.*, Docket No. 20-0939 (issued February 12, 2021); 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 *supra* note 10 at Chapter 2.805.3a(1) (January 2013); *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); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (physical therapists are not considered physicians under FECA).

Appellant also submitted an unsigned MRI scan report of the left knee dated June 3, 2022, which found intact menisci, cruciate, and collateral ligaments; focal high-grade chondral fissure of the deep flexion zone lateral femoral condyle; and mild patellofemoral compartment chondrosis with findings that can be seen in the setting of patellar maltracking. However, diagnostic studies standing alone lack probative value as they do not address whether the employment factors caused the diagnosed condition(s).¹⁴

As the medical evidence of record is insufficient to establish causal relationship between appellant's diagnosed medical conditions and her accepted employment factors, the Board finds that she has not met her burden of proof to establish her claim.

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 her burden of proof to establish bilateral knee conditions causally related to the accepted factors of her employment.

¹⁴ *A.O.*, Docket No. 21-0968 (issued March 18, 2022); *see M.S.*, Docket No. 19-0587 (issued July 22, 2019).

ORDER

IT IS HEREBY ORDERED THAT the October 4, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 2023
Washington, DC

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

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

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