

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

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P.D., Appellant)	
)	
and)	Docket No. 22-1091
)	Issued: March 8, 2023
U.S. POSTAL SERVICE, COLLINWOOD POST)	
OFFICE, Cleveland, OH, Employer)	
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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
JANICE B. ASKIN, Judge

JURISDICTION

On July 20, 2022 appellant, through counsel, filed a timely appeal from a June 27, 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.

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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish expansion of the acceptance of her claim to include osteoarthritis of the right knee causally related to, or as a consequence of, her accepted employment injury.

FACTUAL HISTORY

On November 3, 2000 appellant, then a 44-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a right leg strain causally related to factors of her federal employment. OWCP accepted the claim for right leg strain and a right lateral popliteal nerve lesion. On December 4, 2002 appellant underwent an excisional biopsy of the lipoma and a neurolysis of the peroneal nerve. She stopped work on December 4, 2002, returned to part-time modified employment on February 25, 2003, and resumed full-time employment on March 7, 2003.³

X-rays of the right knee, obtained on June 10, 2014, showed reasonably maintained joint spaces, normal patellofemoral articulation, and no evidence of advanced arthritis changes.

Appellant continued to receive treatment for right knee pain. In a progress report dated April 30, 2021, Dr. Bruce T. Cohn, a Board-certified orthopedic surgeon, provided a “follow-up on her right knee work[-]related injury.” He noted that appellant had intermittent knee pain especially with walking. On examination, Dr. Cohn found a positive McMurray’s test, a negative Lachman’s test, abnormal knee alignment, and an antalgic gait. He diagnosed right knee sprain, and an aggravation of right knee unilateral primary osteoarthritis. Dr. Cohn opined that the aggravation of osteoarthritis directly resulted from the accepted October 19, 2000 employment injury. He related, “The mechanism of injury and the description of the incident are consistent. It is more likely than not that this diagnosis is the result of the work[-]related injury.”

In a June 2, 2021 progress report, Dr. Cohn diagnosed right knee strain, a lesion of the lateral popliteal nerve of the right lower limb, and unilateral primary osteoarthritis of the right knee. He opined that appellant had sustained an aggravation of right knee osteoarthritis as a result of her accepted employment injury. Dr. Cohn requested that OWCP expand the acceptance of the claim to allow the diagnosis of aggravation of right knee osteoarthritis.

On July 1, 2021 OWCP referred appellant to Dr. David K. Halley, a Board-certified orthopedic surgeon, for a second opinion examination.

On July 28, 2021 Dr. Cohn provided a progress report containing similar findings to his prior reports of April 20 and June 2, 2021.

In a report dated August 27, 2021, Dr. Halley provided his review of the history of injury and the medical reports of record. He discussed appellant’s continued complaints of right knee pain occasionally radiating into the big toe of the right foot. On examination, Dr. Halley found a mild antalgic limp on the right side and tenderness to palpation over the medial and lateral joint

³ Appellant retired on disability on April 2, 2011.

lines and patellar facet. He further found mild crepitus and effusion with no instability. Dr. Halley opined that the employment-related right leg sprain had resolved as it was a soft tissue injury that resolved within 12 weeks. He determined that the lateral popliteal nerve lesion had not resolved based on the diagnostic studies and appellant's continued symptoms of pain in the lateral aspect of the medial proximal right leg. Dr. Halley opined that her preexisting right knee osteoarthritis resulted from degenerative causes rather than an aggravation or precipitation of her condition caused by her right leg sprain or right lateral popliteal nerve lesion. He noted that appellant's knee arthritis did not appear to have progressed significantly based on her 2014 x-rays. Dr. Halley related that her activity level at work, her weight, and possibly genetics had caused the deterioration of her arthritic knee. He asserted that the "deterioration of the arthritis cannot solely be attributed to [appellant's] work-related injury or activities, based upon my examination and the records provided for review."

In a progress report dated September 24, 2021, Dr. Cohn treated appellant for right knee sprain, a right lesion of the lateral popliteal nerve, and right knee osteoarthritis. He again attributed the aggravation of right knee osteoarthritis to the accepted employment injury based on the mechanism and description of injury.

On October 13, 2021 OWCP provided Dr. Cohn with Dr. Halley's report and requested that he address whether he agreed or disagreed with his findings.

On October 27, 2021 counsel advised that OWCP should inform Dr. Halley of the legal definition of aggravation, noting that he found that appellant's worsening arthritis did not result solely from the accepted work injury.

In an October 25, 2021 progress report, Dr. Cohn indicated that he agreed with Dr. Halley that appellant's right knee preexisting osteoarthritis was causally related to the October 19, 2000 employment injury.

OWCP requested that Dr. Halley review the definition of aggravation and provide a clarifying opinion. In a supplemental report dated December 27, 2021, Dr. Halley opined that appellant had preexisting osteoarthritis, but that the "subsequent course is that of the natural progression of osteoarthritis rather than injury to the knee joint, leading to a deterioration of the knee joint." He further opined that her surgery caused scarring around the nerve and surgical site resulting in pain. Dr. Halley noted that appellant had slowly progressing preexisting knee osteoarthritis, observing that x-rays obtained 14 years after the injury showed no significant arthritic changes and that he would have anticipated severe arthritis after that amount of time. He asserted that arthritis commonly resulted in the need for a total knee replacement in under 14 years. Dr. Halley related, "Within a reasonably medical probability, I believe the injury had no influence on the natural progression of [appellant's] preexisting arthritis in the right knee." He further found that the right leg sprain and lateral popliteal nerve lesion had not aggravated or accelerated her osteoarthritis. Dr. Halley opined that it was a "preexisting condition which is actually progressing slower than what I would anticipate in the normal progression of arthritis."

By decision dated January 5, 2022, OWCP denied appellant's request to expand the acceptance of her claim to include right knee osteoarthritis as causally related to her accepted employment injury.

On January 13, 2022 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on April 11, 2022. Counsel asserted that Dr. Cohn was also a joint replacement surgeon and that his opinion had the same probative value as the opinion of Dr. Halley. He maintained that Dr. Halley did not understand the definition of aggravation and had not ruled out the injury as a cause of the of the arthritis. Alternatively, counsel maintained that a conflict existed.

By decision dated June 27, 2022, OWCP's hearing representative affirmed the January 5, 2022 decision.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁴

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁵ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁶ Additionally, the physician's opinion 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 appellant's employment injury.⁷

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional misconduct.⁸ The basic rule is that, a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁹

⁴ *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁵ *W.N.*, Docket No. 21-0123 (issued December 29, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁶ *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *Id.*

⁸ *I.S.*, Docket No. 19-1461 (issued April 30, 2020); *A.M.*, Docket No. 18-0685 (issued October 26, 2018); *Mary Poller*, 55 ECAB 483, 487 (2004).

⁹ *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish expansion of the acceptance of her claim to include osteoarthritis of the right knee causally related to, or as a consequence of, her accepted employment injury.

In a report dated August 27, 2021, Dr. Halley, an OWCP referral physician, opined that appellant had no residuals of her right leg sprain but had continued symptoms due to her lateral popliteal nerve lesion. He opined that her preexisting right knee osteoarthritis resulted from degenerative causes and had not been aggravated or accelerated by her right leg sprain or lateral popliteal nerve lesion. Dr. Halley indicated that the medical evidence failed to establish that appellant's worsening arthritis of the right knee was due solely to her employment injury or other activities. In a supplemental report dated December 27, 2021, Dr. Halley reviewed OWCP's definition of aggravation and attributed her knee joint condition to the natural progression of osteoarthritis. He observed that 2014 x-rays of the right knee had not shown significant arthritic changes and that the progression osteoarthritis had been slower than normal. Dr. Halley concluded that the accepted employment injury had not affected the natural progression of her preexisting right knee osteoarthritis and further found that the right leg sprain and lateral popliteal nerve lesions had not aggravated or accelerated her osteoarthritis.

The Board has reviewed the opinion of Dr. Halley and finds that it has reliability, probative value, and convincing quality with respect to its conclusions regarding whether appellant's claim should be expanded to include an aggravation of right knee osteoarthritis causally related to or as a consequence of her accepted employment injury. Dr. Halley provided a thorough factual and medical history and accurately summarized the relevant medical evidence. He provided medical rationale for his opinion by explaining that appellant's 2014 x-rays had shown a slower than expected progression of osteoarthritis and opined that the injury had not affected the natural progression of her condition. As Dr. Halley's report is rationalized and based on an accurate factual history, his opinion constitutes the weight of the medical evidence.¹⁰

In a report dated April 30, 2021, Dr. Cohn opined that appellant had sustained an aggravation of osteoarthritis of the right knee causally related to her accepted employment injury on a more likely than not basis. He indicated that the mechanism and description of injury was consistent with the diagnosis. On June 2, 2021 Dr. Cohn requested that OWCP expand the acceptance of the claim to include an aggravation of right knee osteoarthritis. He provided similar progress reports through September 24, 2021. The Board has held, however, that a medical opinion should offer a medically-sound explanation regarding how the employment factors physiologically caused the diagnosed condition.¹¹ While Dr. Cohn generally asserted that the mechanism of injury was consistent with the condition, he did not explain with reference to the specific facts of the case how it resulted in the diagnosed condition. As his reports are conclusory, they fail to provide a rationalized medical opinion to explain how aggravation of right knee

¹⁰ See *B.P.*, Docket No. 20-0820 (issued July 12, 2022); *R.P.*, Docket No. 20-0891 (issued September 20, 2021); *S.B.*, Docket No. 20-0648 (issued January 27, 2021); *E.T.*, Docket No. 19-0948 (issued July 27, 2020).

¹¹ See *K.C.*, Docket No. 22-0212 (issued June 14, 2022); *N.C.*, Docket No. 21-0934 (issued February 7, 2022); *M.G.*, Docket No. 21-0727 (issued October 15, 2021).

osteoarthritis was caused by the accepted employment-related injury, they are insufficient to meet appellant's burden of proof.¹²

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 expansion of the acceptance of her claim to include osteoarthritis of the right knee causally related to, or as a consequence of her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); see also *K.C., id.; R.D.*, Docket No. 18-1551 (issued March 1, 2019).