United States Department of Labor
Employees' Compensation Appeals Board

C.A., Appellant	)	
and	)	**Docket No. 22-0067**
	)	**Issued: October 26, 2023**
U.S. POSTAL SERVICE, SUNRISE POST OFFICE, Fort Lauderdale, FL, Employer	)	

Appearances:
Daniel B. Shapiro, Esq., for the appellant[1]
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 October 22, 2021 appellant, through counsel, filed a timely appeal from an August 6, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).[2] Pursuant to the

[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] Appellant, through counsel, submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, appellant asserted that oral argument should be granted because OWCP's decisions were based on inaccurate and incorrect information and the decisions failed to provide reasons why his arguments and evidence submitted were insufficient to modify OWCP's denial of his claim. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

Federal Employees' Compensation Act[3] (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.

FACTUAL HISTORY

On December 13, 2017 appellant, then a 58-year-old former letter carrier, filed an occupational disease (Form CA-2) claim, alleging that factors of his federal employment contributed to osteoarthritis in his left knee. He noted that he first became aware of his condition and realized its relation to his federal employment on May 9, 2017, after undergoing an evaluation by Dr. Jeffrey Katzell, an orthopedic surgeon.

In support of his claim, appellant submitted a statement dated March 15, 2017, which indicated that he worked for the employing establishment for 24 years, and that his daily work duties included casing mail, making 800-900 deliveries, walking six to eight miles, and lifting, carrying, and delivering several hundred pounds of mail and parcels on foot. He explained that these tasks required him to be on his feet and to repetitively bend at the hips and knees, squat, reach, walk, stoop, twist, pivot, and climb in and out of his vehicle. Appellant further asserted that he did not engage in any physical activity outside of work, but that as he worked, his knees became more and more painful. He indicated that he underwent bilateral knee replacement surgeries and thereafter continued to work.

OWCP received medical records for treatment appellant received to his right knee, following a traumatic injury on September 9, 1997.[4] On January 12, 1998 appellant underwent right knee arthroscopy, debridement, and partial medial meniscectomy by Dr. Robert Baylis, a Board-certified orthopedic surgeon, who diagnosed a right knee partial anterior cruciate ligament (ACL) tear and medial meniscal tear. On September 17, 1998 Dr. Baylis released appellant to return to full-duty work.

In a report dated January 23, 2001, Dr. Baylis indicated that appellant related complaints of increasing burning pain within the medial aspect of the right knee with similar problems in the left knee. He performed a physical examination and documented tightness with range of motion and tenderness along the medial joint line. Dr. Baylis noted that appellant had a history of Blount's disease with significant varus deformities of his bilateral lower extremities. He diagnosed inflammation, which he indicated would progress over time due to degenerative arthritis. Dr. Baylis opined that appellant would likely need a total knee replacement in the future, which would not necessarily be work related, but rather more from the Blount's disease and chronic degenerative changes.

[3] 5 U.S.C. § 8101 *et seq*.

[4] The record reflects that appellant had a prior claim for a September 9, 1997 traumatic injury (Form CA-1) to the right knee, which OWCP accepted for sprain of medial collateral ligament and tear of medial meniscus, under OWCP File No. xxxxxx988.

In a report dated September 3, 2002, Dr. Baylis noted that appellant had undergone x-rays of both knees, which revealed severe varus misalignment bilaterally with severe degenerative arthritis in the medial compartments, including near bone-on-bone articulation and large bone spurs. He discussed proceeding with high tibial osteotomy surgeries bilaterally.

Dr. Richard S. Kleiman, a Board-certified orthopedic surgeon, in a report dated February 11, 2003, noted that appellant had severe osteoarthritis of the knees with severe genu varum complicated by having rickets when he was younger. He performed a physical examination and documented severe bilateral genu varum, left greater than right. Dr. Kleiman indicated that the optimal treatment for appellant's knees would be high tibial osteotomies, which appellant declined due to the risk of complications.

In a report dated March 11, 2003, Dr. Baylis noted that appellant related that he was using bilateral unloader knee braces and that he complained of ongoing difficulty with chronic knee pain and discomfort. He further noted that any attempt at prolonged walking or standing at work exacerbated his knee pain and ongoing effusions. Dr. Baylis performed a physical examination and recommended that appellant use a cold compress periodically throughout the day, both at work and at home, for his chronic knee pain, inflammation, and osteoarthritis.

Appellant underwent Hyalgan injections to his knees, once per week, from October 20 through November 17, 2004 and again from September 28 through October 31, 2005.

In a report dated November 15, 2006, Dr. Baylis indicated that the Hyalgan injections were no longer providing relief of appellant's bilateral knee pain. Therefore, he referred him to Dr. Richard Berkowitz, a Board-certified orthopedic surgeon for evaluation for total knee arthroplasty.

Reports of x-rays of the bilateral knees dated December 7, 2009 revealed severe degenerative osteoarthritis changes of the knee joints with moderate-to-severe varus deformity.

Appellant underwent total knee replacement on the right on August 19, 2010 by Dr. Michael Baraga, a Board-certified orthopedic surgeon and sports medicine specialist, and on the left on December 23, 2010 by Dr. Henry M. Bernstein, a Board-certified orthopedic surgeon. He was discharged from the hospital on January 4, 2011 following the left knee replacement.

In an evaluation report dated June 20, 2011, Tavis Ramsay, a physical therapist, noted that appellant related complaints of intermittent left knee pain since undergoing surgery on December 23, 2010, which occurred "mostly when attempting to deliver the mail or when maneuvering stairs" and that he "had returned to work as a mail carrier, but had to stop due to concern of damaging the knee."

A report of x-rays of even date revealed bilateral total knee arthroplasties with no evidence of hardware complication.

A report of bone scan dated July 14, 2011 indicated the possibility of an abscess in the left knee.

A report of x-rays of the left knee dated August 8, 2011 revealed a very thin lucency around the tip of the tibial component, suggesting the possibility of loosening of the prosthesis.

In a report dated August 12, 2011, Dr. Bernstein noted that appellant related difficulty in the left knee. He recommended that he remain off work.

In a report dated August 13, 2011, Dr. Baylis indicated that appellant related ongoing complaints of left knee pain. He obtained additional x-rays of the left knee, which did not show any evidence of fracture or dislocation. Dr. Baylis recommended quadriceps strengthening exercises, but no additional surgery. He noted that appellant had a history of military and opined that his military service may have aggravated his condition and caused a progression in the knee arthritis.

In a follow-up medical report dated September 14, 2011, Dr. Bernstein advised that appellant continued to utilize a brace on his left leg and that his gait was antalgic on the left with a cane in the right hand. On examination, he noted that both knees were well aligned, not inflamed, and demonstrated good extension and flexion. Dr. Bernstein indicated that appellant showed him a job description for a letter carrier with the employing establishment and that he related that he had applied for Social Security disability benefits. He diagnosed bilateral total knee arthroplasties with ongoing difficulty in the left knee again noted a history of problems with his knees during his military service.

A report of x-rays of the left knee dated March 30, 2012 revealed lucency around the stem of the tibial component suggesting loosening.

In a narrative report dated May 9, 2017, Dr. Katzell indicated that appellant's chief complaint was left knee pain and that he related a history of working for the employing establishment for 24 years with duties including walking six to eight miles per day, carrying and delivering several hundred pounds of mail per day on foot, standing for two hours while casing mail, repetitive bending, squatting, twisting, and stooping on the knees, climbing hundreds of stairs, and entering and exiting his vehicle up to 100 times per day. He also indicated that his knee pain progressively worsened each year, that he had undergone a left total knee arthroplasty on December 23, 2010, and that he had ongoing pain and difficulty thereafter. Dr. Katzell performed an examination of the left knee and noted malalignment on visual inspection, reduced flexion and extension, medial joint line tenderness and burning discomfort to palpation, and gross varus and valgus laxity to the left knee with marked anterior-posterior laxity. He diagnosed arthritis of the left knee and opined that appellant's high impact loading activities at work, such as repetitive walking, standing, squatting, stooping, climbing, bending, lifting, carrying, stair climbing and twisting, caused repeated local stresses on the cartilage surface that in turn caused and accelerated the progression of arthritis through a process of chronic inflammation. Dr. Katzell explained that this inflammation caused the loss of proteoglycans which are responsible for cartilage resilience, which in turn made the cartilage more susceptible to the wear and tear of the impact loading activities, and thus accelerated the loss of articular cartilage. He indicated that he reviewed medical records, which he opined showed that appellant's arthritis presented and substantially progressed during the time that he was engaged in high-impact loading activities at work. Dr. Katzell opined that his work duties without a doubt contributed to the present arthritic condition in both knees.

In a January 31, 2018 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested information.

OWCP thereafter received an August 15, 2005 medical report by Dr. Baylis, who indicated that appellant presented for treatment of an unrelated left shoulder condition, but also complained of ongoing bilateral knee pain, left greater than right. Dr. Baylis diagnosed bilateral knee osteoarthritis, secondary to genu varum.

OWCP also received a February 21, 2018 statement by appellant's attorney and an undated lower limb questionnaire completed by appellant.

By decision dated March 22, 2018, OWCP denied appellant's claim, finding that he had not submitted sufficient evidence to establish causal relationship between the accepted factors of his federal employment and his left knee condition.

On March 29, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on September 26, 2018.

OWCP thereafter received a September 21, 2018 supplemental narrative report from Dr. Katzell and an accompanying brief by appellant's counsel in support of the claim.

In his September 21, 2018 supplemental report, Dr. Katzell reiterated his opinion that appellant's work duties were a causative contributing factor to the development and progression of his lower extremity arthritis through a process of chronic inflammation. He further opined that the contribution of any post-retirement activities or conditions was irrelevant, because the bilateral knee replacements occurred two years prior to his retirement.

By decision dated December 6, 2018, OWCP's hearing representative affirmed the March 22, 2018 decision.

On November 25, 2019 appellant, through counsel, requested reconsideration and attached a supplemental report by Dr. Katzell dated November 8, 2019. Dr. Katzell noted that appellant had a significant varus deformity prior to undergoing knee replacement surgery. He opined that a substantial varus deformity rendered the left knee much more susceptible to the adverse effects of his employment activities. Dr. Katzell also indicated that appellant's military service did not change his opinion that appellant's work duties were a major contributing factor to his arthritis. He noted that there was no medically accepted definition of the phrase "natural progression" of osteoarthritis, and that environmental factors, such as his work duties, contributed to his condition. Dr. Katzell opined that any natural progression of appellant's arthritis was accelerated by his compromised and weakened left knee joint being subjected to the continuous impact loading activities of his job duties.

By decision dated January 7, 2020, OWCP denied modification of the December 6, 2018 decision.

On October 23, 2020 appellant, through counsel, requested reconsideration of OWCP's January 7, 2020 decision and attached a supplemental report by Dr. Katzell dated September 24, 2020. In his September 24, 2020 supplemental medical report, Dr. Katzell cited various medical literature in support of the opinions he expressed in his prior reports. He also compared the contribution of appellant's work factors and nonwork factors in aggravating appellant's preexisting arthritis, including genetics, body habitus, left/right side dominance, medications, and the existence of other medical conditions. Dr. Katzell opined that these non-

work factors accelerated his arthritis, but that his work activities were a very substantial contributing factor in the aggravation and acceleration of his preexisting arthritis.

By decision dated January 20, 2021, OWCP denied modification of its January 7, 2020 decision.

On June 24, 2021 appellant, through counsel, requested reconsideration of OWCP's January 20, 2021 decision and attached a supplemental report by Dr. Katzell dated May 5, 2021.

In his May 5, 2021 supplemental report, Dr. Katzell noted that there was no test or diagnostic study available to objectively compare the progression of an arthritic condition under multiple sets of circumstances. He opined that appellant's job activities contributed to the progression of his arthritis and that if appellant's job duties had been sedentary in nature, his left knee osteoarthritis would not have progressed as fast as it did, and he would not have required a knee replacement as soon as he did. Dr. Katzell also provided additional clarification as to how the medical literature he cited in his prior report supported his opinion that the occupational exposures contributed to his arthritis.

By decision dated August 6, 2021, OWCP denied modification of its January 20, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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,[6] 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.[7] 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.[8]

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

[5] *Supra* note 3.

[6] *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).

[7] *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).

[8] *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).

compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is casually related to the identified employment factors.[9]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[10] The opinion of the physician must be based upon 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 incident.[11]

ANALYSIS

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

In support of his claim, appellant submitted reports from Dr. Katzell addressing causal relationship. The reports provided a factual and medical history of his medical conditions and contained his opinion that the accepted employment factors were a substantial contributing factor to the development and progression of his left knee arthritis. In the May 9, 2017 report, Dr. Katzell explained that high impact loading activities, such as repetitive walking, standing, squatting, stooping, climbing, bending, lifting, carrying, stair climbing and twisting, caused repeated local stresses on the cartilage surface that in turn caused and accelerated the progression of arthritis through a process of chronic inflammation. He explained that this inflammation caused the loss of proteoglycans which are responsible for cartilage resilience, which in turn made the cartilage more susceptible to the wear and tear of the impact loading activities, and thus accelerated the loss of articular cartilage. Dr. Katzell indicated that he had reviewed medical records, which he opined showed this process was occurring during the time that appellant was engaged in high impact loading activities at work. In subsequent reports, he acknowledged the contribution of appellant's prior military service and other nonwork factors to his arthritis and provided citations to medical literature to support his opinion that the work factors substantially contributed to the worsening of his condition. In his May 5, 2021 report, Dr. Katzell further explained that if appellant's job duties had been sedentary in nature, his left knee osteoarthritis would not have progressed as fast as it did, and he would not have required a knee replacement as soon as he did.

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.[12] It has an obligation to see that justice is done.[13]

[9] *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).

[10] *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

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

[12] *T.L.*, Docket No. 19-1572 (issued March 12, 2020); *see C.C.*, Docket No. 18-1453 (issued January 28, 2020); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

[13] *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *see B.C.*, Docket No. 15-1853 (issued January 19, 2016).

While Dr. Katzell's reports are not fully rationalized, they are sufficient to require further development.[14]

On remand, OWCP shall refer appellant to a specialist in the appropriate field of medicine, along with the case record and a statement of accepted facts. It shall instruct the referral physician to provide a well-rationalized opinion as to whether appellant's diagnosed left knee conditions are causally related to the accepted employment duties. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why their opinion differs from that articulated by Dr. Katzell. After this and other such further development 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 August 6, 2021 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: October 26, 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

[14] *J.J.*, Docket No. 19-0789 (issued November 22, 2019); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *A.F.*, Docket No. 15-1687 (issued June 9, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).