

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

_____)	
G.M., Appellant)	
)	
and)	Docket No. 23-0689
)	Issued: September 15, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Twin Falls, ID, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
*Michael John Watson, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 17, 2023 appellant, through counsel, filed a timely appeal from a January 24, 2023 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 met her burden of proof to establish a right knee condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On June 15, 2021 appellant, then a 72-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that her right knee joint osteoarthritis was caused by the repetitive movements required by her job duties. She first became aware of her condition on September 17, 2019, but did not realize that it had been caused or aggravated by her employment duties until March 16, 2021. Appellant stopped work on June 15, 2021.

In a development letter dated June 16, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of evidence necessary to establish her claim and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afforded both parties 30 days to respond.

A supervisor statement dated June 16, 2021 stated that rural carriers are allowed to take breaks as needed, up to 60 minutes each day. The supervisor controverted appellant's claim, noting that a rural carrier cased mail during the beginning of the day and drove delivering mail for the rest of the day. A rural mail carrier would only exit the vehicle to deliver items requiring a signature or oversized parcels.

By decision dated July 22, 2021, OWCP denied appellant's claim, finding she failed to establish the factual portion of the claim. It noted that she had not responded to the factual questionnaire sent to her on June 16, 2021.

OWCP subsequently received reports dated October 22, 2020, and February 25 and July 13, 2021 from Matt McKinlay, a certified physician assistant. Mr. McKinlay provided examination findings and noted that appellant wished to proceed with total joint arthroplasty. In the February 25 and July 13, 2021 reports, he provided status updates on appellant's condition following her January 11, 2021 right knee arthroplasty.

Mr. McKinlay, in an April 8, 2021 return-to-work note, advised that appellant was currently totally disabled. In a May 20, 2021 return-to-work note, he released her to full duty with no restrictions on May 22, 2021.

In a report dated May 2, 2022, Dr. John W. Ellis, a physician Board-certified in family medicine and environmental medicine, noted appellant's history of injury, reviewed medical evidence and diagnostic tests, and provided physical examination findings. He reported that under OWCP File No. xxxxxx722, OWCP accepted left hip sprain, lower back fascia, tendon, and muscle strain, left knee lateral meniscus tear, and left knee contusion due to a June 20, 2017 traumatic injury. Dr. Ellis reported that appellant underwent total left knee replacement surgery in 2019. On physical examination, he reported well-healed bilateral surgical incisions consistent with prior total knee replacements. Dr. Ellis diagnosed right knee unilateral primary osteoarthritis and right

knee patellar tendinitis, which he attributed to cumulative trauma. He opined that, based upon reasonable medical certainty, that it was more probable than not that the diagnosed conditions arose out of the course of appellant's employment. Dr. Ellis opined that her job duties which required constant mounting and dismounting from her vehicle, constant bending, twisting, stooping, and kneeling, placed an excessive amount of lower extremity stress and strain led to cumulative micro traumas. He explained that these micro traumas prevented appellant's body from having time to properly heal and led to overuse injury and cumulative trauma disorder.

On July 6, 2022 appellant requested reconsideration and submitted additional evidence.

In a January 11, 2021 hospital operative report, Dr. Aaron Altenburg, a Board-certified orthopedic surgeon, diagnosed degenerative osteoarthritis, and indicated that he had performed right total knee arthroplasty surgery.

On August 25, 2022 OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions to Dr. Qing-Min Chen, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether appellant's diagnosed conditions were causally related to the accepted factors of her employment. It provided a definition of aggravation of preexisting conditions. The SOAF noted appellant had filed an occupational disease claim for right knee condition with an injury date of September 17, 2019, noted her job duties, listed treating physicians, Dr. Altenberg and Dr. Ellis, that she was off work from December 4, 2020 through May 18, 2021, and had returned to full-time work.

In a report dated October 17, 2022, Dr. Chen, based upon a review of medical and employment histories, SOAF, and medical records, diagnosed preexisting right knee osteoarthritis. He described appellant's job duties, noted that she had worked for the employing establishment for 23 years, and noted that she had an accepted claim for torn left knee meniscus. Dr. Chen reported that she had undergone total left knee replacement surgery on January 6, 2019. He noted that appellant did not report any specific injury to the right knee and that she had undergone right total knee replacement surgery in January 2021. Dr. Chen noted her physical examination findings related to the right knee. He opined that appellant's employment duties of walking, carrying, lifting, or dismounting did not cause her diagnosed right knee osteoarthritis. In support of his conclusion, Dr. Chen explained that the medical literature contains no evidence that the accepted employment factors would cause the diagnosed condition over nonwork factors such as genetics. Thus, he concluded that appellant's right knee osteoarthritis was preexisting and unrelated to any work exposure or injury.

By decision dated December 6, 2022, OWCP modified its prior decision, finding that appellant had established a valid medical diagnosis. However, the claim remained denied, as the medical evidence of record was insufficient to establish causal relationship between her diagnosed medical condition and the accepted employment factors.

On December 12, 2022 appellant, through counsel, requested reconsideration. Counsel asserted that Dr. Chen's opinion should be disregarded due to his bias that arthritis cannot be aggravated by any factor except genetics.

By decision dated January 24, 2023, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact 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.

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) rationalized medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁵

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁶ 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.⁷

ANALYSIS

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

OWCP referred appellant to Dr. Chen for a second opinion on whether the diagnosed conditions were causally related to the accepted factors directly or by aggravation.

In his October 17, 2022 report, Dr. Chen opined that appellant's right knee osteoarthritis was preexisting. He related that medical literature did not support that the accepted employment factors would have caused or contributed to the diagnosed conditions over nonwork factors such as genetics. However, he explain how the medical articles cited applied to appellant's particular

³ *Id.*

⁴ *T.F.*, Docket No. 22-0573 (issued March 31, 2023); *A.A.*, Docket No. 21-0774 (issued January 11, 2022); *C.K.*, Docket No. 19-1549 (issued June 30, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *T.F.*, *id.*; *A.A.*, *id.*; *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *T.F.*, *id.*; *A.A.*, *id.*; *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *T.F.*, *id.*; *A.A.*, *id.*; *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

situation.⁸ Rather, Dr. Chen only provided a generalized statement that appellant's right knee conditions were preexisting and genetic in nature. Generalized statements are, however, of little probative value.⁹

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹⁰ The claimant has the burden of proof to establish entitlement to compensation, but OWCP shares responsibility in the development of the evidence to see that justice is done.¹¹ Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.¹² Once it starts to procure a medical opinion, it must secure an opinion which adequately addresses the relevant issues.¹³

The Board finds that the second opinion report of Dr. Chen is insufficient to resolve the issue of whether appellant's right knee conditions are causally related to the accepted factors of her federal employment as his report is conclusory in nature. A conclusory opinion provided by a physician, without the necessary rationale explaining how and why an accepted employment injury was insufficient, either directly or by aggravation, to result in a diagnosed medical condition, is insufficient to resolve the issue.¹⁴

Due to the deficiencies in Dr. Chen's report, OWCP should have sought clarification or referred appellant for a new second opinion evaluation. On remand, OWCP shall obtain a supplemental report from Dr. Chen or refer appellant, together with a SOAF and a list of specific questions, to a new second opinion physician in the appropriate field of medicine to resolve the issue.¹⁵ 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 a decision.

⁸ *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *see J.H.*, Docket No. 17-0248 (issued May 10, 2017).

⁹ *A.P.*, *id.*; *see generally M.M.*, Docket No. 14-1488 (issued November 19, 2014).

¹⁰ *D.L.*, Docket No. 21-0047 (issued February 22, 2023); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *LJ.* 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 5.

¹¹ *D.L.*, *id.*; *D.T.*, Docket No. 20-0234 (issued January 8, 2021); *F.K.*, Docket No. 19-1804 (issued April 27, 2020); *B.W.*, Docket No. 19-0965 (issued December 3, 2019).

¹² *A.K.*, Docket No. 18-0462 (issued June 19, 2018); *Robert F. Hart*, 36 ECAB 186 (1984).

¹³ *T.B.*, Docket No. 20-0182 (issued April 23, 2021); *L.V.*, Docket No. 17-1260 (issued August 1, 2018); *Mae Z Hackett*, 34 ECAB 1421, 1426 (1983).

¹⁴ *J.O.*, Docket No. 19-0326 (issued July 16, 2019); *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

¹⁵ *D.L.*, *supra* note 10; *T.S.*, Docket No. 18-1702 (issued October 4, 2019).

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2023 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: September 15, 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