

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

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<b>K.P., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 23-1120</b>
	)	<b>Issued: February 8, 2024</b>
<b>U.S. POSTAL SERVICE, WESTMONT POST OFFICE, Westmont, IL, Employer</b>	)	
_____	)	

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

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On August 25, 2023 appellant, through counsel, filed a timely appeal from a May 12, 2023 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.

**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.

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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 an 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.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On April 9, 2018 appellant, then a 25-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that his left knee patellar tendinitis was caused by his federal employment duties. He noted that he first became aware of his condition on June 1, 2017 and realized its relationship to factors of his federal employment on January 10, 2018. Appellant stopped work on January 6, 2018.

In a January 10, 2018 report, Dr. Siva Krishman, a Board-certified family practitioner, reported that appellant injured his left knee about five or six years prior playing basketball and, since then, physical activity caused light pain. She noted that he worked as a letter carrier and had developed a lot of pain and swelling with activity. Dr. Krishman provided a primary diagnosis of chronic left knee pain and held appellant off work. In a February 13, 2018 form report, she noted his restrictions and recommended a sedentary position.

In a February 20, 2018 progress note, Dr. Gregory H. Dairyko, a Board-certified orthopedic surgeon, indicated that appellant worked as a mail carrier and reported that appellant may walk 10 to 11 miles a day performing his employment duties. He noted that appellant reported that he sustained an injury to the left knee in June 2017. Dr. Dairyko noted appellant's physical examination findings and indicated that x-ray films of the left knee revealed evidence of Osgood-Schlatter's disease with preservation in the medial, lateral, and patellofemoral joint space. He provided an assessment of acute left knee pain and left knee pain, unspecified chronicity. An accompanying February 20, 2018 x-ray of appellant's left knee revealed no acute radiographic findings or significant degenerative changes.

On March 5, 2018 Dr. Adam Yanke, a Board-certified orthopedic surgeon, reported that appellant had undergone left knee arthroscopic debridement, chondroplasty, and patellar tendon injection. The diagnoses for the procedure were listed as left knee patellar cartilage defect with patellar tendinitis and articular cartilage defect.

A June 12, 2018 magnetic resonance imaging (MRI) scan of appellant's left knee revealed mild edema of the infrapatellar fat pad, mild quadriceps, and proximal patellar tendinosis without tear. No acute meniscal or ligamentous injury was seen.

In medical reports dated April 6, May 11 and 29, and June 19, 2018, Dr. Dairyko noted appellant's MRI scan findings. He diagnosed acute pain of left knee and patellar tendinitis of the left knee. Dr. Dairyko also provided several work excuse and medical restriction notes from April 6 to June 19, 2018.

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<sup>3</sup> Docket No. 21-1173 (issued May 4, 2022); Docket No. 20-0237 (issued October 16, 2020); Docket No. 19-0956 (issued June 25, 2019).

By decision dated July 25, 2018, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that his diagnosed left knee condition was causally related to the accepted employment factors.

On August 12, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The request was converted to a review of the written record at counsel's request. No additional evidence was submitted.

By decision dated February 25, 2019, an OWCP hearing representative affirmed the July 25, 2018 decision.

On March 19, 2019 OWCP received appellant's undated request for reconsideration. In a March 4, 2019 report, Dr. Henry Legaspi, an osteopathic physician Board-certified in psychiatry, opined that appellant's left chronic patellar tendinosis could have been a result of his work as a mail carrier given the required repetitive knee flexion and extension.

On June 26, 2019 appellant, through counsel, requested reconsideration. In support of his request, appellant submitted an April 17, 2019 report by Dr. Legaspi, who indicated that appellant's pain at the inferolateral corner of the left patella began while he was working as a letter carrier. His job required walking approximately 8 to 14 miles per day, sometimes on uneven surfaces. Dr. Legaspi advised that patellar tendinosis was a chronic overuse injury that is usually seen in younger patients who perform sports activities that involve repetitive flexion and extension of the knees and typical symptoms are felt at the inferior pole of the patella. He opined that, given the repetitive nature of appellant's job, and no other reported activities that can cause patellar tendinosis such as sports or running, it was "entirely possible that appellant's patellar tendinosis was caused by his occupation as a mailman."

By decision dated September 23, 2019, OWCP denied modification of its February 25, 2019 decision.

On November 11, 2019 appellant, through counsel, filed an appeal with the Board. By decision dated October 16, 2020, the Board affirmed the September 23, 2019 decision of OWCP finding that appellant had not met his burden of proof to establish that his left patellar tendinitis was causally related to the accepted factors of his federal employment.<sup>4</sup>

On June 17, 2021 counsel requested reconsideration.

In a June 7, 2021 report, Dr. Legaspi reported that appellant was seen that day for persistent, anterior knee pain that worsens with activity. He related that appellant's pain had been present for approximately four to five years with evidence of patellar tendinosis from 2018. Dr. Legaspi opined that "[i]t was more likely than not that [appellant] developed patellar tendinosis from repetitively walking on uneven surfaces while at work as a mailman."

By decision dated June 29, 2021, OWCP denied modification.

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<sup>4</sup> *Id.* at Docket No. 20-0237 (issued October 16, 2020).

On July 26, 2021 appellant, through counsel, filed an appeal to the Board. By decision dated May 4, 2022, the Board affirmed the June 29, 2021 decision, finding that appellant had not met his burden of proof to establish that his left patellar tendinitis was causally related to the accepted factors of his federal employment.<sup>5</sup>

On April 24, 2023 appellant, through counsel, requested reconsideration.

In a March 27, 2023 report, Dr. Neil Allen, a Board-certified internist and neurologist, reviewed appellant's medical record, including the June 12, 2018 left knee MRI scan and February 20, 2018 x-rays of left knee, and appellant's statement with regard to the nature of his work as a letter carrier, medical history, and treatment. He reported the physical requirements of appellant's employment as a letter carrier from April 2015, noting that appellant had very few days off due to staffing shortages,<sup>6</sup> and noted that appellant had reported a left knee injury in his teens after pivoting over the knee while playing basketball, but denied pain and/or left knee deficit prior to his employment as a letter carrier. Dr. Allen indicated that appellant's subjective complaints and objective findings documented within his records were consistent with his diagnosis of acceleration of left patellofemoral arthritis, and patellar tendinitis. Regarding causal relationship, he explained that appellant performed repetitive knee bending on a daily basis to complete appellant's regular duties as a letter carrier, including climbing stairs, squatting, stooping, and climbing in and out of his postal vehicle. These repetitive knee bending activities produced a strong contracture of his rectus femoris, vastus lateralis and vastus medialis musculature. These repeated contractions resulted in increased compression within the patellofemoral joint leading to wear and damage of the cartilaginous surfaces of the patella and trochlea, accelerating degenerative change within the patellofemoral joint space. Dr. Allen further explained that the repetitive contractions of appellant's quadriceps also led to tendinosis of the patellar tendon, as the repeated and forceful contractions of appellant's quadriceps muscle while performing his repetitive work activities led to inflammation within the patellar tendon, and manifested as tendinitis, as reflected in his MRI scan dated June 12, 2018. Based on the mechanisms described by appellant and objective findings documented within his medical record, he found that it was both reasonable and expected that his knee conditions were directly caused and/or accelerated by the occupational exposure sustained on June 1, 2017.

By decision dated May 12, 2023, OWCP denied modification.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>7</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 filed within the applicable time limitation

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<sup>5</sup> *Supra* note 3 at Docket No. 21-1173 (issued May 4, 2022).

<sup>6</sup> Physical requirements included casing mail while standing on concrete floors involving repetitive reaching, bending, squatting and stooping, loading delivery vehicle, walking routes, with 13 to 14 miles per day for the first year, while carrying a shoulder bag weighing up to 35 pounds over his right shoulder, climbing in and out of vehicle and up and down stairs and uneven ground to complete deliveries and in June 2017 working a combination route which involved many of the same physical requirements.

<sup>7</sup> *Supra* note 2.

period of FECA,<sup>8</sup> that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>9</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>10</sup>

In an occupational disease claim, appellant's burden requires submission of 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>11</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>12</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 identified by the claimant.<sup>13</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>14</sup>

### ANALYSIS

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

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to OWCP's June 29, 2021 decision because the Board considered that evidence in its May 4, 2022 decision and found that it was insufficient to establish his claim.

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<sup>8</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>9</sup> *T.H.*, Docket No. 17-0747 (issued May 14, 2018); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>10</sup> *T.H., id.*; *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).

<sup>11</sup> *K.V.*, Docket No. 21-0008 (issued November 15, 2021); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>12</sup> *K.V., id.*; *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

<sup>13</sup> *W.R.*, Docket No. 19-0460 (issued May 18, 2020); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); see *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.<sup>15</sup>

In support of his April 24, 2023 request for reconsideration, following the Board's May 4, 2022 decision, appellant submitted a March 27, 2023 report from Dr. Allen. Based on his review of appellant's medical record and appellant's statement, Dr. Allen opined that the diagnoses of left knee patellofemoral arthritis acceleration and patellar tendinitis were caused and/or accelerated by appellant's employment factors. He noted appellant's past medical history of suffering a left knee injury as a teen and that appellant denied pain and/or deficit in the left knee prior to his employment as a letter carrier. Dr. Allen provided a detailed discussion of the physical requirements of appellant's letter carrier position and provided medical rationale explaining how physiologically the diagnosed conditions of acceleration of left knee patellofemoral arthritis and patellar tendinitis, left were caused and/or accelerated by appellant's employment factors. He concluded that, given appellant's description of work duties, the clinical presentation documented by appellant's treating physicians within the medical record of the case, and the absence of pain and/or deficit in the left knee prior to his employment as a letter carrier, the employment factors caused appellant's acceleration of left knee patellofemoral arthritis and patellar tendinitis.

The Board finds that Dr. Allen provided an opinion on causal relationship, based on an accurate description of appellant's prior medical history, appellant's employment factors, and his current medical record.<sup>16</sup> While Dr. Allen's opinion is insufficiently rationalized to meet appellant's burden of proof, it is sufficient, to require further development of the record.<sup>17</sup>

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>18</sup> It has the obligation to see that justice is done.<sup>19</sup>

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

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<sup>15</sup> See *K.V.*, *supra* note 11; *B.R.*, Docket No. 17-0294 (issued May 11, 2018); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

<sup>16</sup> See *A.M.*, Docket No. 22-0313 (issued August 16, 2022).

<sup>17</sup> *A.M.*, *id.*; *R.A.*, Docket No. 19-0650 (issued January 15, 2020); *B.M.*, Docket No. 18-0448 (issued January 2, 2020); *E.G.*, Docket No. 19-1296 (issued December 18, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 12, 2023 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: February 8, 2024  
Washington, DC

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

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

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