

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

S.F., Appellant)	
)	
and)	Docket No. 23-0509
)	Issued: January 24, 2024
U.S. POSTAL SERVICE, SOUTHAMPTON)	
POST OFFICE, Southampton, NY, Employer)	
)	

Appearances:
Capp P. Taylor, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 28, 2023 appellant, through counsel, filed a timely appeal from a September 30, 2022 merit decision and a February 9, 2023 nonmerit 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.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a bilateral knee condition causally related to the accepted factors of her federal employment; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

This case has previously been before the Board.³ 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 May 15, 2014 appellant, then a 54-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a bilateral knee condition due to factors of her federal employment, including standing and walking for prolonged periods of time. She noted that she first became aware of her condition and its relationship to her federal employment on April 29, 2014. Appellant stopped work on April 29, 2014 and returned to work in a modified-duty capacity on May 10, 2014.

By decision dated August 8, 2014, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that her diagnosed bilateral knee condition was causally related to the accepted factors of her employment.

On September 4, 2014 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on February 9, 2015.

By decision dated March 18, 2015, OWCP's hearing representative affirmed the August 8, 2014 decision, finding that the evidence of record was insufficient to establish that appellant's bilateral knee osteoarthritis was causally related to the accepted factors of her federal employment.

On June 9, 2015 and August 15, 2016 appellant requested reconsideration. By decisions dated September 2, 2015 and December 26, 2017, OWCP denied modification.

On April 23, 2018 appellant, through counsel, appealed to the Board. By decision dated April 5, 2019,⁴ the Board affirmed the December 26, 2017 decision, finding that the medical evidence of record was insufficient to establish a bilateral knee condition causally related to the accepted factors of federal employment.

On April 13, 2020 appellant requested reconsideration. By decision dated June 24, 2020, OWCP denied modification.

OWCP thereafter received a report from Dr. Allen Fein, a Board-certified specialist in family medicine. Dr. Fein related that he was familiar with appellant's employment duties, which

³ Docket No. 18-1030 (issued April 5, 2019); Docket No. 20-1503 (issued August 3, 2021).

⁴ Docket No. 18-1030 (issued April 5, 2019).

required that she spend several hours a day on her feet, mostly on concrete surfaces. Once out on her route, she would make stops throughout the day, bending her knees to enter and exit her vehicle. Dr. Fein also noted that she was required to climb up and down stairs. He concluded that, over time, appellant's knee cartilage became increasingly worn, and as less cartilage could cushion the bone, she experienced more wear and tear on the joint. Dr. Fein noted that her x-rays reflected her thinning cartilage and smaller than usual joint spaces.

On August 11, 2020 appellant, through counsel, appealed to the Board. By decision dated August 3, 2021,⁵ the Board set aside the June 24, 2020 decision and remanded the case for further development of the medical evidence. The Board found that the February 20, 2020 report from Dr. Fein, provided a physiological explanation as to how appellant's work activities caused her diagnosed condition, which warranted further development of the medical record, to be followed by the issuance of a *de novo* decision.

On February 18, 2022 OWCP referred appellant for a second opinion evaluation with Dr. Teresa Habacker, a Board-certified orthopedic surgeon. It asked Dr. Habacker to address whether there was a causal relationship between appellant's diagnosed conditions and the accepted factors of federal employment. OWCP also asked her to provide treatment recommendations and work restrictions. In a report dated March 31, 2022, Dr. Habacker noted appellant's history of injury and medical treatment. She listed physical examination findings, reviewed medical records, and diagnosed aggravated bilateral knee arthritis. Dr. Habacker opined that on April 29, 2014 appellant jumped from her mail truck and injured her right knee. She indicated that this incident caused a temporary aggravation of the diagnosed condition as there was no evidence of a permanent aggravation. Dr. Habacker found that appellant's current condition was unrelated to the April 29, 2014 accident. She recommended a sedentary job based on appellant's obesity and severe bilateral knee osteoarthritis.

On August 8, 2022 OWCP requested clarification from Dr. Habacker regarding whether appellant sustained a traumatic injury on April 29, 2014 or an occupational disease due to repetitive factors of employment over more than a day.

In a supplemental report dated September 9, 2022, Dr. Habacker reviewed the additional documents provided by OWCP. She opined that appellant had an occupational knee condition due to repetitive stress, which was complicated by obesity. Additionally, Dr. Habacker found no evidence supporting a traumatic injury on April 29, 2014. She diagnosed aggravated bilateral knee arthritis, which she attributed to appellant's employment. In support of this conclusion, Dr. Habacker explained that osteoarthritis occurs either traumatically or over time with excessive wear and tear. However, she indicated that she was unable to determine that the diagnosed osteoarthritis was due to appellant's employment, but noted that "it may be an impinging factor."

By decision dated September 30, 2022, OWCP denied appellant's claim, finding that Dr. Habacker's opinion represented the weight of the medical evidence.

On November 21, 2022 appellant, through counsel, requested reconsideration. Counsel asserted that Dr. Habacker, in her supplemental September 9, 2022 report, was clear in her opinion

⁵ Docket No. 20-1503 (issued August 3, 2021).

that appellant's osteoarthritic knee condition was occupational and due to repetitive stress. Thus, he asserted Dr. Habacker's opinion established that appellant's arthritic condition was at least aggravated by employment factors and that the claim should be accepted for aggravation of bilateral knee osteoarthritis.

By decision dated February 9, 2023, OWCP denied reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁶ 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 period of FECA,⁷ 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.⁸ 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.⁹

In an occupational disease claim, appellant's burden of proof 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.¹⁰

Causal relationship is a medical issue that requires rationalized medical opinion evidence to resolve the issue.¹¹ 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

⁶ *Supra* note 2.

⁷ *U.M.*, Docket No. 23-0625 (issued August 11, 2023); *S.M.*, Docket No. 21-0937 (issued December 21, 2021); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *U.M.*, *id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ *U.M.*, *id.*; *M.T.*, Docket No. 20-1814 (issued June 24, 2022); *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).

¹⁰ *U.M.*, *id.*; *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

¹¹ *J.L.*, Docket No. 21-1373 (issued March 27, 2023); *K.R.*, Docket No. 21-0822 (issued June 28, 2022); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors.¹²

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.¹³

ANALYSIS -- ISSUE 1

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

OWCP referred appellant to second opinion physician, Dr. Habacker. In a report dated March 31, 2022, Dr. Habacker diagnosed aggravated bilateral knee osteoarthritis. She opined that the April 29, 2014 incident temporarily aggravated appellant's bilateral knee osteoarthritis and that her current condition was unrelated to the accepted employment injury. Dr. Habacker, in a September 9, 2022 supplemental report opined that appellant's employment aggravated her bilateral knee arthritis. She opined that appellant had an occupational knee condition due to repetitive stress, which was complicated by obesity. However, Dr. Habacker also indicated that she was unable to determine whether the diagnosed bilateral knee osteoarthritis was due to appellant's employment. As her opinion is contradictory, OWCP was required to seek further clarification from Dr. Habacker.

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.¹⁴ It has an obligation to see that justice is done.¹⁵ As it undertook development of the evidence by referring appellant to Dr. Habacker, it had the duty to secure an appropriate report based on an accurate factual and medical background and which is internally consistent.¹⁶

Accordingly, this case will be remanded to OWCP for further development of the medical evidence. On remand OWCP shall request that Dr. Habacker clarify her opinion as to whether the

¹² *G.S.*, Docket No. 22-0036 (issued June 29, 2022); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *D.W.*, Docket No. 20-0674 (issued September 29, 2020); *V.W.*, Docket No. 19-1537 (issued May 13, 2020); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹⁴ See, e.g., *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

¹⁵ See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹⁶ See *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Richard F. Williams*, 55 ECAB 343, 346 (2004).

accepted work factors contributed to appellant's diagnosed conditions. Alternatively, if she is unavailable or unwilling to provide a supplemental opinion, OWCP shall refer appellant to a new second opinion physician.¹⁷ After this and other such further development as deemed necessary, it shall issue a *de novo* decision.¹⁸

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2022 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. The February 9, 2023 decision of the Office of Workers' Compensation is set aside as moot.

Issued: January 24, 2024
Washington, DC

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

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

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

¹⁷ *J.F.*, Docket No. 23-0963 (issued December 8, 2023); *S.G.*, Docket No. 22-0014 (issued November 3, 2022); *G.T.*, *id.*; *see also D.L.*, Docket No. 20-0886 (issued November 9, 2021).

¹⁸ In light of the Board's disposition as to Issue 1, Issue 2 is rendered moot.