

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

---

**L.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Las Vegas, NV, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 17-0947  
Issued: March 8, 2018**

*Appearances:*  
*Jeffery Fultz, for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 28, 2017 appellant, through her representative, filed a timely appeal from a February 21, 2017 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.<sup>3</sup>

---

<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 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.*

<sup>3</sup> The Board notes that appellant submitted new evidence following the February 21, 2017 decision. However, since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

## ISSUE

The issue is whether appellant met her burden of proof to establish a right knee condition causally related to accepted factors of her federal employment.

## FACTUAL HISTORY

On January 10, 2017 appellant, then a 59-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained severe pain, limitation of her right knee, and inability to walk normally as a result of her work duties. She first became aware of her condition on June 29, 2009 and first realized its relation to her federal employment on February 13, 2015. The claim form did not indicate whether appellant stopped work. Appellant explained that she had multiple treatments and was able to return to full duty with few or no restrictions, but after a period of returning to normal duties, the aggravation and pain returned and worsened each time.

In an undated narrative statement, appellant explained that she had worked as a letter carrier since October 1988. She related that the majority of her routes were “park and loop,” which required being on her feet for 8 to 12 hours per day while walking long distances between houses, climbing stairs, and carrying a satchel weighing as much as 35 pounds. Appellant indicated that when she moved to Las Vegas, NV her route involved walking across rocks and desert landscaping. She noted that she also worked “over the curb” routes, which involved mounting and dismounting her vehicle hundreds of times a day. Appellant related that she experienced occasional trip and falls at work, but she always recovered from these injuries. She reported that she had two right knee surgeries in 2009 and 2010 for a meniscus tear. Appellant explained that after intense therapy she was able to return to work after both surgeries. She indicated that she continued to have “flare-ups” of pain and had periodic visits to a physician to help reduce the swelling. Appellant related that in February 2015 she sustained a bad fall on the job. She explained that she did not report it immediately because she thought it was a simple injury. Appellant noted that the pain began to worsen and she developed an embarrassing limp. She indicated that in April 2015 she fell down again and sustained injuries to her right knee and back. Appellant recounted the medical treatment that she had received. She alleged that carrying mail was most certainly making her knee worse. Appellant explained that, as mail volumes increased, the stress on her right knee also increased as the loads of mail she had to carry got heavier and heavier. She noted that she could barely walk after carrying mail during an eight-hour day.

Appellant provided a detailed description of her employment duties. She indicated that she cased mail for an average of two hours per day, which required squatting to lift mail trays from the floor to the ledge and twisting from the left to the right. Appellant then placed the cased mail in trays weighing as much as 20 to 30 pounds and loaded them into a hamper for delivery. She noted that the hampers weighed as much as 450 pounds. Appellant explained that pushing the hamper to her delivery vehicle required going up a steep ramp and involved her having to brace her legs. She related that to load her delivery vehicle she had to partially squat, lift, and push the mail and parcels into the vehicle. Appellant reported that she stepped down 2 to 10 steps approximately 46 times per day, walked 7,200 paces per hour or 43,200 per day,

climbed steps from her vehicle approximately 244 times per day, bent over 45 times per day with various weights, and squatted and stooped at least 55 times per day.

In a May 12, 2009 letter, Dr. Randall E. Yee, an osteopath specializing in orthopedic surgery, related appellant's complaints of right knee pain, which had aggravated her for two weeks. He noted that she denied any specific injuries or trauma. Upon physical examination of appellant's right knee, Dr. Yee reported medial joint tenderness, crepitation, and a small effusion. He indicated that x-ray examination reports showed right knee early degenerative joint disease and possible meniscus tear.

Dr. Xin Nick Liu, an osteopath specializing in orthopedic surgery and sports medicine, also treated appellant. In letters dated June 29 to July 27, 2009, he indicated that she was given a cortisone injection to the right knee during her last visit and experienced two to three days of relief, but the pain returned within the last week or so. Upon physical examination of appellant's right knee, Dr. Liu reported minimal effusion, medial joint line tenderness, and positive McMurray's test. Range of motion was 0 to 130 degrees. Neurovascular examination was normal. Dr. Liu related that a right knee magnetic resonance imaging (MRI) scan showed a posterior root tear of the medial meniscus and a ganglion cyst at the medial head of the gastrocnemius area. He diagnosed right knee pain and questionable tear of the posterior horn of the medial meniscus.

In a June 29, 2009 work status form, Dr. Liu indicated that appellant was able to return to sedentary work for two weeks.

Appellant submitted a June 30, 2009 letter from C.C., acting postmaster, offering her a light-duty assignment for the period June 29 to July 7, 2009.

Dr. Michael Todd, a diagnostic radiologist, provided various diagnostic reports of appellant's right knee. In a July 6, 2009 MRI scan report, he noted a medial meniscal root tear and complex ganglion cyst associated with the medial head of the gastrocnemius. In a July 6, 2009 ultrasound report, Dr. Todd indicated an unremarkable examination of appellant's right lower extremity.

In an October 27, 2009 right knee MRI scan report, Dr. Keir Hales, a Board-certified diagnostic radiologist, noted internal development of probable osteochondral defects and body edema within the medial femoral condyles and medial tibial plateau, interval development of a large joint effusion, increased signal abnormality within the medial collateral ligament, definite meniscal tear, and stable complex ganglion cyst.

On November 17, 2009 appellant underwent right knee arthroscopy surgery.

Appellant provided several reports from Dr. Liu dated November 30, 2009 to March 8, 2010. Dr. Liu noted that she was treated for follow-up of right knee surgery and complaints of continued right knee pain and swelling. Upon physical examination of appellant's right knee, he reported +2 effusion and range of motion of 0 to 120 degrees. Dr. Liu noted no instability to varus or valgus stress at 0 to 30 degrees and negative Lachman and anterior and posterior drawer test. He diagnosed right knee pain, Grade 2-3 arthritis, and post-partial meniscectomy. In the March 8, 2010 report, Dr. Liu related that a right knee MRI scan showed

an extensive re-tear of appellant's medial meniscus and bone contusion at the medial tibia plateau. He diagnosed right knee pain, moderate arthritis, and re-tear of the medial meniscus.

In a March 4, 2010 right knee MRI scan interpretation report, Dr. Donald L. Resnick, a Board-certified radiologist, noted status post knee arthroscopy, diffuse areas of high-grade cartilage loss of the weight bearing surfaces of the medial femorotibial compartment, moderate-grade chondral fissuring of the medial facet of the patella, and large joint effusion.

Dr. Liu also provided work status notes dated March 3 to 9, 2010, which indicated a diagnosis of right knee pain and related that appellant was unable to work until March 29, 2010.

On March 9, 2010 appellant underwent another right knee surgery.

Appellant submitted various medical reports dated March 22 to June 14, 2010 by Dr. Liu who indicated that she was seen for follow-up examination of right knee pain, arthritis, and postoperation right knee arthroscopy. Upon physical examination of appellant's right knee, Dr. Liu reported minimum effusion and no instability to varus or valgus stress test. Neurovascular examination was normal. Range of motion was 0 and 30 degrees. Dr. Liu diagnosed status post right knee arthroscopy, chondroplasty, right knee pain, and arthritis. He also provided work status notes dated May 21 to July 2, 2010, which indicated that appellant could return to work with restrictions.

In reports dated April 25, 2012 to March 18, 2013, Dr. Liu noted that appellant was examined for follow-up of right knee pain and arthritis. In an August 20, 2012 report, he related that she fell about a week ago on steps and began to experience right knee swelling and pain. Upon physical examination of appellant's right knee, Dr. Liu reported positive medial and lateral joint line pain. McMurray's, Lachman's, and anterior and posterior drawer tests were negative. Dr. Liu indicated no atrophy, deformity, effusion, instability, or varus or valgus stress at 0 to 30 degrees. Range of motion was 0 to 130 degrees. Dr. Liu diagnosed right knee pain and arthritis. He provided work status notes dated April 25 and October 22, 2012, which indicated that appellant could return to work with restrictions.

Dr. Liu continued to treat appellant. In reports dated May 23 and June 6, 2013, he noted that she was examined for right calf pain and minimal swelling. Upon physical examination of appellant's right calf, he reported minimal tenderness and no pain with range of motion. Neurovascular examination was normal. Dr. Liu diagnosed improving right calf strain. He provided a May 28, 2013 work status note, which indicated that appellant could work a sit down/standing job for one week.

On May 24, 2013 appellant was offered a temporary light-duty assignment.

In an October 17, 2013 report, Dr. Liu related appellant's complaints regarding her right knee pain. Upon physical examination of her right knee, he reported positive medial and lateral joint line pain. Dr. Liu reported right knee degenerative joint disease. He recommended right knee injections. Dr. Liu provided a work status note, which indicated that appellant could return to work on October 18, 2013 with restrictions of limited stair climbing.

In reports dated April 6 to 29, 2015, Dr. Michael Trainor, an osteopath specializing in orthopedic surgery, related that on April 2, 2015 appellant was pushing a metal cart at work when she slipped and fell down on asphalt. He noted that she began to experience back pain, but did not complain of any lower extremity numbness, tingling, or weakness. Dr. Trainor diagnosed low back pain, status post recent fall at work, age-appropriate lumbar spondylosis, and acute L1 compression deformity to rule out acute fracture.<sup>4</sup>

Dr. Liu related in a May 7, 2015 report that appellant had received a cortisone injection during her previous examination, but the pain had now returned. Upon physical examination of her right knee, he reported positive medial and lateral joint line pain and tenderness. Dr. Liu noted no atrophy, deformity, effusion, or instability to varus or valgus stress at 0 to 30 degrees. He related that a right knee x-ray examination showed moderate-to-severe arthritis. Dr. Liu diagnosed right knee pain and arthritis.

Appellant received treatment from Megan Ripoll, a certified physician assistant, who indicated in a June 18, 2015 report, appellant's complaints of left knee pain. Upon physical examination of appellant's left knee, she reported no atrophy, deformity, effusion, or instability to varus or valgus stress. Ms. Ripoll noted medial and lateral joint line pain. She diagnosed left knee arthritis. The report included a handwritten note, which indicated: "this should be 'right knee.'"

In reports dated June 1 to 18, 2015, Dr. Liu related that appellant was seen for follow-up of right knee pain and arthritis. Upon physical examination of her right knee, he reported minimum effusion and medial and lateral joint line tenderness. Dr. Liu noted no instability to varus or valgus stress test at 0 and 30 degrees and normal neurovascular examination. He diagnosed right knee pain and arthritis. Dr. Liu administered a right knee injection.

In a June 25, 2015 report, Dr. Liu related appellant's complaints of right knee pain and arthritis. Upon physical examination of her right knee, he reported minimum effusion and medial and lateral joint line tenderness. Range of motion was 0 to 130 degrees with no instability to varus or valgus stress at 0 to 30 degrees. Dr. Liu diagnosed right knee pain and arthritis.

Dr. Liu indicated in an October 15, 2015 report that appellant had three injections in her last visit, but still had difficulty walking. Upon physical examination, he reported minimum effusion and medial and lateral joint line tenderness. Neurovascular examination was normal. Dr. Liu noted range of motion of 0 to 130 degrees and no instability to varus or valgus. He diagnosed right knee pain and severe arthritis. Dr. Liu indicated that he discussed all the treatment options with appellant and that she elected to proceed with right knee surgery. He provided a work status note, which authorized that she return to work with restrictions of no stair climbing.

In a November 17, 2016 report, Dr. Liu related appellant's complaints of progressively worsening right knee pain and severe arthritis. He indicated that x-rays of her right knee showed

---

<sup>4</sup> OWCP continued to receive medical reports from Dr. Trainor detailing his treatment of appellant's lumbar condition following the April 2, 2015 slip and fall.

bone on bone arthritis and no fracture, dislocation, or acute bony abnormalities. Dr. Liu diagnosed right knee pain and bone on bone arthritis.

In a letter dated January 18, 2017, OWCP advised appellant that the evidence submitted was insufficient to establish her occupational disease claim. It requested that she complete the attached development questionnaire to substantiate the factual elements of her claim and provide medical evidence to establish a diagnosed condition as a result of her federal employment. Appellant was afforded 30 days to submit the requested information.

Appellant provided a letter dated January 25, 2017. She noted that she had previously submitted a five-page statement describing the employment factors she believed contributed to her condition. Appellant resubmitted her undated statement. She also alleged that she submitted a physician's opinion that her condition was caused or aggravated by her work. Appellant resubmitted Dr. Liu's November 17, 2016 report.

In a February 14, 2017 report, Dr. Liu listed the medical reports that he reviewed dated from May 2009 to October 2015. He related that he first examined appellant on May 12, 2009 for complaints of left knee pain for the past two weeks. Dr. Liu reviewed the medical treatment that she had received, including the right knee surgeries on November 17, 2009 and March 9, 2010. He indicated that appellant continued to receive follow-up medical treatment from him due to increasing right knee pain after multiple falls at work. Dr. Liu diagnosed right knee primary osteoarthritis. He recommended a total knee arthroplasty.

Dr. Liu reviewed appellant's employment duties and noted that the duties required twisting from the left to right while sorting mail, squatting to lift and load mail trays into vehicles, pushing hampers up an incline, and walking over uneven terrain while delivering mail. He reported that: "after reviewing [appellant's] detailed job description, this repetitive high impact, and load bearing activity contributes to aggravating her diagnosis of severe knee arthritis. This permanent aggravation was caused by repetitive years of walking, standing, climbing stairs, and squatting with a loaded satchel." Dr. Liu explained that, as the knee flexes, the instant center of rotation moves posteriorly. He further related that the tibiofemoral joint reaction force was three times the body weight when walking and four times the body weight when climbing. Dr. Liu also indicated that squat activity was stressful to the knee and created patella femoral joint reaction force 7.6 times the body weight. He reported that walking, climbing, and squatting especially with the carrying of additional weight could cause an aggravation to cartilage deficiencies and increased speed of cartilage deterioration. Dr. Liu concluded that the "large number of hours spent walking, climbing, carrying a loaded satchel, and heavy packages across uneven terrain, and up and down ramps and stairs [had] caused a permanent aggravation and increased speed of cartridge deterioration of [appellant's] right knee arthritis."

On February 15, 2017 OWCP received appellant's response to its development letter. Appellant explained that the injury she was claiming was a near total deterioration of cartilage in her right knee. She described the employment activities which she believed contributed to her condition as long periods of standing, walking, squatting, and lifting of thousands of pounds of mail and parcels on a continuous basis, walking on uneven surfaces, previous stair climbing and current stepping up and down with loads daily, and twisting and turning while carrying loads.

Appellant indicated that she performed these activities daily and on a full-time basis of 8 hours per day, 40 to 48 hours per week. She also noted that she had numerous falls over the years and two surgeries, but the condition continued to resurface in the course of her job duties. Appellant asserted that she had not engaged in sports or strenuous athletics other than her job.

OWCP denied appellant's claim by decision dated February 21, 2017. It accepted her employment duties as a mail carrier and a diagnosed right knee condition, but denied the claim because the medical evidence of record was insufficient to establish that her right knee condition was causally related to the accepted employment factors.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence<sup>5</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>6</sup> In an occupational disease claim, an employee'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>7</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>9</sup>

### **ANALYSIS**

Appellant alleged that she sustained a right knee condition as a result of her federal employment duties. OWCP accepted her duties as a letter carrier and that she suffered from a diagnosed right knee condition. It denied appellant's claim, however, because it found that the medical evidence of record was insufficient to establish that her right knee condition was

---

<sup>5</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>6</sup> *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>7</sup> *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>8</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

<sup>9</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

causally related to factors of her employment. The Board finds that the case is not in posture for decision.

Appellant submitted various reports by Dr. Liu dated June 29, 2009 to February 14, 2017. In the February 14, 2017 report, Dr. Liu reviewed her employment history and duties and opined that her severe right knee arthritis was caused by repetitive years of walking, standing, climbing stairs, and squatting with a loaded satchel. He explained how the center of rotation of the knee moved when flexing and described the various reaction forces the knee absorbs when walking, climbing, and squatting. Dr. Liu reported that these repetitive duties caused an aggravation to cartilage deficiencies and increased speed of cartilage deterioration. The Board notes that, although these reports do not provide medical rationale explaining how appellant's employment duties caused or contributed to a permanent aggravation of her right knee arthritis, they strongly suggest and support a causal relationship between factors of her employment and her right knee condition.<sup>10</sup>

The Board finds that, while the reports from Dr. Liu do not contain rationale sufficient to completely discharge appellant's burden of proof, they are not contradicted by any substantial medical or factual evidence of record and are sufficient to require OWCP to further develop the medical evidence of record.<sup>11</sup> It is well-established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.<sup>12</sup> While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and to see that justice is done.<sup>13</sup> Thus, the Board will remand the case to OWCP for further development to obtain a rationalized medical opinion as to whether appellant's right knee condition is causally related to factors of her federal employment and issue a *de novo* decision on whether she sustained a right knee condition causally related to the accepted factors of her federal employment.

### CONCLUSION

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

---

<sup>10</sup> See *G.C.*, Docket No. 16-0666 (issued March 17, 2017); see also *L.F.*, Docket No. 14-1906 (issued August 13, 2015).

<sup>11</sup> *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, 41 ECAB 354, 360 (1989).

<sup>12</sup> See *Vanessa Young*, 56 ECAB 575 (2004).

<sup>13</sup> *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *Jimmy A. Hammons*, 51 ECAB 219 (1999); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).



**ORDER**

**IT IS HEREBY ORDERED THAT** the February 21, 2017 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: March 8, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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