United States Department of Labor
Employees' Compensation Appeals Board

B.Y., Appellant	)	
and	)	**Docket No. 18-0702**
	)	**Issued: November 21, 2018**
DEPARTMENT OF JUSTICE, U.S. MARSHALS SERVICE, Charlotte, NC, Employer	)	

Appearances:
Daniel F. Read, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 14, 2018 appellant, through counsel, filed a timely appeal from a December 20, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 has met her burden of proof to establish a left knee condition causally related to the accepted December 21, 2015 employment incident.

FACTUAL HISTORY

On December 31, 2015 appellant, then a 46-year-old Deputy U.S. Marshal, filed a traumatic injury claim (Form CA-1) alleging that on December 21, 2015 she injured both knees when she stepped off a curb while walking during an operational mission. She indicated that, during evening hours with limited visibility, she stepped off a small curb and turned both her left and right knees as she tried to catch herself from falling. Appellant did not stop work.

With her claim, appellant submitted medical reports from Dr. Ian D. Archibald, a Board-certified orthopedic surgeon. In his May 16, 2016 report, Dr. Archibald noted that she originally injured her left knee in January 2013 and underwent left knee arthroscopy in May 2013 for a medial meniscus tear and full-thickness chondral lesion in the medial femoral condyle. Appellant was able to return to her work as a federal agent, but always had some persistent knee pain. Dr. Archibald indicated that she had not been seen in over 15 months and was seen for complaints of increased left knee pain.[3] He noted that, on December 21, 2015, while appellant was on a work assignment, she had stepped off a curb and twisted her knee with loud pops and catches in her knee. Dr. Archibald also noted that, in March 2016, she had misstepped while on a nonwork-related hiking trip and also experienced loud pops in her knee. He indicated that appellant's symptoms were gradually increasing and that the x-rays showed bone-on-bone changes in the medial joint compartment and a lytic lesion in the subchondral bone of the medial femoral condyle consistent with previous full-thickness articular cartilage loss area. Dr. Archibald diagnosed primary osteoarthritis of the left knee and indicated that she could continue her regular-duty work. In a June 13, 2016 progress note, he diagnosed moderate-to-severe primary osteoarthritis of the left knee, which represented an aggravation of a preexisting condition. In a June 22, 2016 progress note, Dr. Archibald diagnosed "work-related injury to the left knee. [Appellant] has osteoarthritis of the medial joint compartment of the left knee." He advised that appellant could continue her work without restrictions.

By development letter dated June 29, 2016, OWCP requested additional factual and medical evidence in support of appellant's claim. It provided a questionnaire for her completion regarding the factual circumstances of her claim and afforded her 30 days to provide the requested information.

By decision dated August 5, 2016, OWCP denied appellant's traumatic injury claim. It found that the medical evidence submitted was insufficient to establish causal relationship between the diagnosed left knee osteoarthritis condition and the accepted December 21, 2015 employment incident. OWCP also noted that it had not received clarification of appellant's hiking incident that took place in March 2016 as referenced by Dr. Archibald.

[3] The remainder of Dr. Archibald's reports note that he evaluated appellant in January 2015.

On October 8, 2016 appellant, through then counsel, requested reconsideration. Counsel contended that the medical evidence of record was sufficient to meet her burden of proof.

In an August 10, 2016 report, Dr. Archibald discussed appellant's prior medical history, including left knee arthroscopy for a microfracture and chondral lesion. He noted that her condition was stable at that time, although additional surgery had been recommended. Dr. Archibald indicated that appellant had a twisting injury to her knee while on assignment on December 21, 2015 which resulted in a loud pop. He indicated that her May 16, 2016 evaluation showed significant deterioration to the function in her left knee. Dr. Archibald noted that "[appellant] alleges that the injury of December 2015 materially aggravated her condition resulting in her treatment evaluation of May and June 2016."

In his October 3, 2016 report, Dr. Archibald opined that the December 21, 2015 work injury permanently aggravated appellant's preexisting left knee osteoarthritis. He acknowledged that, while there had been another episode while she was doing some limited hiking, he "[did] not believe that that was the injury that caused the most difficulty." Dr. Archibald also indicated that, while he had recommended additional surgeries in January 2015, appellant had been functioning well in her federal agent position and that she did not feel surgery was necessary until she sustained the December 21, 2015 injury. He concluded that her condition was permanently aggravated and she now required more extensive surgery to her left knee.

By decision dated December 12, 2016, OWCP denied modification of its August 5, 2016 decision. It found that, given the severity of the underlying condition, the delay in seeking treatment for almost five months, and the subsequent intervening hiking injury, it was not clear that the December 21, 2015 incident was competent to cause the deterioration in appellant's left knee. OWCP further found that, while each injury may have resulted in a temporary episode of pain, no objective evidence had been cited to explain how the December 21, 2015 work injury resulted in a permanent aggravation of the underlying osteoarthritis condition.

On October 12, 2017 appellant, through her then counsel, requested reconsideration. Counsel argued that the medical evidence of record was sufficient to meet her burden of proof.

In an undated statement, appellant indicated that after her December 21, 2015 injury she discontinued any activity that strained her knees to see if resting would heal the discomfort. After a few months of not doing her daily workouts, she decided to go hiking in March 2016. However, halfway up on appellant's first attempt, her left knee popped and she felt the same pain she felt from the December 21, 2015 incident. It was then that she realized that the pain had improved and that the employment incident caused some damage.

Statements from coworkers and friends, J.S., M.C., T.H., C.C., and T.W., indicated that appellant had informed them of the December 21, 2015 employment injury. They verified that, since she returned from her work assignment, she no longer continued her previous level of exercise.

In an August 30, 2017 report, Dr. Archibald reiterated that appellant's last follow-up visit from her May 13, 2015 arthroscopic surgery was January 2015 and that he had advised her then that she may need further surgery. He noted that he did not see her again until May 2016 at which

time she reported a primary injury in December 2015 and a second reinjury in March 2016 while hiking. Dr. Archibald noted that appellant had since indicated that she had felt significant injury in December 2015 with sudden twisting and loud popping of her knee. Appellant rested her knee until March 2016, when she tried to hike the mountain and immediately felt a recurrence of the severe pain and popping she had felt in December 2015.

Dr. Archibald indicated that, in his initial May 2016 report, he had provided a primary diagnosis of osteoarthritis of the left knee as appellant's left knee was bone-on-bone on examination and she had lytic lesion, as verified by radiographs. However, in the August 30, 2017 report, he explained that osteoarthritis was a progressive disease and that her osteoarthritis was significantly accelerated from a person of her age and general high level of fitness. Dr. Archibald noted that, while appellant's osteoarthritis had been developing for years, the sudden mechanical pressure from a stumble or fall where all the weight of the body creates a twisting impact on a weight-bearing joint like a knee can cause significant aggravation of underlying progressive changes. He opined that the December 21, 2015 employment incident was just such a pressure event and she had limited her physical activities until she felt well enough to try climbing the mountain in March 2016 and immediately had the same type of severe pain. Dr. Archibald opined that there had been significant aggravating trauma in December 2015 which was then exacerbated in March 2016. He noted that the absence of significant corresponding osteoarthritic changes in appellant's right knee reinforced that there was a traumatic injury. Also the speed of appellant's progression of osteoarthritis in the left knee reinforced that there had been significant aggravating trauma and that such aggravation was permanent in nature. Dr. Archibald opined that the December 21, 2015 injury was the primary cause of her traumatic aggravation or, at minimum, was a contributory cause.

Treatment reports from Dr. Archibald dated May 30, 2014, January 7, 2015, May 16, June 13 and 22, August 3 and 31, 2016, and June 5, 2017 were provided.

Treatment reports dated June 12 and 19, 2017 from Dr. Erik Johnson, a Board-certified internist, pertaining to left knee injections were also provided.

By decision dated December 20, 2017, OWCP denied modification of its December 12, 2016 decision. It found that Dr. Archibald's August 30, 2017 opinion was speculative and not supported by objective findings as required. OWCP reasoned that while in his August 30, 2017 report he had described in greater detail the mechanism of the December 21, 2015 work injury and had opined that appellant had sustained significant aggravating trauma which was exacerbated by the March 2016 hiking incident, he did not provide objective findings of the effect of the 2015 injury on her baseline condition and other objective findings specifically related to the intervening hiking incident in March 2016.

LEGAL PRECEDENT

A claimant seeking benefits under FECA[4] 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,

[4] *Id.*

including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[6]

To establish causal relationship the claimant must submit rationalized medical opinion evidence. 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 identified by the claimant.[7] This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[8]

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.[9]

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.[10] The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.[11]

ANALYSIS

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

[5] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[6] *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *T.H.*, 59 ECAB 388 (2008).

[7] *A.D., id.; I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *S.H.*, Docket No. 17-1660 (issued March 27, 2018); *James Mack*, 43 ECAB 321 (1991).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[10] *See S.M.*, Docket No. 16-0990 (issued February 8, 2017); *Jimmy A. Hammons*, 51 ECAB 219 (1999).

[11] 20 C.F.R. § 10.121.

While appellant initially alleged that she sustained a bilateral knee injury on December 21, 2015, the medical evidence of record and OWCP's decisions only addressed her left knee condition. It is undisputed that she had a preexisting left knee condition and that on December 21, 2015 she stepped off a curb, twisted her left knee, and heard a loud pop while in the performance of duty. It is also undisputed that in March 2016 appellant experienced the same left knee symptoms while hiking.

In support of her claim, appellant submitted medical evidence from Dr. Archibald. Dr. Archibald first examined her on May 16, 2016, approximately five months after the employment incident. He noted that appellant had previously undergone an arthroscopy in May 2013 for a microfracture and chondral lesion. Dr. Archibald described the December 21, 2015 employment incident as a twisting injury with a loud pop. He also acknowledged that appellant felt the same symptoms when she misstepped while hiking in March 2016. Dr. Archibald characterized this event "as a recurrence of the severe pain and popping she had felt in December 2015." He diagnosed primary osteoarthritis of the left knee. Dr. Archibald indicated that appellant's symptoms were gradually increasing and that x-rays showed bone-on-bone changes in the medial joint compartment and a lytic lesion in the subchondral bone of the medial femoral condyle consistent with previous full-thickness articular cartilage loss area. In his August 10, 2016 report, he noted that her May 16, 2016 evaluation showed significant deterioration to the function in her left knee.

In his October 3, 2016 report, Dr. Archibald opined that the work injury appellant sustained on December 21, 2015 permanently aggravated her preexisting left knee osteoarthritis. In his August 30, 2017 report, he provided additional rationale for his finding that the December 21, 2015 work incident was the primary cause of significant aggravating trauma which had aggravated the underlying osteoarthritis. Dr. Archibald exhibited knowledge of the history of injury, referenced the results of x-rays in May 2016, and provided an explanation of the mechanism of injury to show how the December 21, 2015 work incident was the primary cause of significant aggravating trauma. He related that the December 21, 2015 event was an event wherein sudden mechanical pressure from a stumble or fall caused a twisting impact on a weight-bearing joint. Dr. Archibald explained how all the weight of the body creates a twisting impact on a weight-bearing joint like a knee can cause significant aggravation of underlying progressive changes. He opined that the December 21, 2015 employment incident was just such a pressure event and appellant had limited her physical activities until she felt well enough to try hiking in March 2016 and immediately had the same type of severe pain. Dr. Archibald opined that the traumatic injury is demonstrated as there was an absence of significant corresponding osteoarthritic changes in her right knee. Further, that the speed of appellant's progression of osteoarthritis, after December 21, 2015, in the left knee reinforced that there had been significant aggravating trauma and that such aggravation was permanent in nature. The Board finds that this opinion, while insufficiently rationalized to represent the weight of the evidence, is sufficient, given the absence of any opposing medical evidence, to require further development of the record.[12]

As noted, proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to

[12] *See J.D.*, Docket No. 18-0001 (issued March 27, 2018); *R.B.*, Docket No. 16-0205 (issued October 11, 2016).

compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[13] On remand, OWCP should refer appellant to an appropriate specialist for a rationalized opinion regarding whether she sustained a permanent aggravation of the underlying left knee osteoarthritis condition causally related to the accepted December 21, 2015 employment incident.[14] After such further development as OWCP deems necessary, it shall issue a *de novo* decision.[15]

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the December 20, 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: November 21, 2018
Washington, DC

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

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

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

[13] *See W.W.*, Docket No. 15-1130 (issued August 7, 2015); *Phillip L. Barnes*, 55 ECAB 426 (2004).

[14] *See M.K.*, Docket No. 17-1140 (issued October 18, 2017).

[15] In light of the disposition of this case, the Board will not address the remainder of counsel's arguments or the other reports of record.