

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

_____)	
T.F., Appellant)	
)	
and)	Docket No. 18-0447
)	Issued: February 5, 2020
U.S. POSTAL SERVICE, EAST CLEVELAND)	
POST OFFICE, Cleveland, OH, Employer)	
_____)	

Appearances:
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 29, 2017 appellant, through counsel, filed a timely appeal from an October 18, 2017 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.³

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.*

³ The Board notes that, following the October 18, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include right knee osteoarthritis as causally related to her November 26, 2005 employment injury.

FACTUAL HISTORY

On November 28, 2005 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 26, 2005 her right knee popped when walking her route while in the performance of duty. She stopped work on November 28, 2005. OWCP accepted the claim for patellar tendinitis, right sprain of unspecified sites of the knee, and leg on the right. It paid appellant intermittent wage-loss compensation on the supplemental rolls from March 6 until November 5, 2007.

An x-ray of appellant's right knee dated November 27, 2005 revealed mild degenerative changes predominantly involving the patellofemoral compartment with subchondral sclerosis and marginal osteophytes. A fractured ossicle or fracture enthesophyte could not be excluded. A large suprapatellar effusion was also noted.

Appellant underwent a right knee arthroscopy with open incision of the patellar tendon and ossicles of the patellar tendon on October 3, 2007 by Dr. John Wood, a Board-certified orthopedic surgeon. Dr. Wood provided a postoperative diagnosis of patellar tendinosis with painful ossicles in the patellar tendon. Appellant returned to full-time modified duty on November 6, 2007. She retired from her federal employment effective January 2, 2010.

In a letter dated April 8, 2015, Dr. Wood requested acceptance of appellant's claim be expanded to include right knee osteoarthritis.

On June 11, 2015 OWCP requested that Dr. Wood explain how appellant's right knee osteoarthritis was causally related to her accepted employment injury.

Dr. Wood in a July 7, 2015 progress note, related appellant's examination findings and noted that she had a several-week history of new knee pain. He advised that, after a day of prolonged standing, grilling, *etc.*, appellant had a three-hour period of stabbing "A-I" pain. Dr. Wood noted that she had a possible new tear of the anterior horn or lower medial and chronic patellofemoral syndrome and osteoarthritis of the right knee. He recommended a magnetic resonance imaging (MRI) scan.

A July 20, 2015 MRI scan interpreted by Dr. Mary Wall, a radiologist, revealed significant spurring of the patella, chondral thinning, and irregularity of the medial articulating surface of the dorsal talus, and slight irregularity of the medial attachment of the anterior horn of lateral meniscus suggesting a small partial tear in this location, but no full-thickness meniscal tear.

By letter dated October 29, 2015, counsel requested that acceptance of appellant's claim be expanded to include additional conditions. In a report dated August 27, 2015, Dr. Wood noted that he had treated her for several years for her right knee pain, which she aggravated while working for the employing establishment. He explained that, although appellant suffered from

preexisting osteoarthritis of her patellofemoral joint, patellofemoral arthritis was aggravated by work that involved squatting, stairs, heavy pushing/pulling, lifting, or walking on grades.

In a September 15, 2015 progress note, Dr. Wood discussed appellant's MRI scan results and noted that she was aware that surgery could worsen her osteoarthritis symptoms for a prolonged period of time.

On November 23, 2015 Dr. Wood again requested that appellant's claim be expanded to include osteoarthritis and tear of the lateral cartilage of meniscus of the knee.

By decision dated December 10, 2015, OWCP denied the request to expand acceptance of appellant's claim to include right knee osteoarthritis.⁴

On December 15, 2015 counsel requested a telephonic hearing before an OWCP representative, which was held on August 2, 2016. Regarding any incidents, accidents, or falls after November 26, 2005, appellant testified that, on one occasion, she sought medical treatment after she accidentally bumped her knee on a door. She also testified that her knee used to give way, but that she had not fallen.

Counsel subsequently provided additional progress reports from Dr. Woods dated October 7, 2014, January 27, November 23, and December 1, 2015. In the October 7, 2014 and January 27, 2015 reports, Dr. Woods noted appellant's diagnoses. In the November 23, 2015 report, he related that she had reached maximum medical improvement (MMI) for her patellofemoral arthritis of the right knee. In the December 1, 2015 report, Dr. Wood related that appellant had sustained aggravation of right knee osteoarthritis and that this condition had reached MMI.

By decision dated September 23, 2016, an OWCP hearing representative affirmed the December 12, 2015 decision. OWCP found that appellant had not submitted a report from a physician explaining how the diagnosed condition of preexisting right knee osteoarthritis was causally related to the accepted November 26, 2005 employment injury.

OWCP received a May 11, 2017 report from Dr. Laurel Beverly, a Board-certified orthopedic surgeon. Dr. Beverly noted appellant's history of injury and treatment and explained that appellant had been seen for right knee pain for over 10 years. She noted the history as related by appellant, which included that other physicians had diagnosed osteoarthritis. Dr. Beverly diagnosed right knee patellofemoral arthritis, with weakness.

A May 11, 2017 x-ray of the right knee read by Dr. Christina Cavalier Clemow, a Board-certified diagnostic radiologist, revealed moderate degenerative changes.

In a letter dated August 2, 2017, counsel requested reconsideration and submitted additional evidence.

⁴ OWCP has not issued a formal decision as to whether acceptance of appellant's claim should be expanded to include tear of the lateral cartilage of the right knee.

In a July 18, 2017 report, Dr. Catherine Watkins Campbell, a family medicine specialist, noted appellant's history of injury and advised that appellant complained of unilateral right knee pain since the date of injury. She noted that following appellant's October 4, 2007 surgery, which failed to alleviate her pain issues, appellant continued to work as a letter carrier, while wearing a knee brace until she retired. Dr. Watkins Campbell examined appellant's right knee, reviewed the diagnostic reports of record and diagnosed chronic bilateral patellar tendinitis of the knees. She found patellofemoral osteoarthritis in both knees, which existed prior to the injury. Dr. Watkins Campbell explained that surgical treatment of the patellar tendinitis involved filing down the bony protuberances of the patella into the superior and inferior tendons, which subsequently caused an accelerated regrowth of the bony protuberances. She opined "[t]he surgical treatment of the patellar tendinitis is felt to have directly aggravated the preexisting patellofemoral osteoarthritis in the right knee in excess of the similar condition present in the left knee. The inciting traumatic event that occurred on November 27, 2005 is directly, proximally and causally related to the substantial aggravation of patellofemoral osteoarthritis in the right knee." Dr. Watkins Campbell opined "In my medical opinion, the effects of the injury are the direct and proximate cause of the diagnoses that I cited above. This is based on a reasonable medical probability. There may be other causes for this medical problem, but one of the causes is clearly the activities of the work described as performed by the injured worker as described above."

On September 28, 2017 OWCP requested that the district medical adviser (DMA) review Dr. Watkins Campbell's report.

In report dated October 6, 2017, the DMA, Dr. Todd Fellars, a Board-certified orthopedic surgeon, noted that he had reviewed the statement of accepted facts and the medical evidence. He explained that appellant's right knee osteoarthritis preexisted the employment injury and there was no objective evidence that her arthroscopic surgery worsened her osteoarthritis. Dr. Fellars explained that the nature history of the osteoarthritis was that it worsened over time. He opined that "[t]herefore, years later, one cannot return to the time of arthroscopy and state that was the cause for [appellant's] worsening given that this condition will often worsen with or without surgery. Therefore, I respectfully disagree with his opinion that osteoarthritis is associated with her work claim." Dr. Fellars concluded his opinion noting that he disagreed with the request for expansion of appellant's claim.

By decision dated October 18, 2017, OWCP denied modification of its prior decision. It found that appellant had not established that her right knee osteoarthritis was causally related to the accepted employment injury.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁵

⁵ *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁶ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).⁷

OWCP's procedures provide:

"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 rationalized medical opinion which differentiates between the effects of the work-related injury or disease and the preexisting condition."⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include right knee osteoarthritis as causally related to her November 26, 2005 employment injury.

OWCP received several reports from Dr. Wood. In a July 7, 2015 progress note, Dr. Wood noted a several-week history of new knee pain, which occurred after a day of prolonged standing and grilling. He noted that appellant had a possible new tear of the anterior horn or lower medial and chronic patellofemoral syndrome and osteoarthritis of the right knee. However, this report offered no opinion causally relating her right knee osteoarthritis to the accepted employment incident. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.⁹

In a report dated August 27, 2015, Dr. Wood noted that he had treated appellant for several years for her right knee condition, which she aggravated while working for the employing establishment. He explained that, although she suffered from preexisting osteoarthritis of her patellofemoral joint, he believed that her arthritic symptoms were aggravated by work that involved squatting, stairs, heavy pushing/pulling, lifting, or walking on grades. The Board notes that Dr. Wood did not explain pathophysiologically how the November 26, 2005 employment incident caused or aggravated the diagnosed conditions.¹⁰

⁶ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Casual Relationship*, Chapter 2.805.3(e) (January 2013).

⁹ *A.S.*, Docket No. 19-0915 (issued November 22, 2019); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁰ *See K.W.*, Docket No. 10-0098 (issued September 10, 2010).

OWCP also received a September 15, 2015 progress note in which Dr. Wood discussed appellant's MRI scan results and noted that she was aware that surgery could worsen her osteoarthritis symptoms for a prolonged period of time. Dr. Wood did not address whether her osteoarthritis was related to her work injury. Additionally, he provided treatment notes and reports dated October 7, 2014 and January 27, July 7, September 15, November 23, and December 1, 2015. Likewise in a treatment note, dated November 23, 2015, Dr. Wood advised that appellant reached MMI for her right patellofemoral osteoarthritis. However, all of his reports are of no probative value as he did not offer an opinion as to the cause of the condition.¹¹

In a May 11, 2017 report, Dr. Beverly noted appellant's history of injury and treatment and explained that appellant was seen for right knee pain for over 10 years. Dr. Beverly noted the history as related by appellant, which included that another physician had diagnosed arthritis. She diagnosed right knee patellofemoral arthritis, with weakness. However, she did not provide her own opinion regarding causal relationship. As previously noted, a medical opinion that lacks an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹²

In a July 18, 2017 report, Dr. Watkins-Campbell noted appellant's history of injury, which included complaints of unilateral right knee pain since the date of injury. She found that appellant had preexisting patellofemoral osteoarthritis in both knees, which existed prior to the injury. Dr. Watkins-Campbell opined that surgical treatment of the patellar tendinitis is felt to have directly aggravated the preexisting patellofemoral osteoarthritis in the right knee in excess of the similar condition present in the left knee. She opined that the inciting traumatic event that occurred on November 27, 2005 is directly, proximally and causally related to the substantial aggravation of patellofemoral osteoarthritis in the right knee. Dr. Watkins Campbell indicated that there may be other causes for this medical problem, but one of the causes is clearly the activities of the work described as performed by the injured worker as described above. The Board finds that she did not explain the objective basis for her opinion. Dr. Watkins Campbell did not describe objective findings documenting an aggravation of the preexisting right knee osteoarthritis following the surgical procedure.¹³ A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is insufficient to meet a claimant's burden of proof.

Dr. Fellars, the DMA, in his October 6, 2017 report explained that appellant's right knee osteoarthritis was not caused by the work injury of November 26, 2005. He provided an opinion that her osteoarthritis preexisted the condition and there was no objective evidence that the arthroscopic surgery performed worsened her osteoarthritis. Furthermore, Dr. Fellars explained that the natural history of the osteoarthritis was that it worsened over time. He opined that "[t]herefore, years later, one cannot return to the time of arthroscopy and state that was the cause for [appellant's] worsening given that this condition will often worsen with or without surgery." The Board finds that Dr. Fellars' report is based upon a proper history of injury and provides a well-rationalized opinion as to why the right knee osteoarthritis condition is not a work-related

¹¹ *Supra* note 9.

¹² *Id.*

¹³ *See J.M.*, Docket No. 14-1311 (issued April 28, 2015).

condition. As there is no other medical evidence of record sufficient to establish that the claim should be expanded to include this additional condition, the DMA's report is therefore entitled to the weight of the medical evidence.

OWCP also received diagnostic reports. However, the Board has explained that diagnostic studies lack probative value as they do not address whether an employment incident caused the diagnosed condition.¹⁴

Because the medical evidence of record is insufficient to establish causal relationship between appellant's right knee osteoarthritis and the accepted employment injury, the Board finds that she has not met her burden of proof.

On appeal counsel argues that OWCP failed to adjudicate the claim in accordance with the standard of causation and that OWCP failed to give deference to the findings of the attending physician. As found above, the medical evidence of record contains no reasoned explanation of how the November 26, 2005 employment injury aggravated appellant's preexisting right knee osteoarthritis.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include right knee osteoarthritis as causally related to her November 26, 2005 employment injury.

¹⁴ *F.S.*, Docket No. 19-0205 (issued June 19, 2019).

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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