

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

M.M., Appellant	)	
	)	
and	)	<b>Docket No. 20-1524</b>
	)	<b>Issued: April 20, 2021</b>
U.S. POSTAL SERVICE, CAMBRIDGE-	)	
CENTRAL SQUARE MAIN POST OFFICE,	)	
Cambridge, MA, Employer	)	
	)	

*Appearances:*  
John L. DeGeneres, Jr., Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 19, 2020 appellant, through counsel, filed a timely appeal from an August 11, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> Pursuant to the

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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 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> Appellant, through counsel, submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, counsel asserted that oral argument should be granted in order for appellant to directly respond to any questions or concerns the Board may have regarding the problematic and recurring issues associated with the case. The Board, in exercising its discretion, denies appellant's request for oral argument finding that the arguments on appeal could adequately be addressed based on the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

Federal Employees' Compensation Act<sup>3</sup> 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 an aggravation of a bilateral knee condition causally related to the accepted factors of his federal employment.

### **FACTUAL HISTORY**

On October 3, 2013 appellant, then a 58-year-old clerk and bulk mail technician, filed an occupational disease claim (Form CA-2) alleging that on or before September 3, 2013 he sustained a permanent acceleration of bilateral knee osteoarthritis due to factors of his federal employment including standing, lifting, twisting, pivoting, and climbing stairs.<sup>4</sup> In an accompanying statement, he recounted his work history and explained that on July 5, 1981 he sustained significant bilateral knee injuries in a nonoccupational motor vehicle accident when his moped was struck by a car. Appellant recovered from those injuries and began work at the employing establishment as a full-duty distribution clerk in September 1986. His duties involved standing and throwing parcels into hampers for five hours a day, requiring him to twist and pivot on his lower extremities. In 1989 appellant transferred to another facility where he worked as a window clerk, standing for eight hours a day, with intermittent bending, lifting, and turning. In 1990 he transferred to another station to work as a bulk mail technician, sorting parcels for six to eight hours a day while standing on a cement floor. He also performed window clerk duties. Beginning in 2005, appellant experienced increasing bilateral knee pain and ambulated with crutches. He was diagnosed with bilateral knee arthritis. Appellant underwent a total left knee arthroplasty on June 21, 2006, and a total right knee arthroplasty on June 23, 2008.

In a September 23, 2013 report, Dr. Byron V. Hartunian, an orthopedic surgeon specializing in sports medicine, reviewed official position descriptions of appellant's duties and summarized medical records. On examination, he found limited flexion and extension of both knees, ligamentous laxity to valgus stress bilaterally, and severe tenderness to palpation of the right knee. Dr. Hartunian diagnosed status post total right and left knee replacement for end-stage degenerative arthritis, and mild medial collateral ligament laxity of both knees. He opined that while nonoccupational trauma from the 1981 moped accident possibly contributed to the progression of degenerative changes of both knees, this did not negate the contribution of strenuous employment activities in the development of progressive bilateral knee arthritis. Dr. Hartunian explained that prolonged standing and repetitive lifting and turning for 27 years accelerated articular surface loss, permanently reducing the joint spaces in both knees. This permanently hastened the preexistent degenerative disease process and such work factors were significant causative factors.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> Prior to the present claim, under OWCP File No. xxxxxx373, appellant claimed a March 28, 1988 left knee injury when he caught his left foot in a plastic band and twisted his left knee. OWCP closed the claim and subsequently destroyed the file.

In a November 20, 2013 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of his claim. In a letter of even date, it also requested additional evidence from the employing establishment. OWCP afforded both parties 30 days to submit the requested information.

In response, C.O., an employing establishment manager, submitted a December 4, 2013 statement confirming that appellant's work duties beginning in 2007 required him to stand for prolonged periods, bend, lift, stoop, and twist while processing mail.

In a December 10, 2013 report, Dr. Hartunian opined that appellant's job duties of prolonged standing, walking, twisting, pivoting, bending, stooping, climbing, and reaching accelerated the progression of degenerative osteoarthritis in both knees, resulting in bilateral knee replacements.

By decision dated January 30, 2014, OWCP denied appellant's claim, finding that he had not submitted sufficient medical evidence to establish a medical condition causally related to the accepted factors of his federal employment.

On February 3, 2014 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. Following a preliminary review, by decision dated May 6, 2014, the hearing representative set aside the January 30, 2014 decision and directed OWCP to refer appellant for a second opinion examination to obtain a rationalized medical opinion on causal relationship.

On remand OWCP referred appellant, the case record, and a statement of accepted facts (SOAF) to Dr. Stanley Hom, a Board-certified orthopedic surgeon, for a second opinion examination and opinion regarding whether he sustained an employment-related knee condition. In a July 17, 2014 report, Dr. Hom reported his physical examination findings and noted that appellant complained of bilateral knee pain and had osteoarthritis in both knees. He diagnosed post-traumatic degenerative joint disease of both knees. Dr. Hom noted that while all of appellant's activities would contribute to the gradual progression of post-traumatic arthritis, his work activities were not a "major or predominant cause of his progressive degenerative joint disease and/or need for treatment."

By decision dated September 4, 2014, OWCP denied the claim, according the weight of the medical evidence to the second opinion examiner, Dr. Hom. Appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary, by decision dated January 13, 2015, the hearing representative set aside the September 4, 2014 decision and directed OWCP to obtain a supplemental report from Dr. Hom differentiating between the natural progression of the underlying traumatic osteoarthritis and any effects of the accepted work activities.

On remand, OWCP obtained an April 13, 2015 report from Dr. Hom in which he opined that appellant's work activities were likely factors in progression of bilateral knee osteoarthritis, but not a predominant cause.

By decision dated May 29, 2015, OWCP determined that appellant had not met his burden of proof to establish a bilateral knee condition causally related to the accepted factors of his federal employment. It found that the weight of the medical evidence with respect to the matter rested with the opinion of Dr. Hom.

Appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. Following a preliminary review, by decision dated October 13, 2015, the hearing representative set aside the May 29, 2015 decision and directed OWCP to refer appellant to a new second opinion examiner as Dr. Hom was unable to clarify his opinion on causal relationship.

On remand OWCP referred appellant, the case record, a SOAF, and a list of questions to Dr. Christopher Geary, a Board-certified orthopedic surgeon, for a second opinion examination and opinion regarding whether he sustained an employment-related bilateral knee condition.

In a June 30, 2016 report, Dr. Geary reported his physical examination findings and reviewed the medical record and SOAF. He opined that appellant's work activities did not cause, accelerate, aggravate, or materially alter the course of bilateral knee osteoarthritis as there was no record of a traumatic employment injury. Dr. Geary noted that the accepted work factors would have caused recurrent, temporary aggravations of underlying osteoarthritis, but would not have altered the course of the condition.

OWCP subsequently found a conflict between the opinions of Dr. Hartunian, for appellant, and Dr. Geary, for the government, regarding whether appellant sustained an employment-related bilateral knee condition. It referred appellant, the case record, a SOAF, and a list of questions to Dr. Jonathan W. Sobel, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a January 31, 2017 report, Dr. Sobel discussed his review of the medical records and SOAF. On examination, he noted well-healed surgical scars on both knees, slightly restricted range of motion of both knees, and slight posterior medial instability of the left knee with gentle stress. Dr. Sobel reviewed x-rays of the lower extremities dating from 2005 onward, which demonstrated progressive post-traumatic osteoarthritic changes, greater on the left, with deformity of the bony surfaces, malalignment, and some medial compartment collapse. He opined that the medical evidence of record did not indicate that appellant's job duties caused or accelerated the claimed conditions as compared to activities of daily living. Dr. Sobel explained that it appeared that there were no specific occupational injuries or repetitive trauma that would cause or accelerate osteoarthritis of the knees. He opined that the 2006 and 2008 total knee arthroplasties were necessitated solely by preexisting bilateral knee conditions and the natural progression of arthritis following the 1981 moped accident. Dr. Sobel concluded that appellant's federal employment did not accelerate or precipitate appellant's bilateral knee conditions.

By decision dated April 28, 2017, OWCP determined that appellant had not met his burden of proof to establish a bilateral knee condition causally related to the accepted factors of his federal employment. It found that the special weight of the medical evidence rested with the impartial medical opinion of Dr. Sobel.

On May 11, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. During the hearing, held on September 27, 2017, counsel contended that the definitions of acceleration and causation provided to Dr. Geary and Dr. Sobel were improper. He also argued that Dr. Sobel's opinion was speculative and equivocal.

Appellant submitted documents related to his claim for a March 28, 1988 left knee injury under OWCP File No. xxxxxx373.

In a September 25, 2017 report, Dr. Hartunian opined that prolonged standing, walking, bending, stooping, pivoting, climbing, and reaching while in the performance of duty constituted impact loading activities that exerted repeated local stresses to the lower extremities, causing articular cartilage loss. He outlined his disagreement with the findings of Dr. Geary and Dr. Sobel and contended that "the lack of a discrete traumatic work-related injury" did not preclude that impact loading activities contributed to the progression of appellant's bilateral knee arthritis.

By decision dated December 8, 2017, OWCP's hearing representative set aside the April 28, 2017 decision and directed OWCP to obtain a supplemental report from Dr. Sobel indicating whether the medical evidence pertaining to the prior claim and Dr. Hartunian's September 25, 2017 report would alter his opinion on causal relationship.

Dr. Sobel submitted a January 16, 2018 report noting his review of the additional records. He opined that the accepted work factors were not competent to accelerate or aggravate bilateral knee osteoarthritis as they did not "rise above the level of normal activities" of daily living. Dr. Sobel disagreed with Dr. Hartunian's characterization of osteoarthritic aggravation as permanent. In a January 24, 2018 report, he reiterated that the accepted work factors were not a "substantial or increased occupational risk" as they did not "rise above the level of normal activities" of daily living.

By decision dated February 2, 2018, OWCP determined that appellant had not met his burden of proof to establish a bilateral knee condition causally related to the accepted factors of his federal employment. It found that the special weight of the medical evidence continued to rest with the impartial medical opinion of Dr. Sobel.

On February 8, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a June 25, 2018 statement, he contended that Dr. Hartunian's reports were sufficient to meet appellant's burden of proof, and that Dr. Sobel's opinion could not represent the special weight of the medical evidence as they were insufficiently rationalized. Appellant submitted additional medical evidence relative to the prior claim.

In chart notes from May 24, 2013 through October 1, 2014, Dr. Lynch noted bilateral knee osteoarthritis with well-maintained bilateral knee prostheses.

In a June 15, 2018 report, Dr. Hartunian opined that it was medically certain that appellant's job duties over a 31-year period accelerated bilateral knee osteoarthritis. As appellant had sustained multiple traumas to his knees, impact loading activities such as standing, walking, twisting, and bending would accelerate and aggravate arthritis to a greater degree than in an

individual with no history of trauma. Dr. Hartunian noted that the combination of work factors and nonoccupational trauma hastened the chemical process that deteriorated cartilage over time.

By decision dated September 11, 2018, an OWCP hearing representative set aside OWCP's February 2, 2018 decision and remanded the claim to obtain a supplemental report on causal relationship from Dr. Sobel, reviewing Dr. Hartunian's June 15, 2018 report and additional medical records.

On February 6, 2019 OWCP referred an updated SOAF and the additional medical evidence to Dr. Sobel for an opinion regarding causal relationship." In an April 20, 2019 report, Dr. Sobel reviewed the updated SOAF and additional medical records. He opined that any effect of appellant's employment duties on bilateral knee osteoarthritis "pale[d] in comparison" to the effects of the 1981 nonoccupational accident and that the degenerative condition was not "unusually or suspiciously hastened" by employment factors. Dr. Sobel concluded that appellant's occupational descriptions did not appear to rise to the level of an occupational exposure and as such his job duties did not aggravate bilateral knee osteoarthritis "even to a minor extent," as his degenerative knee conditions were due only to the 1981 accident and "personal risk factors."

By decision dated May 10, 2019, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish that appellant's bilateral knee osteoarthritis was causally related to the accepted employment factors. It accorded Dr. Sobel's opinion the special weight of the medical evidence as the impartial medical examiner.

On May 17, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on September 30, 2019.

By decision dated December 13, 2019, the hearing representative affirmed the May 10, 2019 decision, finding that Dr. Sobel's opinion continued to represent the special weight of the medical evidence.

On July 28, 2020 appellant, through counsel, requested reconsideration. He contended that Dr. Geary's report was insufficiently rationalized to have created a conflict of opinion with Dr. Hartunian. Counsel also argued that Dr. Geary had not opined that any temporary aggravations of osteoarthritis had returned to baseline, and that Dr. Sobel's opinion was insufficiently rationalized to represent the special weight of the medical evidence.<sup>5</sup>

Appellant submitted March 5, 2020 personnel documents indicating that he separated from the employing establishment effective February 28, 2020.

By decision dated August 11, 2020, OWCP denied modification of the December 13, 2019 decision.

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<sup>5</sup> Appellant submitted March 5, 2020 personnel documents indicating that he separated from the employing establishment effective February 28, 2020.

## LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>6</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>7</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>8</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit 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 identified employment factors.<sup>9</sup>

Rationalized medical opinion evidence is required to establish causal relationship.<sup>10</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.<sup>11</sup> 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 factors.<sup>12</sup>

In a case in which 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>13</sup>

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<sup>6</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>7</sup> *See G.B.*, Docket No. 19-1510 (issued February 12, 2020); *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>8</sup> *K.V. and M.E., id.; Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> *L.G.*, Docket No. 20-0433 (issued August 6, 2020); *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

<sup>11</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>12</sup> *Id.*, *Victor J. Woodhams*, *supra* note 9.

<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See S.P.*, Docket No. 20-0332 (issued October 20, 2020); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

Section 8123(a) of FECA provides in pertinent part: “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”<sup>14</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>15</sup>

### ANALYSIS

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

OWCP properly determined that there was a conflict in the medical opinion evidence between Dr. Hartunian, an attending physician, and Dr. Geary, an OWCP referral physician, on the issue of whether appellant sustained an aggravation of a bilateral knee condition causally related to the accepted factors of his federal employment. In order to resolve the conflict, it properly referred appellant, pursuant to 5 U.S.C. § 8123(a), to Dr. Sobel for an impartial medical examination and an opinion on causation.

In a situation where OWCP secures an opinion from an impartial medical examiner for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, it has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.<sup>16</sup> If a given impartial medical specialist is unable to clarify or elaborate on his or her original report, or if his or her supplemental report is also vague, speculative, or lacking in rationale, OWCP must submit the case record and a detailed SOAF to a second impartial medical specialist for the purpose of obtaining his or her rationalized medical opinion on the issue.<sup>17</sup>

In reports dated January 31, 2017, and January 16 and 24, 2018, Dr. Sobel opined that the accepted employment factors did not aggravate or accelerate bilateral knee osteoarthritis as appellant’s job duties did not exceed the level of activities of daily living. In an April 20, 2019 report, Dr. Sobel reiterated that appellant’s job duties as a distribution clerk and bulk mail technician did not “rise to the level of an occupational injury” as there were no documented traumatic or repetitive use knee injuries and no unusual or suspicious acceleration of the condition. The Board has held that there is no necessity to show special exposure or unusual conditions of employment in the factors producing disability.<sup>18</sup> Additionally, Dr. Sobel opined that any effects of appellant’s federal job duties “pale[d] in comparison” to the bilateral knee trauma sustained in

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<sup>14</sup> 5 U.S.C. § 8123(a).

<sup>15</sup> *Id.*

<sup>16</sup> *S.R.*, Docket No. 17-1118 (issued April 5, 2018); *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232, 238 (1988).

<sup>17</sup> *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Talmadge Miller*, 47 ECAB 673 (1996); *Harold Travis*, 30 ECAB 1071, 1078 (1979).

<sup>18</sup> *Neal C. Evins*, 48 ECAB 252 (1996); *Geraldine Sutton*, 46 ECAB 1026 (1995).

the 1981 moped accident and unspecified “personal risk factors.” However, there is no apportionment under FECA.<sup>19</sup> Any contribution to appellant’s condition by the accepted employment factors would render his condition compensable.<sup>20</sup>

For this reason, his opinion did not sufficiently address the underlying issue of the present case and his reports cannot be afforded the special weight of an impartial medical specialist. Therefore, in order to resolve the conflict in medical opinion evidence, the case will be remanded to OWCP for referral of the case record, including an updated SOAF, and appellant to a new impartial medical specialist for examination and an opinion, which evaluates whether he sustained a bilateral knee condition causally related to the accepted factors of his federal employment.<sup>21</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

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

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<sup>19</sup> *J.B.*, Docket No. 17-2021 (issued August 8, 2018); *G.G.*, Docket No. 17-0504 (issued August 8, 2017); *Beth C. Chaput*, 37 ECAB 158 (1985) (it is not necessary to show a significant contribution of employment factors to a diagnosed condition to establish causal relationship).

<sup>20</sup> *Id.*

<sup>21</sup> *G.B.*, Docket No. 19-1510 (issued February 12, 2020); *see supra* note 17.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 11, 2020 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: April 20, 2021  
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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