

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

S.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Manchester, NH, Employer**

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**Docket No. 20-1458
Issued: March 5, 2021**

Appearances:

*John L. DeGeneres, Jr., Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On July 30, 2020 appellant, through counsel, filed a timely appeal from an April 20, 2020 merit decision² of the Office of Workers' Compensation Programs (OWCP).³ Pursuant to the

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 The Board notes that appellant, through counsel, specifically appealed from OWCP's April 20, 2020 merit decision. Although, OWCP's July 23, 2020 nonmerit decision denying appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a), is within the Board's jurisdiction, he has not appealed from that decision. Therefore, the Board will not address the July 23, 2020 decision in this appeal. 20 C.F.R. § 501.3(c)(4).

³ Appellant 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, it was asserted that oral argument should be granted because the issues in this case are recurring ones, and a dialogue with the Board would assist in resolving them. The Board, in exercising its discretion, denies appellant's request for oral argument because this matter requires an evaluation of the medical evidence presented. As such, the argument on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would therefore further delay issuance of a Board decision. 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 Act⁴ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a left knee condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On April 8, 2018 appellant, then a 64-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed arthritis in his left knee as a result of factors of his federal employment.⁵ He noted that he first became aware of his condition on July 15, 2015 and realized its relationship to his federal employment on May 24, 2017. Appellant stopped work on January 11, 2017.

In a development letter dated June 4, 2018, OWCP advised appellant of the factual and medical deficiencies of his claim. It asked him to complete a questionnaire to provide further details regarding the circumstances of his claimed injury and requested a narrative medical report from his treating physician, which contained a detailed description of findings and diagnoses, explaining how his work activities caused, contributed to, or aggravated his medical condition. In a separate development letter of even date, OWCP requested that the employing establishment provide a copy of appellant's position description and physical requirements of his position. It afforded both parties 30 days to respond. No response was received from either party.

By decision dated July 6, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the employment injury or event(s) occurred as alleged. OWCP explained that appellant had not responded to its development letter. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Thereafter, OWCP received a June 28, 2018 medical report by Dr. Eric R. Benson, a Board-certified orthopedic surgeon, who examined appellant's right knee and diagnosed unilateral primary osteoarthritis, right knee, and mechanical loosening of other internal prosthetic joint, subsequent encounter, right.

On July 2, 2019 appellant, through counsel, requested reconsideration of the July 6, 2018 decision.

In a June 24, 2019 employee statement, appellant described the various positions he held commencing in 1989 through his retirement in 2018, and the requisite employment duties, which included walking, ascending and descending stairs, lifting, carrying, entering and exiting a postal vehicle, squatting, twisting, reaching, pushing, and pulling.

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ The present claim was assigned OWCP File No. xxxxxx730. Appellant has a prior claim for a January 9, 2002 traumatic injury under OWCP File No. xxxxxx382, accepted for left knee strain. OWCP administratively combined File No. xxxxxx382 with appellant's claims for right knee injuries in File Nos. xxxxxx681 and xxxxxx667, with xxxxxx681 serving as the master file.

Appellant submitted medical evidence, including a June 28, 2019 medical report by Dr. John J. Walsh, Jr., a Board-certified orthopedic surgeon. Dr. Walsh noted that while he had not reviewed all of appellant's medical records, the medical records he reviewed contained a sufficiently complete and accurate factual and medical history upon which he could render a medical opinion. He described appellant's employment duties over the course of 29 years while working for the employing establishment. Dr. Walsh discussed examination findings, reviewed diagnostic results, and diagnosed end-stage osteoarthritis (DJD) of the left knee. He opined that appellant's diagnosed left knee condition was aggravated, accelerated, and precipitated by his repetitive work activities, which included walking, ascending and descending stairs, bending, lifting, carrying, stooping, squatting, entering and exiting a postal vehicle, climbing, twisting, turning, and kneeling for over the course of almost 30 years. Dr. Walsh indicated that appellant's medical records objectively supported his conclusion that the high-impact loading work activities engaged by appellant contributed to the development and progression of his arthritis. He explained that appellant's work activities caused a permanent aggravation of his osteoarthritis as his loss of cartilage space was irreversible and would not regrow. Dr. Walsh further explained that the cartilage interval of the left knee medial compartment was degraded to one millimeter and once the cartilage loss was aggravated in the biological and physical process described, the condition of the joint would never go back to any prior level of severity as the damage to the joint gliding cartilage surface(s) would never revert to a prior condition. He noted that articular cartilage has no blood supply and no ability to repair or regenerate so that once the joint gliding cartilage surfaces were destroyed they had no ability to heal. Dr. Walsh opined that the 29 years of physical activity from appellant's employment duties accelerated his arthritis because of the continuous walking, stooping, squatting, and stair climbing/descending. He further noted that without decades of the repetitive work duties appellant was required to perform, his osteoarthritis would not have progressed as fast as it did. Dr. Walsh discussed the mechanism of injury by stating that arthritis is a loss of articular cartilage surface. He reported that impact loading resulting from repeated local stresses causes and accelerates the progression of arthritis through a process of chronic inflammation. Appellant's employment duties as a letter carrier required constant and repetitive walking, standing, squatting, stooping, climbing, bending, lifting, carrying, stair climbing, and twisting activities. These impact-loading activities exerted repeated local stresses to his lower extremities and the arthritis was caused by a well-described biological/chemical process where excessive impact loading and repeated local stresses on the cartilage surface result in chronic inflammation. Dr. Walsh noted that the inflammation resulted in chemical changes within the cartilage, most significantly the loss of proteoglycans which was significant because proteoglycans were responsible for cartilage resilience. With less resilience, the cartilage became more susceptible to the wear and tear of the impact loading activities, which in turn resulted in an accelerated loss of articular cartilage due to those activities. Dr. Walsh noted that this process was evident in appellant's history and examination, and by his medical records documenting a progression of the arthritis while appellant was engaged in the impact-loading activities.

By decision dated September 27, 2019, OWCP affirmed the July 6, 2018 decision, as modified, finding that the evidence submitted by appellant was sufficient to establish that the employment injury or event(s) occurred as alleged. The claim remained denied, however, because the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed condition(s) and the accepted factors of his federal employment.

On December 6, 2019 appellant, through counsel, requested reconsideration.

By decision dated April 20, 2020, denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation period of FECA,⁷ that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁸ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁹

In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.¹⁰

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.¹¹ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹³

ANALYSIS

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

⁶ *Supra* note 3.

⁷ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

¹⁰ *S.C.*, *supra* note 7; *R.H.*, 59 ECAB 382 (2008).

¹¹ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

¹² *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

¹³ *See A.T.*, Docket No. 19-1972 (issued June 25, 2020); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

In a June 28, 2019 medical report, Dr. Walsh opined that appellant's employment duties as a letter carrier over the course of 29 years contributed to and accelerated his left knee osteoarthritis. He discussed appellant's medical history, reviewed diagnostic reports, and provided findings on physical examination of his left knee. Dr. Walsh discussed the mechanism of injury for this occupational disease claim.¹⁴ He defined arthritis as a failure and loss of articular cartilage surface, explaining that the progression of arthritis was accelerated through a biological/chemical process that occurs by which excessive impact loading and repeated local stresses which caused mechanical stresses on the cartilage surface, resulting in chronic inflammation. This inflammation resulted in an accelerated loss of articular cartilage in the affected areas, in this case in the lower extremities. Inflammation resulted in a chemical change within the cartilage as it activated degradative enzymes which caused the loss of the proteoglycans. Dr. Walsh noted that this loss of proteoglycans was significant because, among other reasons, proteoglycans are responsible for cartilage resilience. He explained that loading and local stresses arising from appellant's repetitive motion activities such as knee bending, walking, standing, kneeling, climbing, stooping, twisting, squatting, lifting, carrying, stair climbing, and twisting contributed to the development and progression of appellant's accelerated loss of articular cartilage and his left knee osteoarthritis. Dr. Walsh indicated that appellant's medical records contained objective support for causal relationship between his long-standing repetitive work activities and his left knee osteoarthritis.

The Board finds that his report provides sufficient rationale to require further development of the case record by OWCP.¹⁵ Dr. Walsh referenced objective medical findings demonstrating injury, expressed his opinion on causal relationship within a reasonable degree of medical certainty, and provided a pathophysiologic explanation as to the mechanism by which appellant's repetitive work duties would have resulted in his diagnosed condition(s).

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁶

The case shall therefore be remanded to OWCP for further development of the medical evidence in order to determine whether appellant sustained a left knee condition causally related to the accepted factors of his federal employment. On remand OWCP shall prepare a statement of accepted facts and refer appellant to specialist in the appropriate field of medicine for a second opinion examination. The referral physician shall provide a well-rationalized opinion as to whether the accepted employment factors caused, aggravated, or accelerated appellant's diagnosed condition(s).¹⁷ If the referral physician opines that the diagnosed condition(s) are not causally related to the employment incident, they must provide a rationalized explanation as to why their opinion differs from that articulated by Dr. Walsh. Furthermore, OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on

¹⁴ See *L.H.*, Docket No. 17-0947 (issued March 8, 2018).

¹⁵ See *R.R.*, Docket No. 18-0914 (issued February 24, 2020); *J.D.*, Docket No. 18-0270 (issued January 6, 2020).

¹⁶ *S.S.*, Docket No. 20-1141 (issued December 14, 2020); *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Phillip L. Barnes*, 55 ECAB 426 (2004).

¹⁷ *Supra* note 13 at Chapter 2.805.3e (January 2013); *M.B.*, Docket No. 20-0813 (issued October 29, 2020); *C.C.*, Docket No. 19-1631 (issued February 12, 2020); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *P.A.*, Docket No. 09-0319 (issued November 23, 2009).

frequent cross-referencing between files.¹⁸ OWCP File No. xxxxxx382 also involves an accepted left knee condition. Therefore, for full and fair adjudication, OWCP must administratively combine OWCP File Nos. xxxxxx730 and xxxxxx382 prior to referral to a second opinion physician. This will allow OWCP to consider all relevant claim files in adjudicating this claim.¹⁹ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's occupational disease claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 20, 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: March 5, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

¹⁹ *Id.* at Chapter 2.400.8(c)(1); *W.W.*, Docket No. 19-0884 (issued June 16, 2020); *L.P.*, Docket Nos. 18-1558, 181568 (issued June 21, 2019); *L.S.*, Docket Nos. 17-1863, 17-1867, 17-1868 (issued April 18, 2018); *W.S.*, Docket No. 15-0969 (issued October 5, 2015); *C.C.*, Docket No. 14-1576 (issued March 9, 2015).