

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

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B.S., Appellant))	
))	
and))	Docket No. 23-0715
))	Issued: April 10, 2024
U.S. POSTAL SERVICE, DETROIT POST))	
OFFICE, Detroit, MI, Employer))	
_____))	

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

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 24, 2023 appellant, through counsel, filed a timely appeal from a March 15, 2023 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 March 15, 2023 decision, appellant submitted additional evidence to OWCP. 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 establish an injury in the performance of duty, as alleged.

FACTUAL HISTORY

On October 6, 2021 appellant, then a 50-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she injured cartilage in an unspecified knee due to factors of her federal employment when she slipped on a thin piece of ice while delivering mail and her leg went backward. She noted that she first became aware of her condition on May 20, 2020, and realized its relation to her federal employment on September 16, 2021. Appellant did not stop work.

In a September 20, 2021 statement, appellant alleged that she reported the January 2020 incident to a supervisor on the date of injury. She continued working until May 2020, when her knee symptoms worsened. Appellant also described an incident where her knee gave out when she descended stairs while delivering mail. She telephoned her duty station, finished delivering mail, returned to her duty station, completed an incident report, and went home. Appellant's treating physician, Dr. Peter Samet, a Board-certified physiatrist, asked her to come in on September 3, 2021 and ordered a magnetic resonance imaging (MRI) scan. Appellant underwent the MRI scan and returned to Dr. Samet on September 16, 2021. Dr. Samet then told her that her knee condition was employment related and that she required surgery. Appellant also attributed her condition to ascending and descending stairs while delivering mail during the winter and walking on cement six days a week for 10 years.

In a May 20, 2020 report, Dr. Samet recounted that appellant had been attacked by a dog while delivering mail. Appellant was knocked backwards and fell onto her buttocks. Dr. Samet noted appellant's complaints of bilateral knee pain, left worse than right, recurrent bilateral sacroiliac joint pain, and low back pain, improved with injections. He diagnosed sacroiliitis not elsewhere classified, and traumatic arthropathy of the left knee. Dr. Samet drained fluid from appellant's left knee and administered an intra-articular injection. He noted work restrictions.

OWCP received additional reports by Dr. Samet dated from May 29, 2020 through April 27, 2021, reiterating the history of a dog attack while at work, and repeating prior findings and diagnoses. Dr. Samet administered a series of intra-articular injections to appellant's left knee.

In a June 3, 2021 report, Dr. Samet diagnosed degenerative arthritis of the knees, and traumatic arthropathy of the right knee. He reiterated these diagnoses in a series of reports dated through August 4, 2021. Dr. Samet administered a series of intra-articular injections to the knees.

In a September 3, 2021 report, Dr. Samet recounted that appellant injured her right knee while delivering mail one week previously. Appellant's knee twisted and buckled, with the onset of medial joint line pain, swelling, and instability. Dr. Samet diagnosed sacroiliitis, and traumatic arthropathy of the knees. He held appellant off work.

In a September 16, 2021 report, Dr. Samet returned appellant to restricted-duty work. He opined that an MRI scan of the right knee demonstrated degenerative changes and a severe medial meniscal tear.⁴ Dr. Samet diagnosed degenerative arthritis and traumatic arthropathy of the knees.⁵

In an October 13, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

OWCP received additional reports from Dr. Samet dated September 28 through November 3, 2021, holding appellant off work.

In a November 10, 2021 report, Dr. Samet recounted a January 2, 2020 employment incident when appellant “slipped on ice and injured her left knee.” He noted that MRI scans verified tears in the cartilage and ligaments of the left knee and indicated that, as a result, appellant was unable to work and would require surgery and postoperative physical therapy. Dr. Samet held her off work pending surgery.

In a December 30, 2021 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a separate development letter also dated December 30, 2021, OWCP requested that the employing establishment clarify whether appellant claimed a traumatic injury or an occupational disease, provide copies of any paperwork or traumatic injury claim (Form CA-1) completed pursuant to a January 2020 employment incident when she slipped on ice, indicate whether appellant reported the January 2020 injury to a supervisor on the date of injury or thereafter; and provide a statement from the supervisor or employing establishment if appellant reported the injury. Additionally, it requested a supervisor’s statement on the accuracy of appellant’s statements explaining any points of disagreement with supportive evidence, a copy of appellant’s position description, a description of any tasks performed requiring physical exertion and the frequency and duration of these activities, precautions taken to minimize the effect of these activities, and an explanation of whether the tasks appellant performed differed from the official position description. OWCP afforded the employing establishment 30 days to respond. No response was received.

⁴ A September 9, 2021 MRI scan of the right knee demonstrated moderate-to-severe medial compartmental degenerative changes, mild-to-moderate patellofemoral compartment degenerative chondral changes, complex tearing, and partial maceration of the medial meniscus body and posterior horn with extrusion of the body.

⁵ A September 24, 2021 MRI scan of the left knee demonstrated a small-to-moderate knee joint effusion and a very small popliteal cyst, complex tearing of the body, posterior horn, and posterior root medial meniscus, with radial and longitudinal components, minimal undersurface to longitudinal tearing of the lateral meniscus body, severe medial tibiofemoral compartment chondromalacia with large regions of full-thickness cartilage loss, a small region of reactive subchondral signal change at the medial tibial plateau adjacent to the medial meniscal body, mild lateral tibiofemoral compartment chondromalacia, deep cartilage loss and fissuring along the lateral patellar facet and patellar apex with moderate amount of adjacent reactive subchondral signal change, and cartilage fraying and fissuring along the trochlea with a very small region of reactive signal change in the lateral aspect of the lateral trochlea.

Appellant thereafter submitted a duty status report (Form CA-17) by Dr. Samet dated January 18, 2022, recounting that appellant had “slipped on ice at work” in January 2020. Dr. Samet submitted a separate report of even date that indicated appellant was disabled from work.

In a January 3, 2022 statement, appellant recounted that she had slipped on ice in a driveway while delivering mail on January 8, 2020 at approximately 10:30 a.m. She had not fallen, but her knee popped backward. Appellant returned to her duty station at 11:00 a.m. and completed and submitted an incident report.

In a January 7, 2022 statement, appellant asserted that she had completed a traumatic injury claim (Form CA-1) on the date of injury but that management at the station had since changed. She attributed the claimed condition to stooping while entering and exiting her delivery vehicle, pulling and pushing a gurney to load and unload her delivery vehicle, and bending to retrieve packages.

By decision dated March 16, 2022, OWCP denied appellant’s occupational disease claim, finding that she had not established the implicated factors of her federal employment. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

On December 15, 2022 appellant requested reconsideration and submitted additional evidence.

OWCP received reports by Dr. Samet dated from September 13, 2021 through March 17, 2022 reiterating previous diagnoses. Dr. Samet held appellant off work.

Appellant underwent left knee arthroplasty on March 29, 2022. Dr. Samet submitted postsurgical progress notes dated from April 13 through September 13, 2022. Appellant returned to work on September 1, 2022.

In reports dated September 13 and October 14, 2022, Dr. Samet diagnosed traumatic arthropathy and degenerative arthritis of the knees.

In an October 25, 2022 statement, appellant asserted that on January 8, 2020 while delivering mail, she slipped on thin ice and her left knee and leg went backward. She began to experience left knee pain on May 20, 2020 and sought treatment with Dr. Samet. A September 24, 2021 MRI scan demonstrated degenerative joint disease in the knees. Appellant attributed her condition to prolonged walking on uneven surfaces while carrying a mail satchel, pushing or pulling gurneys, and repetitive bending and heavy lifting.

In a November 23, 2022 letter, Dr. Samet related that, on January 8, 2020, appellant had slipped on thin ice and injured her left knee. He opined that appellant’s degenerative joint disease of the knees, with tears in the ligaments and cartilage, was “common among letter carriers because their job requires constant weight bearing walking.” Repetitive walking on stairs and uneven surfaces “caused wear and tear on the cartilage around the joints in her knees that she developed” degenerative joint disease. He opined that appellant’s job duties caused degenerative joint disease

in the knees. Dr. Samet added that the January 8, 2020 employment incident “contributed to and aggravated her condition.” He recommended total right knee arthroplasty.⁶

By decision dated March 15, 2023, OWCP denied modification of the March 16, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ 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 timely filed within the applicable time limitation of FECA,⁸ 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.⁹ 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.¹⁰

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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.¹¹

OWCP’s procedures provide that, if an employing establishment fails to respond to a request for comments on a claimant’s allegations, OWCP’s claims examiner may usually accept the claimant’s statements as factual. OWCP’s procedures further provide that the Board has consistently held that allegations unsupported by probative evidence are not established and that

⁶ On December 10, 2022 appellant filed a series of claims for compensation (Form CA-7) for disability from work for the periods July 16 through 29, 2021, August 28, 2021 through July 15, 2022, and July 30 through September 9, 2022.

⁷ *Supra* note 2.

⁸ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁹ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

¹⁰ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

¹¹ *See A.S.*, Docket No. 22-0861 (issued April 27, 2023); *A.S.*, Docket No. 19-1766 (issued March 26, 2020); *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).

OWCP's claims examiner should consider the totality of the evidence and evaluate any inconsistencies prior to making a determination.¹²

ANALYSIS

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

Appellant alleged that in January 2020 she slipped on ice and injured cartilage in her knee. In a January 3, 2022 statement, she noted a January 8, 2022 injury. Appellant elaborated in statements dated September 20, 2021, and January 7 and October 25, 2022, that additional employment factors contributed to her condition, including an incident when her knee gave out while descending stairs, and other instances when she was ascending stairs and walking on cement while delivering mail over a prolonged period, stooping while entering and exiting her delivery vehicle, engaging in repetitive bending and lifting, pushing and pulling gurneys, and walking on uneven surfaces while carrying a mail satchel.

Appellant recounted additional employment injuries to Dr. Samet. In reports dated from May 20, 2020 through April 27, 2021, Dr. Samet noted that appellant had been attacked by a dog while delivering mail on an unspecified date and had fallen onto her buttocks. In a September 3, 2021 report, he recounted that appellant reported injuring her right knee when she twisted the knee while delivering mail one week previously. In his November 10, 2021 report and November 23, 2022 letter, Dr. Samet recounted a January 2020 employment incident in which appellant slipped on ice.

In a development letter dated December 30, 2021, OWCP requested that the employing establishment address the accuracy of appellant's allegations, clarify whether she claimed a traumatic injury or occupational disease, provide any relevant documentation of a January 2020 employment incident where appellant slipped on ice, describe her duties requiring physical exertion, provide her position description and explain any discrepancy between the duties presented and appellant's work activities, and specify any precautions taken to minimize the effect of these activities. The employing establishment, however, did not respond to OWCP's December 30, 2021 letter and did not provide the requested statements or documentation.

Accordingly, the Board finds that OWCP must further develop the factual aspect of this case. The record reflects that the information regarding the nature, frequency, and duration of appellant's job duties and any prior injuries claimed is incomplete. Moreover, the employing establishment should provide any relevant information that is normally in its exclusive control.¹³

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5d(1) (June 2011). *V.H.*, Docket No. 19-0827 (issued November 20, 2019); *see also R.B.*, Docket No. 21-0962 (issued February 23, 2023); *L.B.*, Docket No. 17-1671 (issued November 6, 2018); *R.B.*, Docket No. 14-1663 (issued September 29, 2015).

¹³ *See generally, M.M.*, Docket No. 23-0009 (issued December 15, 2023); *P.K.*, Docket No. 21-0967 (issued December 3, 2021).

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹⁴ While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹⁵ Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁶ The Board finds, therefore, that the case must be remanded to OWCP. On remand, OWCP shall obtain from the employing establishment the information requested in its December 30, 2021 development letter. The Board notes that if the employing establishment does not respond, OWCP may accept appellant's description of her other occupational employment factors, including ascending and descending stairs, prolonged walking on uneven surfaces, loading and unloading her postal vehicle, and entering and exiting her deliver vehicle, as factual.¹⁷ Following this and other such development deemed necessary, OWCP shall issue a *de novo* decision.¹⁸

CONCLUSION

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

¹⁴ *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

¹⁵ *C.L.*, Docket No. 20-1631 (issued December 8, 2021); *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁶ *T.K.*, Docket No. 20-0150 (issued July 9, 2020); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

¹⁷ *Supra* note 12.

¹⁸ On return of the case, OWCP shall administratively combine all of a appellant's relevant cases for similar injuries with the current claim.

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2023 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 10, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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