

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

K.M., Appellant)	
)	
and)	Docket No. 24-0046
)	Issued: May 21, 2024
U.S. POSTAL SERVICE, NORTH TEXAS)	
PROCESSING & DISTRIBUTION CENTER,)	
Coppell, TX, Employer)	
)	

Appearances:
Appellant, pro se
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 17, 2023 appellant filed a timely appeal from July 28 and September 12, 2023 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the September 12, 2023 decision, appellant submitted additional evidence to OWCP and on appeal to the Board. 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.*

FACTUAL HISTORY

On April 27, 2023 appellant, then a 60-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained injuries due to factors of his federal employment, including his repetitive work duties. He alleged that pushing, pulling, lifting, and casing mail caused injury to his neck, shoulders, and back; reaching/stooping in his mail delivery vehicle caused injury to his neck; and walking/standing on concrete for four to five hours per day caused injury to his feet. Appellant noted that he first became aware of his claimed conditions and their relation to factors of his federal employment on March 23, 2023. On the reverse side of the claim form appellant's supervisor indicated that the employing establishment would challenge appellant's claim "for fact of injury and performance of duty." OWCP assigned the claim OWCP File No. xxxxxx874.³

In a May 1, 2023 letter, the employing establishment challenged appellant's claim, asserting that he could not have sustained a new occupational employment injury due to work duties as he had not performed his regular repetitive job duties in over two years.

In a May 16, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond.

In an undated factual statement received by OWCP on May 23, 2023, appellant asserted that, in addition to the previously accepted knee conditions, he sustained work-related injuries to his neck, shoulders, back, and feet. He described his work duties, which he had performed for 17 years prior to approximately mid-2021, including lifting and carrying heavy buckets of mail, reaching over his head to case mail, twisting to load mail trays into containers, pushing heavy containers loaded with mail and loading them into a truck, driving a large truck, and walking over six hours per day to deliver mail while carrying a heavy mail pouch. Appellant indicated that, from October 2021 to the time he stopped work for left knee surgery in April 2022, he performed all of these duties except for driving a truck. He acknowledged that he had injuries from military service prior to starting work for the employing establishment but asserted that his activities as a postal worker aggravated those injuries and caused new conditions. Appellant advised that he did not engage in any nonwork-related activities that required heavy lifting or extensive walking.

Appellant submitted a March 23, 2023 report wherein Dr. Diane S. Litke, a Board-certified orthopedic surgeon, noted that appellant carried out repetitive work duties at the employing establishment over the course of 17 years before stopping work in April 2022 for left knee surgery. She described appellant's work duties, including lifting, handling, carrying, casing, and delivering mail, and noted that approximately seven years prior appellant experienced increased stress to his body when he started using a larger delivery truck and there was an increase in the mail volume he handled. Dr. Litke discussed appellant's complaints of pain and other symptoms in his neck, shoulders, back, and feet, and summarized the findings on diagnostic testing. She detailed the findings of her physical examination. Appellant exhibited tenderness to palpation and positive

³ At the time appellant filed the April 27, 2023 Form CA-2, appellant had been off work since May 5, 2022 due to a prior occupational disease claim, assigned OWCP File No. xxxxxx802, which OWCP accepted for left knee articular cartilage tear, internal derangement of both knees, and aggravation of osteoarthritis of both knees. OWCP has administratively combined OWCP File Nos. xxxxxx874 and xxxxxx802, with the latter serving as the master file.

impingement syndrome test results of both shoulders, as well as 5/5 strength in the main muscle groups of the shoulders. Dr. Litke reported that appellant had tenderness to palpation of the cervical and lumbar regions of the spine, and 5/5 muscle strength and normal range of motion throughout the entire spine. Appellant exhibited tenderness to palpation of the plantar pads of both feet, as well as 5/5 muscle strength and normal range of motion in both feet/legs.

Dr. Litke diagnosed other disc degeneration of the cervical spine, other intervertebral disc degeneration of the thoracic and lumbar spine, bilateral unspecified nontraumatic rotator cuff tear/rupture, bilateral incomplete nontraumatic rotator cuff tear/rupture, and bilateral plantar fascial fibromatosis. She asserted that the same work duties that contributed to the accepted injuries to appellant's knees also contributed to injuries to his neck, shoulders, back, and feet. Dr. Litke indicated that it made no sense to her, from her perspective as an orthopedic surgeon, that OWCP would accept work-related conditions to appellant's knees, but would not accept that he sustained injuries to his neck, shoulders, back, and feet due to his repetitive work duties. She asserted that prior physicians of record did not adequately evaluate all of appellant's body regions and opined that it was improper to consider the injuries to his neck, shoulders, back, and feet as a "disease of life." With respect to appellant's preexisting conditions, Dr. Litke referenced his prior military-related conditions and indicated that he fully passed his physical examination prior to starting work for the employing establishment. She also referenced traumatic sprain injuries from 2007 and/or 2008 but asserted that they were not related to appellant "developing repetitive injuries."

Appellant also submitted magnetic resonance imaging (MRI) scans obtained on March 29, 2023 for the shoulders, cervical spine, thoracic spine, and lumbar spine. The MRI scans revealed, *inter alia*, early osteoarthritis and tendinitis without tearing of the left shoulder, early osteoarthritis, and tendinitis with low-grade articular-sided tearing of the right shoulder, and disc herniations and annular tears of the cervical, thoracic, and lumbar regions of the spine.

In an April 20, 2023 report, Dr. Litke provided examination findings and diagnoses that were similar to those contained in her March 23, 2023 report. Her discussion of the cause of appellant's present medical condition was also similar to that contained in her March 23, 2023 report. Dr. Litke again opined that it made no sense to her, from her perspective as an orthopedic surgeon, that OWCP would accept work-related conditions to appellant's knees, but would not accept that he sustained injuries to his neck, shoulders, back, and feet due to his repetitive work duties.

In a May 23, 2023 note, Dr. Litke indicated that she was clarifying her previously submitted opinion that appellant sustained severe cervical spine, bilateral shoulder, lumbar spine, and bilateral foot injuries due to the "heavy repetitive physical stress" from his work duties. She asserted that it did not make any sense that prior physicians found in June 2021 that appellant's work duties directly contributed to his bilateral knee conditions due to the repetitive stress from those duties, but then ignored conditions in other body parts that were exposed to work-related stress in the same way. Dr. Litke discussed the prior examinations conducted by physicians of record and argued that these physicians did not conduct adequate examinations and improperly found normal findings with respect to several body regions areas, including the shoulders and the spine from the cervical to the lumbar region. She referenced appellant's prior military-related conditions and indicated that he fully passed his physical examination prior to starting work for the employing establishment. Dr. Litke asserted that appellant's traumatic sprain injuries from 2007 and/or 2008 were not related to him "developing repetitive injuries." She indicated that the

findings of her April 29, 2023 report superseded those of her March 23, 2023 report. Dr. Litke described appellant's work duties and noted that he experienced increased stress to his body when he started using a larger delivery truck and there was an increase in the mail volume he handled. She discussed the diagnostic testing of record, noted that his work accelerated the degenerative conditions of his shoulders and back, and concluded that the following diagnoses were all related to the "same mechanism of injuries" that directly contributed to his accepted bilateral knee conditions: other disc degeneration of the cervical spine, other intervertebral disc degeneration of the thoracic and lumbar spine, bilateral unspecified nontraumatic rotator cuff tear/rupture, bilateral incomplete nontraumatic rotator cuff tear/rupture, and bilateral plantar fascial fibromatosis.

By decision dated July 28, 2023, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted factors of his federal employment.

On September 7, 2023 appellant requested reconsideration of the July 28, 2023 decision.

In an August 8, 2023 statement, appellant asserted that his prior claim, assigned OWCP File No. xxxxxx802, should have also been accepted for bilateral severe shoulder injuries, severe cervical spine/lumbar injuries, and bilateral feet/ankle injuries. He alleged that these additional conditions were directly related to the work duties that caused the previously accepted knee conditions. Appellant discussed his prior medical examinations and asserted that his current medical condition was not solely related to preexisting conditions.

Appellant submitted an August 10, 2023 note, wherein Dr. Litke argued that OWCP did not adequately consider all the evidence she produced prior to denying appellant's claim. Dr. Litke asserted that OWCP's claims examiner should have expanded the acceptance of appellant's original claim, assigned OWCP File No. xxxxxx802, to include "missing proven diagnosis codes." She maintained that appellant had no choice but to file a new claim. Dr. Litke questioned how it was possible for prior physicians to find that appellant's work duties directly contributed to his bilateral knee conditions, but then ignored conditions in other body parts that were also exposed to the same work-related stress. She asserted that neither appellant's military-related injury nor a 2007 work-related traumatic injury was the cause of his present problems. Dr. Litke further opined that appellant's nonwork-related activities, including playing golf, did not contribute to his medical condition.

In an August 31, 2023 report, Dr. Litke provided examination findings and diagnoses that were similar to those contained in her March 23 and April 20, 2023 reports. Her discussion of the cause of appellant's present medical condition was also similar to that contained in her March 23 and April 20, 2023 reports. Dr. Litke again opined that it made no sense to her, from her perspective as an orthopedic surgeon, that OWCP would accept work-related conditions to appellant's knees, but would not accept that he sustained injuries to his neck, shoulders, back, and feet due to his repetitive work duties. In her April 20, 2023 report, she also noted that appellant sustained "occupational injuries even though he has not worked in [two] years because this injuries [sic] were present before he stopped working and should have been included in his initial claim."

Appellant submitted additional copies of Dr. Litke's May 23, 2023 note and the March 29, 2023 MRI scans.

By decision dated September 12, 2023, OWCP denied modification of its July 28, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 filed with the applicable time limitation, 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.⁵ These are the essential elements of every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

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.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ 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.⁹ 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).¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition casually related to the accepted factors of his federal employment.

⁴ *Supra* note 1.

⁵ *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁶ *E.S.*, *id.*; *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *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).

⁸ *W.M.*, Docket No. 14-1853 (issued May 13, 2020); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹⁰ *Id.*; *Victor J. Woodhams*, *supra* note 7.

Appellant submitted March 23, April 20, and August 31, 2023 reports wherein Dr. Litke noted the findings of her physical examinations, provided diagnoses, and asserted that the same work duties that contributed to the accepted injuries to appellant's knees also contributed to injuries to his neck, shoulders, back, and feet. Dr. Litke indicated that it made no sense to her, from her perspective as an orthopedic surgeon, that OWCP would accept work-related conditions to appellant's knees, but would not accept that he sustained injuries to his neck, shoulders, back, and feet due to his repetitive work duties. With respect to appellant's preexisting conditions, Dr. Litke referenced his prior military-related conditions and indicated that he fully passed his physical examination prior to starting work for the employing establishment. She also referenced traumatic sprain injuries from 2007 and/or 2008, but asserted they were not related to appellant "developing repetitive injuries." In her August 31, 2023 report, Dr. Litke also noted that appellant sustained "occupational injuries even though he has not worked in [two] years because this injuries [sic] were present before he stopped working and should have been included in his initial claim." She, however, did not provide adequate medical rationale in support of her opinion on causal relationship. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.¹¹ Therefore, this evidence is insufficient to establish appellant's claim.

Appellant also submitted a May 23, 2023 note wherein Dr. Litke asserted that it did not make any sense that prior physicians found in June 2021 that appellant's work duties directly contributed to his bilateral knee conditions due to the repetitive stress from those duties, but then ignored conditions in other body parts that were exposed to work-related stress in the same way. She described appellant's work duties and indicated that his work accelerated the degenerative conditions of his shoulders and back. Dr. Litke concluded that his diagnoses were all related to the "same mechanism of injuries" that directly contributed to his accepted bilateral knee conditions. Appellant also submitted an August 10, 2023 note wherein Dr. Litke asserted that the OWCP claims examiner should have upgraded the acceptance of appellant's prior claim, accepted for knee conditions, to include "missing proven diagnosis codes." Dr. Litke questioned how it was possible for prior physicians to find that appellant's work duties directly contributed to his bilateral knee conditions, but then ignored conditions in other body parts that were also exposed to the same work-related stress. She asserted that neither appellant's military-related injury nor a 2007 work-related traumatic injury was the cause of his present problems. Dr. Litke further opined that appellant's nonwork-related activities, including playing golf, did not contribute to his medical condition. However, she did not provide adequate medical rationale in support of her opinion on causal relationship. As noted above, the Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.¹² Therefore, this evidence is insufficient to establish appellant's claim.

¹¹ *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹² *See id.*

Appellant also submitted several March 29, 2023 MRI scans. However, diagnostic studies, standing alone, lack probative value on causal relationship as they do not address whether employment factors caused the diagnosed conditions.¹³

As the medical evidence of record does not establish a medical condition causally related to the accepted factors of appellant's federal employment, he has not met his burden of proof.

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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 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

¹³ C.S., Docket No. 19-1279 (issued December 30, 2019).