United States Department of Labor
Employees' Compensation Appeals Board

M.D., Appellant	)	
and	)	**Docket No. 25-0122**
	)	**Issued: January 2, 2025**
U.S. POSTAL SERVICE, WEST ALLIS POST OFFICE, West Allis, WI, Employer	)	

Appearances:
Stephanie N. Leet, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 19, 2024 appellant, through counsel, filed a timely appeal from an October 3, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[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.*

ISSUE

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

FACTUAL HISTORY

On March 18, 2021 appellant, then a 56-year-old lead sales and services associate, filed an occupational disease claim (Form CA-2) alleging that he experienced weakness and constant pain in both knees, stabbing pain on the side of both knees, and giving out of the left knee due to factors of his federal employment including constant standing, moving empty and full containers and pallets of parcels, and walking up stairs. He noted that he first became aware of his conditions and their relationship to his federal employment on February 17, 2021.

OWCP, in a development letter dated March 22, 2021, informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In an April 13, 2021 response and completed questionnaire, appellant described his work duties and the physical demands of his position.

Appellant submitted medical evidence. In a doctor's first report of occupational injury or illness dated April 1, 2021, Dr. Francis Saigh, an attending Board-certified family practitioner, noted appellant's history of injury, discussed his examination findings, reviewed diagnostic studies, and diagnosed bilateral knee osteoarthritis. He opined that the diagnosed condition resulted from appellant's work duties, which included repetitive bending and lifting at the knees. Dr. Saigh indicated that biomechanically when appellant loaded the knee in flexion and then added an axial force *via* lifting parcels weighing up to 70 pounds, the joint space in the knee became compressed. He further noted that when this was performed over the course of repetition and years it caused osteoarthritis or loss of joint space. Dr. Saigh concluded that frequent, long term, and repetitive bending and lifting of the knee caused appellant's bilateral knee osteoarthritis.

OWCP also received a May 18, 2021 progress note from Dr. Ryan J. Kehoe, an attending Board-certified orthopedic surgeon. Dr. Kehoe discussed his examination findings and provided an assessment of neck pain.

On May 26, 2021 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Mysore S. Shivaram, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether he sustained a medical condition causally related to factors of his federal employment.

OWCP subsequently received an additional progress note dated May 27, 2021 from Dr. Kehoe who examined appellant and provided an assessment of bilateral knee pain.

In a June 16, 2021 report, Dr. Shivaram reviewed the SOAF and medical record, and noted that appellant underwent nonwork-related arthroscopic left knee surgery in 2021. On examination of both knees, he found no evidence of swelling, but observed mild varus deformity and

generalized tenderness. On examination of the left knee, Dr. Shivaram found a painless palpable Baker's cyst, no evidence of intraarticular effusion, 0 degrees of extension and 135 degrees of flexion, stable for valgus/varus stress, a negative Lachman test, negative pivot shift test, mild varus deformity, normal quadriceps strength, normal motor strength with knee flexors, extensors, hip flexors, extensors and abductors of the hip, normal range of motion and motor strength of the ankle, intact sensation in the left lower extremity, and normal circulatory status. On examination of the right knee, he found mild varus deformity, no intraarticular effusion, range of motion of 0 to 135 degrees, stable to valgus and varus stress with knee in extension and flexion, negative Lachman test, negative pivot shift test, good quadriceps strength, good motor strength with knee extensors and flexors, and good motor function of the hip and ankle. Sensory examination of the right lower extremity was normal. Circulatory status was normal. Dr. Shivaram reported that an x-ray of the left knee revealed evidence of mild degenerative arthritis. An x-ray of the right knee was normal. Dr. Shivaram provided a final diagnosis of mild degenerative arthritis of the left knee and normal examination of the right knee. He noted that appellant underwent nonwork-related left knee meniscectomy in 2001 for a nonwork-related injury sustained in 2001. Dr. Shivaram related that following this surgery, the knee was prone to develop degenerative changes, and as a result, appellant developed mild degenerative arthritis of the left knee. He further related that although appellant claimed that standing, lifting packages, going up and down stairs, and pushing at work caused his bilateral knee degenerative arthritis, his review of the literature indicated that there was insufficient evidence that these activities posed any risk factor for onset and development of arthritis. Dr. Shivaram indicated that a previous meniscectomy and genetic predisposition were risk factors for development of degenerative arthritis. He advised that since appellant was 56 years old, advancing age was a risk factor for the development of degenerative arthritis. Based on his review of the available x-rays, Dr. Shivaram advised that he had grade 2 Kellgren arthritis of the left knee and zero Kellgren arthritis of the right knee. Low and moderate levels of physical activity as described by appellant were not etiological factors for onset and progression of degenerative arthritis of the knee. Dr. Shivaram concluded that appellant's left knee osteoarthritis was related to his prior medial meniscectomy and unrelated to his work activities. He further concluded that clinical examinations and radiological findings of the right knee did not indicate the presence of osteoarthritis and even if there was evidence of arthritis in the right knee, it was unrelated to appellant's work activities. Dr. Shivaram concluded that any treatment for his knee problems was unrelated to his work activities as a distribution clerk.

By decision dated July 27, 2021, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted factors of his federal employment. It accorded the weight of the medical evidence to the June 16, 2021 second opinion report of Dr. Shivaram.

On April 4, 2022 appellant requested reconsideration and submitted additional medical evidence from Dr. Kehoe.

In a March 22, 2022 progress note, Dr. Kehoe discussed examination findings and provided an assessment of work-related bilateral knee injuries. He noted that the right knee was more meniscal in nature. Dr. Kehoe also noted that while the left knee was more arthritic, there was a meniscal tear where appellant's symptoms were medially.

In a March 8, 2022 progress note, Dr. Kehoe again provided an assessment of bilateral knee pain.

OWCP, by decision dated April 13, 2022, denied modification of the July 27, 2021 decision.

Thereafter, OWCP received an additional progress note dated April 12, 2022 from Dr. Kehoe wherein he discussed his examination findings and provided an additional assessment of other tear of the medial meniscus, current injury, right knee, subsequent encounter.

On April 13, 2023 appellant, through counsel, requested reconsideration of the April 13, 2022 decision. In support of the request, counsel submitted a February 6, 2023 report from Dr. Saigh. Dr. Saigh noted the physical requirements of appellant's lead sales and services associate position and his 2001 left knee arthroscopic surgery. He advised that constant standing and moving containers and pallets of parcels over many years of work at the employing establishment caused degenerative tearing of the right meniscus and aggravation of bilateral knee arthritis. Dr. Saigh opined that appellant's diagnosed conditions of bilateral knee arthritis and right meniscal tear were caused by repetitive motion, long hours of standing, and repetitive pushing and pulling large pieces of postal equipment. He explained that these job duties required appellant to repetitively bend his knees and load them in an axial manner with weight. Dr. Saigh further explained that the diagnosed conditions resulted from objective testing, x-rays, and an accompanying March 17, 2022 magnetic resonance imaging (MRI) scan. He indicated that appellant's repetitive work duties caused excessive amounts of axial pressure on the knees while he repeatedly pushed, pulled, and maneuvered large pieces of equipment, thereby causing the degeneration of articular tissue more rapidly than the course of natural aging. Dr. Saigh further indicated that appellant's osteoarthritis slowly occurred after his left knee surgery in 2001, but increasingly worsened due to his long hours of standing and repeatedly pushing and pulling postal equipment over several years at work. Despite osteoarthritis developing with age, this condition was accelerated due to his repetitive duties and long periods of standing and walking while working at the employing establishment. Dr. Saigh reviewed Dr. Shivaram's report and disagreed with his opinion that there was no causal relationship between appellant's bilateral knee condition and his accepted employment factors. He maintained that Dr. Shivaram did not provide medical reasoning, used generalities that appellant was predisposed to having arthritis due to his prior meniscectomy, did not elaborate on the outside factors which contributed to the accelerated process of appellant's bilateral knee osteoarthritis, did not cite the specific literature he relied on to support his finding that lifting, standing, sitting, and walking increased the risk factor for osteoarthritis, made a blanket statement that was not specific to someone working in appellant's position, and did not provide firm medical rationale correlating objective findings and an accurate medical history.

By decision dated July 7, 2023, OWCP denied modification of the April 13, 2022 decision.

On July 5, 2024 appellant, through counsel, requested reconsideration and submitted a March 13, 2023 report from Dr. Kehoe. In the letter, Dr. Kehoe noted a history of his treatment of appellant beginning May 2021 and his examination findings. He also diagnosed bilateral knee meniscus tearing and progressive osteoarthritis, left greater than right. Dr. Kehoe opined that the diagnosed conditions of bilateral knee meniscal tearing and aggravation of bilateral knee

osteoarthritis were significantly contributed to by the repetitive motion standing, twisting, and lifting involved in his job and described work duties. He noted that contrary to a sedentary job environment, appellant's repetitive work duties caused excessive pressure on the knees. Dr. Kehoe indicated that the force on the knees in a repetitive fashion can lead to an increased rate of progression of osteoarthritis, as well as, an increased rate of meniscal tearing, as compared to a more sedentary duty. He noted that although appellant was of an age where osteoarthritis is frequently seen in this population, the increased twisting, standing, and pushing involved in his job would make him more prone for meniscal tearing and progression of osteoarthritis in the knees compared to a more sedentary role. This was secondary to increased stress across the articular surfaces and across the meniscus with the repetitive standing and twisting activities he performed on a regular basis in his full-duty work environment. Dr. Kehoe reviewed Dr. Shivaram's opinion and noted that Dr. Shivaram did not have the ability to review the MRI scan images which more specifically detailed the arthritic changes and meniscal pathology that he was unable to see on x-rays. He also disagreed with Dr. Shivaram's opinion that appellant's constant standing, twisting, pulling, and pushing would not have an impact on his knees with regards to meniscal pathology and/or progression of his osteoarthritis. Thus, Dr. Kehoe concluded that appellant's work environment significantly contributed to his progression of bilateral knee osteoarthritis, the development of meniscal pathology, and aggravation of that meniscal pathology with repetitive twisting, standing, pushing, and pulling in the work environment.

OWCP, by decision dated October 3, 2024, denied modification of the July 7, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[4] 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.[5] 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.[6]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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

[3] *Id*.

[4] *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).

[5] *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).

[6] *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).

compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[7]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[8] The opinion of the physician must be based upon a complete factual and medical background, 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.[9]

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.[10]

Section 8123(a) provides that, if there is a 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.[11] The implementing regulations provide that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case. 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.[12]

ANALYSIS

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

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[7] *P.L.*, Docket No. 19-1750 (issued March 26, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, *id*.

[8] *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

[10] *M.S.*, Docket No. 21-0855 (issued February 3, 2023); *A.O.*, Docket No. 20-0038 (issued August 26, 2020); *B.H.*, Docket No. 18-1693 (issued July 20, 2020); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023).

[11] 5 U.S.C. § 8123(a); *see C.C.*, Docket No. 20-0151 (issued July 30, 2020); *M.G.*, Docket No. 19-1627 (issued April 17, 2020); *R.C.*, Docket No. 12-0437 (issued October 23, 2012).

[12] 20 C.F.R. § 10.321; *see also S.L.*, Docket No. 24-0220 (issued May 15, 2024); *J.H.*, Docket No. 22-0981 (issued October 30, 2023); *N.D.*, Docket No. 21-1134 (issued July 13, 2022); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

OWCP referred appellant to Dr. Shivaram for a second opinion evaluation and, in his June 16, 2021 report, Dr. Shivaram opined that there was no evidence of work-related bilateral knee injury. Dr. Shivaram explained that, based on his evaluation, appellant had left knee osteoarthritis causally related to his 2001 nonwork-related left knee meniscectomy and essentially normal findings on examination of the right knee, which revealed no evidence of right knee osteoarthritis. He noted that a previous meniscectomy and genetic predisposition were risk factors for development of degenerative arthritis. Dr. Shivaram maintained that since appellant was 56 years old, advancing age was a risk factor for the development of his left knee degenerative arthritis. Additionally, he noted that his review of the literature did not support appellant's contention that standing, lifting packages, going up and down stairs, and pushing at work caused his bilateral knee degenerative arthritis.

Appellant, however, submitted reports from his treating physicians which provided medical rationale in support of causal relationship between his diagnosed bilateral knee conditions and the accepted factors of his employment. In reports dated April 1, 2021 and February 6, 2023, Dr. Saigh opined that appellant's aggravation of bilateral knee arthritis and right meniscal tear were causally related to his work duties, which included repetitive bending and lifting at the knees, pushing and pulling large pieces of postal equipment and pallets of parcels, and long hours of standing. He explained that biomechanically when appellant loaded the knee in flexion and then added an axial force by repeatedly lifting parcels weighing up to 70 pounds, and pushing, pulling, and maneuvering large pieces of equipment over several years at work, the joint space in the knee became compressed. Dr. Saigh related that although appellant's osteoarthritis slowly developed after his 2001 nonwork-related left knee surgery and with age, the condition was accelerated by his repetitive work duties. He noted that x-rays and an accompanying March 17, 2022 MRI scan of the bilateral knees confirmed his diagnosis of bilateral knee osteoarthritis.

Similarly, in a March 13, 2023 report, Dr. Kehoe diagnosed bilateral knee meniscus tearing and progressive osteoarthritis, left greater than right. He opined that the diagnosed conditions of bilateral knee meniscal tearing and aggravation of bilateral knee osteoarthritis were significantly contributed to by the repetitive motion standing, twisting, and lifting required by appellant's work duties. Dr. Kehoe explained that appellant's repetitive work duties caused excessive pressure on the knees. He noted that although appellant was of an age where osteoarthritis is frequently seen in this population, the increased twisting, standing, and pushing involved in his job would make him more prone for meniscal tearing and progression of osteoarthritis in the knees compared to a more sedentary role. This was secondary to increased stress across the articular surfaces and across the meniscus with the repetitive standing and twisting activities he performed on a regular basis in his full-duty work environment.

The Board finds that a conflict in medical opinion has been created between appellant's treating physicians Drs. Saigh and Kehoe, and that of Dr. Shivaram, the second opinion physician, regarding whether appellant sustained a work-related bilateral knee condition.[13] Section 8123 of FECA provides that, if there is a disagreement between the physician making the examination for

[13] *See J.L.*, Docket No. 22-0964 (issued November 15, 2022); *D.S.*, Docket No. 21-1388 (issued May 12, 2022); *S.M.*, Docket No. 19-0397 (issued August 7, 2019).

the United States and the employee's physician, OWCP shall appoint a third physician who shall make an examination.[14]

As a conflict in medical opinion exists regarding whether appellant has a diagnosed bilateral knee condition causally related to the accepted employment factors, the case must be remanded to OWCP for creation of an updated SOAF and referral to a specialist in the appropriate field of medicine to obtain an impartial medical opinion regarding whether appellant sustained a bilateral knee condition causally related to the accepted factors of his federal employment. Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the October 3, 2024 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: January 2, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[14] *Id.*