United States Department of Labor
Employees' Compensation Appeals Board

T.T., Appellant	)	
and	)	**Docket No. 14-1255**
	)	**Issued: May 21, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Tampa, FL, Employer	)	

Appearances:
Lenin V. Perez, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 7, 2014 appellant, through his representative, filed a timely appeal from the April 15, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 occupational disease causally related to factors of his federal employment.

FACTUAL HISTORY

On May 21, 2013 appellant, then a 62-year-old city letter carrier, filed an occupational disease claim alleging that his work caused low back pain radiating down both legs as well as right and left shoulder, thumb, and hip pain. He alleged that his claimed conditions began on

[1] 5 U.S.C. § 8101 *et seq.*

May 1, 1994 and that he first became aware of the injuries and their relationship to his work on May 2, 2013. Appellant stopped work on December 1, 2012 and retired on April 1, 2013.

In an April 9, 2013 statement, appellant described his employment duties as bending, reaching, twisting, turning, and lifting while preparing and delivering mail. He asserted that the physical demands of his route were extreme. Appellant began at 8:00 a.m. and continued until all mail was delivered. His workday consisted of frequently moving in all directions, stooping, bending, reaching, heavy lifting, (sometimes in excess of 70 pounds), and thousands of head turns, twisting of the back, shoulders, neck, arms, hands, and legs. Maximum speed and accuracy for appellant's duties was "absolutely demanded" and "extreme" physical exertion was the "norm." His duties left him without any energy at the end of his workday, which averaged nine hours. Appellant stated that he frequently had to work on his days off, which entailed a six-day workweek, in excess of nine hours per day, for most of the calendar year. His conditions included severe and debilitating pain in the neck, low back, right leg and right hip, left knee and left hip, and both hands. Appellant stated that his excruciating pain left him unable to case and deliver mail. He noted that his other activities were docile.

In reports dated March 12, April 9, and May 2, 2013, Dr. Samy F. Bishai, Board-certified in emergency medicine, noted appellant's history and treatment. He examined appellant and diagnosed status postoperative right total hip replacement, internal derangement of both shoulders, complete rotator cuff tear of the right shoulder, right shoulder impingement syndrome, status postoperative right knee surgery, right knee degenerative arthritis, degenerative disc disease with radiculopathy, and lumbar disc disease with radiculopathy. Dr. Bishai noted that appellant had major problems with his cervical and lumbosacral spine, as well as most joints in his legs and arms, particularly his shoulders. He explained that appellant was not able to work because of multiple complicated joint problems.

In his March 12, 2013 report, Dr. Bishai described appellant's work activities in detail and opined that his work duties contributed to the aggravation of his preexisting conditions and accelerated the development of degenerative and arthritic changes. This was due to the stress imposed upon the joints in his body from walking and standing eight hours daily as well as many activities that require bending, stooping, twisting, and lifting. Dr. Bishai opined that the cumulative combination of these activities over a period of years aggravated appellant's preexisting conditions in areas such as the cervical and lumbosacral spine, shoulders, knee joints, and hip joints. He again detailed appellant's work duties in his April 9, 2013 report and opined that appellant "could never deliver the mail as a letter carrier with all the problems he is experiencing at this time. I advised him that he will not be able to return to work at this time." Dr. Bishai indicated that it would take time and treatment to reduce appellant's pain and improve his condition.

On June 6, 2013 OWCP advised appellant that he must provide a physician's opinion supported by a medical explanation as to how work factors caused the claimed conditions.

In a July 3, 2013 statement, appellant noted hurting his low back in 1992 when he fell from a seven-foot patio roof onto a support beam. He described nonwork injuries in 1992, 1994, and December 2, 2012. Appellant stated that he had a thumb injury in 1993, which his physicians indicated was related to work duties. He noted that his back began hurting in 1994

and worsened over the years. Appellant was diagnosed with degenerative disc disease and osteoarthritis of the right hip in 2004. In 2005, he was treated for the right hip and right shoulder rotator cuff tendinitis. Appellant noted falling at home on December 2, 2012. He stated that he had right hip replacement surgery, and a right shoulder replacement on January 9, 2013. OWCP received various records dating to 1981, including a September 9, 1981 medical examination and physical therapy notes. Also received were diagnostic test reports, including magnetic resonance imaging (MRI) scans of December 2, 2004 for the lumbar spine, October 8, 2008 for the right shoulder, and December 28, 2012 for the cervical spine.

OWCP also received reports from Dr. Steven Knezevich, a Board-certified orthopedic surgeon. In an April 20, 2005 report, Dr. Knezevich, advised that appellant had a sore right knee and hip that bothered him over a period of time. Orthopedic problems included spinal stenosis, rotator cuff tendinitis without evidence of tear, right knee pain of unknown etiology, and some arthritis. In an Apri1 27, 2005 report, Dr. Knezevich stated that appellant had right shoulder pain due to rotator cuff tendinitis, right hip pain due to osteoarthritis, and a right knee meniscus tear. On December 29, 2010 he diagnosed rotator cuff tendinitis of both shoulders. On July 13, 2011 Dr. Knezevich noted appellant's history and left wrist complaints. Other orthopedic problems were not bothersome. Dr. Knezevich opined that appellant may have left carpal tunnel syndrome or nerve irritation or entrapment, or cervical radiculopathy. In a July 13, 2012 report, he treated appellant for left shoulder pain with rotator cuff pathology and possible tear. Dr. Knezevich noted that appellant had preexisting right shoulder problems with a rotator cuff tear, which he had treated conservatively for years. He recommended an MRI scan.

On July 15, 2013 OWCP received a June 5, 2013 report, in which Dr. Bishai reiterated diagnoses from previous reports. Dr. Bishai advised that appellant continued to have major problems with the cervical and lumbosacral spine with radiculopathy down the arms and legs. He indicated that appellant was currently unable to work because of the multiplicity of the painful conditions of his neck, back, upper, and lower extremities.

By decision dated August 6, 2013, OWCP denied the claim. It found that the medical evidence did not demonstrate with specificity that the claimed medical conditions were related to work events.

Appellant requested a telephonic hearing and submitted more evidence. In a July 23, 2013 report, Dr. Bishai repeated his prior diagnoses and advised that appellant continued to have cervical and lumbosacral spine problems with radiculopathy down the arms and legs. He also indicated that appellant had problems with both right and left shoulder joints and the right knee joint. Dr. Bishai reiterated that appellant was permanently disabled.

At the hearing held on February 4, 2014, appellant indicated that he filed his claim after Dr. Bishai told him his conditions were caused or aggravated by his employment. He stated that he was unaware until then that he could file a claim for aggravation. Appellant described his duties and argued that they caused his body to wear down and aggravate his conditions over 31

years working for the employer.[2] The hearing representative asked that appellant provide medical records from the fall in 1980, shoulder records from 1992, and back records from 1994. Appellant's representative clarified the conditions being claimed as including: aggravation of total right hip replacement; aggravation of internal derangement of right shoulder joint; aggravation of rotator cuff tear, right; aggravation of right shoulder impingement syndrome; aggravation of internal derangement of left shoulder joint; aggravation of postoperative arthroscopic knee; right knee degenerative arthritis; degenerative disc disease and radiculopathy; and lumbar disc disease with radiculopathy. He argued that appellant did not previously know that repetitive duties were causing his problems.

OWCP received medical records dating from 1997 to 2014. In a June 4, 2013 report, Dr. Dan Durrieu, a chiropractor, noted seeing appellant and providing treatment since December 1999 until an accident on December 2, 2012. He opined that appellant's letter carrier duties caused both severe pain and degeneration of his entire spinal column. Dr. Durrieu advised that numerous subluxations were caused by continual and repetitive motion; lifting up to 70 pounds; driving a delivery truck; delivering mail into mailboxes; and 180 degree twisting and bouncing in and out of potholes. He stated that he reviewed x-rays annually. Dr. Durrieu stated that appellant was totally disabled.

On November 27, 2013 Dr. Gregory Saric, Board-certified in family medicine, noted treating appellant for work-related injuries. He opined that appellant was totally and permanently disabled as a result of his December 2012 injury based upon an accumulation of multiple injuries over the years. Dr. Saric indicated that appellant was unable to perform the job he had performed for over 30 years.

OWCP received several reports from Dr. Knezevich, including a March 3, 2014 report in which he noted treating appellant for various orthopedic conditions since April 20, 2005. Dr. Knezevich related that appellant worked as a mailman for over 30 years and that he was aware of the job requirements. He also noted nonoccupational injuries that included the 1970's back problems in the Air Force and thumb problems between 1992 and 1994, which were possibly due to work and a baseball throwing incident. In the late 1990's appellant had "growing orthopedic issues" and began chiropractic treatment. His back pain worsened in 2004 and 2005 while a December 2, 2012 fall worsened his right shoulder problems. In March 2013, Dr. Knezevich noted discussing with appellant the role of job activities in his shoulder complaints. Appellant had a physically demanding job and "it appears that these activities have played a role in his shoulder complaints and pathology over the years and also his low back pain." Dr. Knezevich advised that "obviously these activities would have contributed to the need for treatment including operative and nonoperative care as well as care of future and/or persistent symptomatology." He noted that the right shoulder issues could be due to repetitive activities, explaining that "repetitive activities at and/or above the shoulder level may irritate the rotator

[2] At the hearing, appellant testified that he had a 1979 back injury in the Air Force. His injuries after he began working for the employing establishment included: a 1980 off-the-job injury when he fell from a pickup truck on his head; a 1983 hernia repair and two subsequent repairs in the next 10 years; a 1992 thumb injury; a 1992 right shoulder injury; a 1994 fall through a patio roof; 2005 right knee arthroscopy; a 2006 right hip replacement; October 2011 right wrist surgery; February 2012 left wrist surgery; and a right shoulder injury in December 2012 with surgery in January 2013.

cuff tendon, in combination with pathology which may include a prominent acromion and/or arthritic and hypertrophic acromioclavicular joint. It is, however, difficult to specifically relate this condition to one specific activity and/or activity level in the specific individual. I can state with a high degree of certainty that the activities performed with the [employing establishment] contributed to symptomatology and may have contributed to evaluation and treatment. However, one must … stop short of stating that the employment activities are the sole cause of the conditions affecting his right shoulder." Dr. Knezevich noted that repetitive activities also could play a role in developing carpal tunnel syndrome symptoms although he could not suggest that they were the specific cause of the ailment. He also opined, "certainly his occupational duties have contributed to the symptomatology and have contributed to the need for a right hip replacement surgery." Dr. Knezevich stated that knee arthritis was worsened by repetitive job activities. He noted that work activities contributed to the symptomatology and perhaps the need for the knee surgery, as may have been the case with his right hip arthritis and hip replacement surgery. Dr. Knezevich indicated that he could not state with specificity the cause of the osteoarthritis, meniscal tear, left shoulder symptoms, or rotator cuff tendinitis. He advised appellant's osteoarthritis affected both knees but the etiology could not be stated with any degree of certainty. Dr. Knezevich opined that "the more than 30 years of service with the [employing establishment] have contributed to symptomatology, and may have hastened progression and the need" for surgery. He noted that the work environment and activities were not the primary "cause" or "etiology" of the orthopedic conditions. OWCP also received numerous other reports including a December 2, 2004 MRI scan of the right shoulder, lumbar spine, and hip; an October 8, 2008 right shoulder MRI scan; July 11, 2011 electrodiagnostic findings; April 10, 2013 MRI scan of the lumbar spine; and physical therapy reports.[3]

By decision dated April 15, 2014, an OWCP hearing representative affirmed the August 6, 2013 decision.[4]

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty, as alleged, and that any disability and/or specific condition for which compensation is claimed are 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]

[3] OWCP also received reports from 1993 to 1996 from Dr. Robert J. Belsole, a Board-certified orthopedic surgeon, who noted treating appellant since August 1992 for left thumb problems. Dr. Belsole opined that his was work related or aggravated by work activities. He also noted treating appellant for hip pain.

[4] The hearing representative noted that, per appellant's representative, the present claim did not involve the thumb.

[5] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *Victor J. Woodhams*, 41 ECAB 345 (1989).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.[7]

ANALYSIS

The evidence establishes that appellant worked as a letter carrier and was engaged in activities such as bending, reaching, twisting, turning, and lifting in the course of preparing and delivering mail. However, appellant has submitted insufficient medical evidence to establish that his claimed conditions were caused or aggravated by work activities.[8]

Dr. Bishai submitted reports noting history, treatment, and diagnoses. He noted that appellant had major problems in the cervical and lumbosacral spine, as well as most of the joints of his arms and legs, particularly the shoulders. On March 12, 2013 Dr. Bishai detailed appellant's work activities and opined that his diagnosed conditions were aggravated by his duties and contributed to the aggravation of his preexisting conditions. He opined that they accelerated the development of degenerative and arthritic changes because the joints in appellant's body were affected by the type of stress that comes from eight hours a day of constant walking and standing. Additionally, Dr. Bishai found they were caused by the many activities that required bending, stooping, twisting of his body, and lifting. He opined that the combination of all these work activities cumulatively caused appellant to aggravate his preexisting conditions over a period of years. However, Dr. Bishai did not explain how he arrived at this conclusion in light of the numerous nonwork injuries. For example, appellant had several falls and injuries outside work in 1992, 1994, and on December 2, 2012. Dr. Bishai did not adequately explain his conclusions in a rationalized manner as to why he attributed appellant's conditions to work and why they were not due to nonemployment matters. This is particularly important as appellant never attributed his condition to work while at the employing establishment. As noted, part of appellant's burden of proof includes the submission of rationalized medical evidence. This medical opinion must also include an accurate history of the

[7] *Id.*

[8] The claimed conditions are aggravations of total right hip replacement, right shoulder internal derangement, right rotator cuff tear, right shoulder impingement, left shoulder internal derangement, postoperative right knee arthroscopy, as well as degenerative arthritis, and lumbar disc disease with radiculopathy.

employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[9] Dr. Bishai repeated the details provided by appellant of his work duties in his April 9, 2013 report and found him disabled. However, he did not explain how each of appellant's conditions were work related. Other reports from Dr. Bishai also fail to give a detailed explanation as to why each diagnosed condition was caused or aggravated by particular work activities. Thus, these reports are of limited probative value.

Dr. Knezevich also provided medical evidence. In a March 3, 2014 report, he noted treating appellant since 2005 and also noted appellant's work activities for a number of years. Dr. Knezevich advised that in March 2013 he discussed the role of appellant's work activities in his shoulder pathology. He opined that "it appears that these activities have played a role in his shoulder complaints and pathology over the years and also his low back pain." Dr. Knezevich advised that "obviously these activities would have contributed to the need for treatment including operative and nonoperative care as well as care of future and/or persistent symptomatology." He indicated that appellant's right shoulder complaints could be related to his repetitive activities and opined that "repetitive activities at and/or above the shoulder level may irritate the rotator cuff tendon, in combination with pathology which may include a prominent acromion and/or arthritic and hypertrophic acromioclavicular joint." Dr. Knezevich explained that, while it was unlikely that this condition was solely due to work factors, he could "state with a high degree of certainty" that work activities "contributed to symptomatology and may have contributed to evaluation and treatment." However, the Board finds that this opinion is equivocal. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.[10] Furthermore, while Dr. Knezevich noted appellant's nonwork injuries, he did not offer any opinion as to why appellant's diagnosed conditions would not be attributable to the nonwork conditions. The Board also finds that regarding appellant's carpal tunnel and symptoms and need for hip replacement surgery, his opinion is lacking the requisite rationale. Dr. Knezevich indicated that it was likely that repetitive activities played a role in the development of carpal tunnel syndrome symptoms. As noted, this is a speculative opinion and he did not otherwise provide medical reasoning to support his opinion. Regarding the right hip replacement surgery, Dr. Knezevich opined, "certainly his occupational duties have contributed to the symptomatology and have contributed to the need for a right hip replacement surgery." Without explaining the reasons for this conclusion, this opinion is of limited probative value. Likewise, Dr. Knezevich did not clearly explain why appellant's right knee and hip arthritis were worsened by occupational activities. He indicated that he believed appellant's work activities contributed to the symptoms but he did not provide any detailed explanation of the reasons supporting his opinion. A medical opinion not fortified by medical rationale is of little probative value.[11]

[9] *James Mack*, 43 ECAB 321 (1991).

[10] *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

[11] *S.D.*, 58 ECAB 713 (2007).

On November 27, 2013 Dr. Saric noted treating appellant for work-related injuries and advised that appellant was totally disabled as a result of his December 2012 injury based upon an accumulation of multiple injuries over the years. This report is of limited probative value as Dr. Saric did not explain how particular work duties caused or aggravated specific diagnosed conditions. Instead he seems to attribute appellant's condition to a nonwork-related fall at home in 2012 without any clear indication as to how work factors contributed to any particular condition. This report is insufficient to establish the claim.

In his June 4, 2013 report, Dr. Durrieu, a chiropractor, noted seeing appellant from December 1999 until the December 2, 2012 nonwork accident. He opined that appellant's work duties caused severe pain and degeneration of his entire spinal column. Dr. Durrieu advised that numerous subluxations were caused by repetitive motion at work. He stated that he reviewed x-rays and found appellant totally disabled. To the extent that he diagnosed a spinal subluxation as demonstrated by x-ray,[12] his report is not sufficiently rationalized to establish appellant's claim. Although Dr. Durrieu referenced certain of appellant's work activities, he did not explain why particular activities would cause or aggravate a spinal subluxation that was shown on an x-ray.

Other medical evidence of record is of limited probative value as it does not provide a reasoned explanation as to why particular diagnosed conditions were caused or aggravated by specific work duties.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[13] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

The Board finds that appellant has failed to meet his burden of proof.

On appeal appellant's representative argues that appellant was not aware of the relationship between his diagnosed conditions and his work until he received Dr. Bishai's report. The Board notes that the claim was not denied because the medical evidence was insufficient to establish his claim.

Appellant may submit evidence or argument with a written request for reconsideration 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.

[12] 5 U.S.C. § 8101(2) provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. *See Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

[13] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish an occupational disease causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the April 15, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board