

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

PAUL L. CHARETTE, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Central Falls, RI, Employer**

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**Docket No. 03-2189
Issued: March 5, 2004**

Appearances:
Paul L. Charette, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 4, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated June 23, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether appellant established that he sustained an injury in the performance of duty.

FACTUAL HISTORY

On March 13, 2003 appellant, then a 55-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that he developed knee problems in the performance of duty. Appellant identified June 1, 1998 as the date he first became aware of his illness and August 1, 1998 as the date he realized it was caused or aggravated by his employment. He stopped work on March 10, 2003 and was expected to return on March 24, 2003.

In a March 12, 2003 statement, appellant indicated that he sustained injuries to both his right and left knees as a result of being a walking city carrier which caused the cartilage in both joints to deteriorate by wear and tear. In support of his claim, appellant submitted a March 17, 2003 duty status report from Dr. Jack D. Goldstein, a Board-certified orthopedic surgeon, who indicated that appellant had wear and tear of both knees due to excessive walking and climbing and prescribed limitations on appellant's activities.

In a letter dated March 21, 2003, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office requested that appellant submit additional supportive factual and medical evidence. A copy of the letter was also provided to the employing establishment. In an undated letter received by the Office on April 7, 2003, the employing establishment described appellant's duties and the procedures concerning his position. The employing establishment indicated that appellant was on a mounted carrier route since April 20, 2002 with delivery to curbside boxes. The position required appellant to dismount and leave his vehicle approximately 16 times per day to make delivery to centralized mail receptacles or small businesses for about 1 hour per day. The employing establishment explained that, of the hour, about 35 minutes was used for delivering mail to an elderly housing complex with its own mailroom. Appellant's walking time was described as approximately 15 minutes per day spread over the entire day with the rest of his delivery time, approximately 4½ hours per day spent sitting in the postal truck delivering to curbside mailboxes along his route. The employing establishment indicated that appellant's previous route was a walking route. The employing establishment questioned how appellant's condition was aggravated while working in the new route, as opposed to his previous walking route which involved spending 5 to 6 hours per day carrying about 20 to 30 pounds of mail in his bag. Further, it was noted that appellant spent about 2 hours and 45 minutes per day standing at his letter case, casing mail each day, the same time he spent on his previous route. Further, the employing establishment stated that rubber cushioning mats were provided for every carrier.

In an April 2, 2003 report, Dr. Goldstein diagnosed severe medial compartment arthrosis, status post high tibial osteotomy bilaterally with limitations in appellant's ability to walk for a prolonged period as a mail carrier. Dr. Goldstein indicated that it was impossible for appellant to be on his feet all day carrying mail long distances and carrying packages, and opined that appellant would eventually need a total knee replacement. In an April 11, 2003 duty status report, Dr. Goldstein prescribed limitations on appellant's duties.¹

By letter dated March 26, 2003, appellant described his condition and indicated he had worked for the employing establishment for 18 years and asserted that this was the direct cause of his condition. He indicated his symptoms began prior to September 1999, and for three or four years he would take over-the-counter pain relievers prior to and after performing his duties as a letter carrier. Appellant stated the pain finally became so unbearable that in the summer of 1999 he sought the advice of Dr. Goldstein who determined that the cartilage in the joints of

¹ The limitations included a limit on lifting and carry between 10 to 35 pounds and intermittent of 30 pounds for 1 hour per day, sitting, continuous for 6 hours per day, intermittent standing for 2 to 3 hours per day, walking for 1 hour per day, climbing ½ hour per day, no kneeling, 1 hour only of bending, stooping, twisting, pulling or pushing, 6 to 6½ hours of simple grasping, 2 to 3 hours of fine manipulation, ½ hour of reaching above the shoulder, and 6 to 6½ hours of driving a vehicle.

appellant's knees was deteriorated, and certain spots were such that he was experiencing bone to bone contact. Appellant indicated the first surgery on his left knee was performed in September 1999,² followed by therapy three times a week until the surgery of his right knee was performed in January 2000. He noted that he believed that the 17 years as a city letter carrier on a walking route, was a direct cause of his condition. Appellant indicated that he stood at a filing case for 2 to 3 hours a day filing mail, walked on the road for 4 to 5 hours up and down inclines and stairs in all kinds of weather conditions. He noted that presently he had restrictions and was able to perform 95 percent of his normal carrier duties although he took anti-inflammatory medication when needed. Appellant indicated that his outside activities included playing golf regularly, probably on an average of 27 holes a week between the months of April and October, although he used a riding golf cart for the last 7 years because of the pain and discomfort that he felt from excessive walking. Further, appellant noted that he worked part time as a bartender for 7 years from 1988 to 1995 for approximately 8 to 16 hours a week, although he presently did not have a second job and did not plan on getting one. He accepted a modified position on April 14, 2003.

In a June 23, 2003 decision, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that appellant sustained the claimed conditions in the performance of duty.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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 diagnosed condition is causally related to the employment factors identified by the claimant.³

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized medical 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 upon 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.⁴

² He corrected a prior statement that indicated his first surgery occurred in September 1998.

³ *Solomon Polen*, 51 ECAB 341 (2000); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ *Id.*

ANALYSIS

In the instant case, appellant did not submit sufficient medical evidence to establish that his knee conditions were caused by factors of his employment. Appellant alleged that the wear and tear he sustained to the joints in his knees arose as a result of 17 years of his duties as a walking letter carrier that included standing, walking and climbing for hours. However, the record reflects that appellant's position was changed from a walking route that required 5 to 6 hours of walking, to a mounted route that involved no more than 15 minutes of walking throughout the entire day. While appellant submitted several reports from Dr. Goldstein, they were not sufficient as the doctor did not provide a rationalized opinion explaining the nature of the relationship between appellant's diagnosed condition and the specific employment factors identified by appellant such as walking, climbing and standing. For example, Dr. Goldstein did not specify or differentiate appellant's current job duties as a mounted carrier as opposed to his previous duties as a walking carrier nor did he describe or differentiate how appellant's condition arose due to factors of his federal employment. In his March 17, 2003 duty status report, Dr. Goldstein noted appellant had wear and tear of both knees due to excessive walking and climbing. However, he did not provide any diagnosis or an opinion causally relating appellant's employment activities to his condition.⁵ Furthermore, he did not describe how outside employment factors such as appellant's activities involving golf or other sports or hobbies may have contributed to appellant's condition. In his April 2, 2003 report, he provided a diagnosis and opined that appellant was limited in his abilities to walk for a prolonged period as a mail carrier, however, he did not provide an opinion explaining the nature of the relationship between the diagnosed condition and factors of appellant's employment.⁶ Further, the employing establishment indicated that appellant's mounted route involved very little walking, as most of his duties occurred in the vehicle. In his April 11, 2003 duty status report, Dr. Goldstein merely prescribed limitations for appellant and made no discussion of causal relationship. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁷ In the instant case, the Office advised appellant of the type of medical evidence required to establish his claim; however, he failed to submit such evidence. Appellant did not provide a rationalized medical opinion to describe or explain how his knee conditions were caused by factors of his federal employment. As appellant has failed to submit any probative medical evidence establishing that he sustained an injury in the performance of duty, the Office properly denied his claim for compensation.

Since the medical evidence submitted does not establish a causal relationship between appellant's claimed condition and factors of his employment, appellant has not met his burden of proof in establishing his claim. In the absence of a rationalized medical opinion stating that appellant's condition was causally related to his employment, the Board finds that appellant is not entitled to compensation.

⁵ It is appellant's burden of proof to submit a physician's rationalized opinion on the issue of whether there is a causal relationship between his diagnosed condition and the implicated employment factors. *Marilyn D. Polk*, 44 ECAB 673 (1993).

⁶ See footnote 3.

⁷ *Michael E. Smith*, 50 ECAB 313 (1999).

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty.

ORDER

The decision of the Office of Workers' Compensation Programs dated June 23, 2003 is hereby affirmed.

Issued: March 5, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member