

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

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**JERRY L. JOHNSON, Appellant**

**and**

**U.S. POSTAL SERVICE, BULK MAIL  
FACILITY, Kearny, NJ, Employer**

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**Docket No. 05-50  
Issued: April 13, 2005**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member

DAVID S. GERSON, Alternate Member

A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On September 30, 2004 appellant, through his attorney, filed an appeal of a merit decision of the Office of Workers' Compensation Programs dated July 9, 2004 which rejected his claim for occupational injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2) the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant sustained a bilateral knee condition in the performance of duty, causally related to factors of his federal employment.

**FACTUAL HISTORY**

On December 23, 2002 appellant, then a 52-year-old mail handler, filed an occupational disease claim alleging that he developed pain and soreness in both knees from prolonged standing, cold weather, rain and conditions included with job stress. Appellant alleged that his condition was aggravated and worsened to the point of interfering with his employment. He also stated that he had a fall in 1979, two subsequent knee surgeries, stiffness, soreness and severe

pain in both knees, and medical conditions from two automobile accidents. Appellant alleged that he first became aware of his condition on May 27, 2002. He stopped work on December 11, 2002 and returned to work on December 23, 2002.

On December 26, 2002 the employing establishment controverted appellant's claim, noting that he claimed that cold weather aggravated his condition but the date on the Form CA-2 was May 1, 2002 (spring) and his medical evidence was dated October 2, 2002 and December 17, 2002. The employing establishment also noted that appellant was working on a rehabilitation job offer.

On December 26, 2002 the employing establishment senior area medical director, Dr. Yvonnecris S. Veal, a Board-certified occupational and general preventive medicine specialist, provided an October 1, 2002 employing establishment form noting that appellant's diagnosis was bilateral knee sprain, that it had not resolved, that his date of recovery was undetermined, that required work restrictions were no repetitive bending, pushing, pulling, no lifting over 15 to 20 pounds, and no cold exposure, and that his work restrictions were permanent. Physical therapy was recommended. In a December 17, 2002 employing establishment form report, Dr. Juluru P. Rao, a Board-certified orthopedic surgeon, noted that appellant complained of pain and painful range of motion in both knees, and tenderness over the medial/lateral joint line. Dr. Rao noted that when appellant's knees flared up he was unable to work, but noted that he would be able to return to work December 23, 2002. Indoor work was recommended.

In a letter dated January 21, 2003, the Office advised appellant that it needed further information to decide his claim, and it requested a list of the factors implicated in causing the condition and a medical diagnosis diagnosing a specific condition.

In response appellant submitted a magnetic resonance imaging (MRI) scan that contained no impression or diagnosis.

By decision dated March 24, 2003, the Office rejected appellant's claim finding that the evidence was insufficient to establish his claim. The Office found that there was no evidence presented to counter the employing establishment's controversion, and that he had not established that he sustained a specific condition caused by factors of his employment and that he submitted no rationalized medical evidence establishing that a specific or diagnosed condition was causally related to the implicated factors of employment.

Appellant submitted several pages of statements claiming that his knee problems stemmed from falling while loading a truck in 1979 and 1985, arthritis from going up and down stairs, having two operations in 1979 for a cracked knee cap and ruptured ligaments, from calcium buildup in the knee, wear and tear on the job, prolonged standing, prolonged walking, sudden stops, being assigned to different pay locations, being assigned to the platform, handling mail on pallets, mail in large containers, pushing and pulling mail bundles and carriers, cutting off plastic, throwing bundles into containers, and being out in the cold weather.

Dr. Rao provided some medical progress notes suggesting multiple conditions, including a tear of the medial and lateral menisci, chondromalacia of the patella, and medial and lateral joint pathology. He diagnosed degenerative joint disease, mild suprapatellar joint effusion, and noted that appellant did not respond to physical therapy or cortisone injections.

On October 14, 2003 appellant requested reconsideration.

By decision dated July 9, 2004, the Office denied modification of the prior decision finding that the evidence submitted did not establish that appellant sustained a specific work-related condition due to specific factors of her federal employment.

### **LEGAL PRECEDENT**

An occupational disease or illness means a condition produced in the work environment over a period longer than a single workday or shift,<sup>1</sup> by such factors as systemic infection, continued or repeated stress or strain or other continued or repeated conditions or factors of the work environment.<sup>2</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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 the 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 employee 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 employee.<sup>3</sup> The medical opinion 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 employee.<sup>4</sup>

### **ANALYSIS**

The Board finds in this case that appellant has not met his burden of proof to establish his claim, due to failure to establish specific employment factors.

Appellant submitted evidence which described his condition variously as pain and soreness in both knees, bilateral knee strain, painful range of motion in both knees, tenderness over the medial/lateral joint line, arthritis of the knees, calcium build-up in the knees, tears of the medial and lateral menisci, chondromalacia of the patellas, medial and lateral joint pathology, degenerative joint disease, and mild suprapatellar joint effusion. However, the medical evidence

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<sup>1</sup> 20 C.F.R. § 10.5(q).

<sup>2</sup> *William Taylor*, 50 ECAB 234 (1999).

<sup>3</sup> *See generally, Arturo A. Adame*, 49 ECAB 421 (1998); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>4</sup> *See Solomon Polen*, 51 ECAB 341 (2000).

of record is inconsistent as to a diagnosis and the nature of any pathology. No primary diagnosis was presented, and no condition was demonstrated by testing, which agreed with any other evidence of record. The record merely contains comments suggesting that appellant possibly had several different lower extremity conditions due to his employment at different times dating from 1979 to the present. No medical consensus was included as to what appellant's pathological condition actually was, and therefore appellant has not met his burden of proof to establish that he sustained an occupational disease by failing to submit sufficient probative medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed.

Appellant has failed to establish specific employment factors that caused or aggravated his lower extremity conditions. He implicated prolonged standing, being out in the cold weather and rain, and job stress in the aggravation or causation of his condition. Appellant also implicated falling while loading a truck in 1979 and 1985, going up and down stairs, having two operations in 1979, wear and tear on the job, prolonged walking, sudden stops, being assigned to different pay locations, being assigned to the platform, handling mail on pallets and in large containers, pushing and pulling mail bundles and carriers, cutting off plastic, and throwing bundles into containers. However, appellant did not get any more specific as to the implicated employment factors, and each time he saw a physician he gave a different history of causation, some factors identified as being immediately past and some dating back more than 20 years. He did not submit any medical evidence which identified a particular pathological condition as being caused by any specific employment factor, or any factual evidence implicating a particular employment factor or activity, possibly as the cause of the identified medical condition. Therefore, he has not met his burden of proof to establish any specific compensable employment factors in the performance of duty, causally related to identifiable factors of his federal employment.

As appellant had not submitted factual evidence sufficient to meet his burden of proof to establish an occupational disease claim, the decision of the Office dated July 9, 2004 must be affirmed.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a bilateral knee condition in the performance of duty, causally related to factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 9, 2004 is hereby affirmed.

Issued: April 13, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member