United States Department of Labor
Employees' Compensation Appeals Board

T.W., Appellant	)	
and	)	**Docket No. 06-1464**
	)	**Issued: February 27, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Long Beach, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 19, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 10, 2006 decision denying his claim for additional employment-related conditions. 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 met his burden of proof to establish that he had employment-related injuries other than the accepted left shoulder tendinitis and mild degenerative meniscal disease of the right knee.

FACTUAL HISTORY

On October 12, 2001 appellant, then a 46-year-old clerk, filed an occupational disease claim alleging that his work duties caused him to experience pain in his neck, back, left hip, shoulders, elbows, right wrist, right knee, ankles and left foot. He did not stop work at the time claim but began working in a light-duty position. The record reveals that appellant worked on a

mail sorting machine which required him to engage in extensive typing, lifting, carrying, pushing, pulling, twisting, reaching and bending. The employing establishment indicated that he was required to lift mail trays weighing up to 20 pounds.

The findings of October 25, 2001 electromyogram testing revealed mildly abnormal results in the right triceps and right abductor of the fifth finger consistent with a C7-T1 root finding. Magnetic resonance imaging (MRI) scan testing from late 2001 revealed mild disc protrusions at multiple levels between C3 and C7, a mild disc bulge at L2-3, a right knee meniscal tear and a subchondral cyst and edema in the anterior distal femur at the right knee.[1] On January 3, 2002 nerve conduction studies of the extremities found a C6-7 radiculopathy and an neurologic changes at the left peroneal/posterior tibial nerve. The medical evidence reveals that appellant had polio since childhood which caused him to have a left leg atrophy.

On October 18, 2001 Dr. Fred Hafezi, an attending Board-certified orthopedic surgeon, indicated that appellant developed accelerated degenerative changes, particularly in the low cervical spine and the low back spine, due to working at the employing establishment. On December 4, 2001 Dr. Hafezi stated that appellant had a L2-3 disc bulge, irritation of the L4-5 and L5-S1 annular ligaments, irritation of the L4-5 nerve fibers, a C3-4 discopathy and irritation of the C4 and C7-8 nerve fibers. He posited that these conditions were caused by the repetitive injury sustained at the employing establishment.

In a June 8, 2003 decision, the Office accepted that appellant sustained employment-related left shoulder tendinitis and mild degenerative meniscal disease of the right knee. The Office paid appropriate compensation for periods of disability.

The Office referred appellant to Dr. William C. Boeck, Jr., a Board-certified orthopedic surgeon, for additional evaluation of his employment-related conditions. On June 15, 2003 Dr. Boeck determined that appellant's employment-related residuals were limited to his left shoulder and right knee and found that his cervical and lumbar degenerative conditions were not employment related.

The findings of July 18, 2003 nerve conduction studies suggested bilateral carpal tunnel syndrome and possible neuropathy of the tarsal tunnels of the legs, primarily on the right. On March 18, 2004 appellant underwent a partial medial meniscectomy, synovectomy and chondroplasty of the right knee. The procedure was authorized by the Office.

Appellant claimed that he had employment-related injuries other than the accepted left shoulder tendinitis and mild degenerative meniscal disease of the right knee. The Office determined that there was a conflict in the medical opinion between Dr. Hafezi and Dr. Boeck regarding whether appellant had such additional employment-related injuries. In order to resolve the conflict, the Office referred appellant to Dr. Paul Bouz, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.

[1] MRI scan testing from this period showed no significant abnormalities of the left shoulder.

On May 2, 2006 Dr. Bouz indicated that appellant reported pain in his neck, back, shoulders, elbows, wrists, hands, knees and right ankle and tingling in his wrists and hands. He stated that on examination appellant exhibited normal range of motion in his neck, shoulders, wrists, fingers and legs and that he had a slightly positive Tinel's sign in both wrists. Dr. Bouz noted that appellant had some tenderness at L5-S1 with no muscle spasms. He diagnosed degenerative changes of the neck and low back, status post right knee and left shoulder arthroscopy, minimal right elbow tendinitis, possible minimal left elbow tendinitis, possible mild bilateral carpal tunnel syndrome but more likely cervical spondylolysis, polio of the left lower extremity and possible tarsal tunnel syndrome. Dr. Bouz discussed appellant's work duties, including sorting mail and indicated that this type of work would not be competent to cause his multiple conditions other than the accepted left shoulder and right knee conditions.[2] He asserted that appellant had exaggerated his condition and that it was not possible that his work could cause pain in virtually every part of his body. Dr. Bouz determined that appellant's neck and low back conditions were a result of the natural progression of his preexisting degenerative changes.

In a May 10, 2006 decision, the Office denied appellant's claim that he had employment-related injuries other than the accepted left shoulder tendinitis and mild degenerative meniscal disease of the right knee. The Office found that the special weight of the medical evidence rested with the well-rationalized report of Dr. Bouz.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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 of the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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.[4] The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury 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 compensable 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.[5]

[2] In particular, he indicated that the type of work appellant performed could not cause right tarsal tunnel syndrome.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

Section 8123(a) of the Act provides in pertinent part: "If there is 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."[6] 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.[7]

ANALYSIS

The Office accepted that appellant sustained employment-related left shoulder tendinitis and mild degenerative meniscal disease of the right knee. Appellant claimed that he had employment-related injuries other than the accepted left shoulder and right knee conditions.

The Office properly determined that there was a conflict in the medical opinion between Dr. Hafezi, appellant's attending Board-certified orthopedic surgeon and Dr. Boeck, a Board-certified orthopedic surgeon acting as an Office referral physician, on whether appellant had such additional employment injuries. In October 18 and December 4, 2001 reports, Dr. Hafezi determined that appellant's cervical and lumbar degenerative changes were due to working at the employing establishment. In a June 15, 2003 report, Dr. Boeck determined that appellant's employment-related residuals were limited to his left shoulder and right knee and posited that his cervical and lumbar degenerative conditions were not employment related. In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Bouz, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.[8]

The Board finds that, the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Bouz, the impartial medical specialist selected to resolve the conflict in the medical opinion. The May 2, 2006 report of Dr. Bouz establishes that appellant did not sustain employment-related injuries other than the accepted left shoulder tendinitis and mild degenerative meniscal disease of the right knee. He indicated that appellant reported pain in his neck, back, shoulders, elbows, wrists, hands, knees and right ankle and tingling in his wrists and hands. Dr. Bouz noted limited findings on examination with normal range of motion in the neck, back and extremities, a slightly positive Tinel's sign in both wrists and tenderness at L5-S1 with no muscle spasms. He diagnosed degenerative changes of the neck and low back, status post right knee and left shoulder arthroscopy, minimal right elbow tendinitis, possible minimal left elbow tendinitis, possible mild bilateral carpal tunnel syndrome but more likely cervical spondylolysis, polio of the left lower extremity and possible tarsal tunnel syndrome. Dr. Bouz concluded that appellant did not have any employment-related conditions other than the accepted left shoulder and right knee conditions.

[6] 5 U.S.C. 8123(a).

[7] *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

[8] *See supra* notes 6 and 7 and accompanying text.

The Board has carefully reviewed the opinion of Dr. Bouz and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Bouz' opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence.[9]

Dr. Bouz provided medical rationale for his opinion by discussing appellant's work duties and indicating that this type of work would not be competent to cause his multiple conditions other than the accepted left shoulder and right knee conditions. He further explained that appellant had exaggerated his condition and that it was not possible that his work could cause pain in virtually every part of his body. Dr. Bouz explained appellant's continuing neck and low back conditions by indicating that they were a result of the natural progression of his preexisting degenerative changes.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he had employment-related injuries other than the accepted left shoulder tendinitis and mild degenerative meniscal disease of the right knee.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 10, 2006 decision is affirmed.

Issued: February 27, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

[9] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).