

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

J.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Newark, NJ, Employer**

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**Docket No. 09-1096
Issued: November 4, 2009**

Appearances:

James D. Muirhead, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 17, 2009 appellant filed a timely appeal from an Office of Workers' Compensation Programs' May 14, 2008 and February 17, 2009 merit decisions. 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 is whether appellant has met his burden of proof in establishing that he sustained bilateral hip and leg conditions in the performance of duty.

FACTUAL HISTORY

Appellant, a 62-year-old letter carrier, filed a Form CA-2 claim for benefits on February 22, 2008, alleging that as of February 12, 2008 he became aware that he had a bilateral hip and leg condition causally related to factors of his employment. In a supplemental statement, he explained that he had worked for the employing establishment for 23 years in a position that required constant walking, climbing stairs, standing and carrying a heavy mailbag.

By letter dated March 3, 2008, the Office advised appellant that it required factual and medical evidence to determine whether he was eligible for compensation benefits. It asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition and an opinion as to whether his claimed conditions were causally related to his federal employment.

Appellant submitted a March 6, 2007 x-ray report, the results of which showed a small synovial cyst on the right of the femoral neck, but no evidence of acute fracture or dislocation in his hip joints. In a report dated March 29, 2007, Dr. Mark A.P. Filippone, Board-certified in physical and rehabilitative medicine, stated that appellant had been complaining of lower and upper extremity pain caused by his duties as a letter carrier. He noted that appellant had recently experienced low back pain radiating into the right thigh and the calf, with numbness in the lateral right thigh. Dr. Filippone diagnosed low back derangement with lumbosacral radiculitis and suspected internal derangement of both hips. He opined that appellant's low back and hip complaints were directly and solely the result of occupational injuries sustained through his years of employment as a letter carrier.

By decision dated May 14, 2008, the Office denied appellant's claim, finding that he failed to submit medical evidence sufficient to establish that he sustained a bilateral hip or leg condition in the performance of duty.

In a report dated October 15, 2008, Dr. Filippone reiterated his previously stated opinion that appellant's job as a letter carrier resulted in his claimed bilateral hip condition because it required him to be on his feet eight hours per day, walking long distances, walking up and down stairs, getting in and out of the employing establishment vehicles, walking up and down hills, etc., for approximately 23 years. He noted that appellant had been complaining of intermittent low back pain over the last few years, with pain on both hips and buttocks, on the right than on the left, although he denied any discrete history of trauma or injury. Dr. Filippone opined that given appellant's work history, objective findings on physical examination and subjective complaints, it was well within reasonable medical probability that his bilateral hip abnormalities were directly and solely the result of his employment duties.

By letter dated November 19, 2008, appellant's attorney requested reconsideration.

By decision dated February 17, 2009, the Office denied modification of the May 14, 2008 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that 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

¹ 5 U.S.C. §§ 8101-8193.

for which compensation is claimed are causally related to the employment injury.² 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.³

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 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 is usually rationalized medical 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.⁴

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor, his belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁵ Causal relationship must be established by rationalized medical opinion evidence and he failed to submit such evidence.

A claimant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed right shoulder condition and his federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

ANALYSIS

In the instant case, appellant has alleged that his duties, which included walking, climbing stairs, and standing, caused bilateral hip and lower extremity conditions. He has submitted medical evidence which indicates that he has been diagnosed with low back

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Id.*

⁵ *Id.*

⁶ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

derangement with lumbosacral radiculitis, suspect internal derangement of both hips and a small synovial cyst of the right femoral head. Appellant has failed to submit probative medical opinion evidence containing a rationalized medical explanation which relates his alleged conditions to factors of his employment. For this reason, he has not discharged his burden of proof.

Appellant submitted the May 29, 2007 and October 15, 2008 reports from Dr. Filippone, noted that he was required to be on his feet eight hours per day, walk long distances, walk up and down stairs, walk up and down hills, and get in and out of the employing establishment vehicles for more than two decades. Dr. Filippone stated that, based on appellant's work history, objective findings on physical examination and his subjective complaints, his bilateral hip abnormalities were directly and solely the result of his employment duties. His opinion, however, is of limited probative value as it does not contain any medical rationale explaining how these duties physiologically caused the diagnosed conditions of low back derangement with radiculitis, "suspect" bilateral hip derangement or the small synovial cyst of the femoral head.⁷ The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁸ Dr. Filippone did not sufficiently describe appellant's job duties and then explain the medical process through, which such duties would have been competent to cause the claimed condition. His reports, the only evidence appellant submitted in support of his claim, thus, did not constitute sufficient medical evidence to establish that his claimed bilateral conditions were causally related to his employment.

The Office advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Consequently, appellant has not met his burden of proof in establishing that his claimed bilateral hip and leg conditions were causally related to his employment.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof in establishing that his claimed bilateral hip and leg conditions were sustained in the performance of duty.

⁷ *William C. Thomas*, 45 ECAB 591 (1994).

⁸ *See Anna C. Leanza*, 48 ECAB 115 (1996).

ORDER

IT IS HEREBY ORDERED THAT the February 17, 2009 and May 14, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 4, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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