



her employment on that date. Appellant submitted a narrative statement and noted that she had experienced a traumatic injury on June 17, 2006 and was currently receiving total disability compensation under that claim.<sup>2</sup> She stated that the fall had resulted in sprains of the neck and shoulder as well as a left elbow contusion. Appellant underwent left shoulder surgery on August 24, 2007 and her claim was later accepted for left shoulder impingement syndrome. She sought medical treatment from Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, who diagnosed cervical radiculopathy, acromioclavicular arthritis, bilateral shoulder impingement syndrome and left adhesive capsulitis and opined that these conditions were not only the result of appellant's June 17, 2006 employment injury, but also due to the repetitive motion of her employment duties.

In a letter dated August 21, 2008, OWCP requested additional factual and medical information.

On May 22, 2008 Dr. Tauber noted appellant's work history including her June 2006 traumatic injury. He listed her symptoms of pain in the right shoulder, elbow, forearm, wrist and hand, low back and right knee. On examination, Dr. Tauber found tenderness in the right shoulder, elbow, wrist and hand with pain at the extremes of motion. There was a questionable positive impingement sign at the right shoulder and questionably positive Tinel's sign at her right wrist. Dr. Tauber also reported pain in the cervical spine with motion and decreased sensation in her hands to pin prick. He stated that appellant had tenderness in her right knee with normal range of motion and tenderness of the low back. Dr. Tauber stated that it was reasonable for a person who carried out repetitive motion duties to have problems in either upper extremity. He suggested that overhead work may contribute to shoulder pathology and that appellant's frozen left shoulder may result from compensatory pain in the right upper extremity.

Appellant responded to OWCP's questions and claimed her neck and left shoulder, arm wrist and hand conditions, lumbar spine and bilateral knee conditions, were not part of her traumatic injury claim. She stated that her symptoms worsened with the work she performed after the June 17, 2006 injury. Appellant stated that she had to stand most of the time lifting, bending, twisting and performing repetitive motion activities which increased her symptoms, particularly her back pain. She described her duties as a mail carrier. Following her June 17, 2006 injury, appellant continued to work casing mail for eight hours a day, standing and reaching above her shoulder, twisting and moving around the case. She stated that her back symptoms began approximately one month after the June 2006 injury and that her other conditions followed.

Appellant underwent a second opinion evaluation on September 18, 2008 by Dr. H. Harlan Bleecker, a Board-certified orthopedic surgeon, who diagnosed impingement syndrome of the left shoulder and degenerative arthritis of the lumbar spine and right hip. Dr. Bleecker noted that appellant first mentioned her back complaints in February 2007 and that a cervical magnetic resonance imaging (MRI) scan demonstrated minimal bulges at C5-6 and C6-7. He stated that the pain in her legs was nonanatomic with both anterior and posterior burning pain with pins and needles on the left. Dr. Bleecker found that appellant's grip was equal and normal. He found a full range of motion of the right shoulder with limitations on the left. Dr. Bleecker

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<sup>2</sup> OWCP File No. xxxxxx777.

reported a normal range of motion of the elbows and wrists. He opined that appellant's low back condition was not due to her traumatic injury.

By decision dated October 7, 2008, OWCP denied appellant's occupational disease claim. It found that she had not submitted sufficient medical evidence.

On October 15, 2008 counsel requested an oral hearing before an OWCP hearing representative. It was held on February 25, 2009.

In a report dated January 15, 2009, Dr. Tauber noted that appellant underwent bilateral knee MRI scans on December 22, 2008. The right MRI scan demonstrated a horizontal tear of the posterior horn of the medial meniscus. On the left, the MRI scan showed intrasubstance degenerative in the medial meniscus without a complete tear. Dr. Tauber diagnosed degenerative disease of her lumbar spine based in part on a lumbar MRI scan, which demonstrated mild lumbar spondylosis. On examination, he found positive straight leg raising and attributed appellant's lumbar and knee conditions to the strenuous duties as a letter carrier including lifting, bending and stooping, climbing and squatting. Dr. Tauber stated, "There is no physician who could reasonably say that six years of strenuous duties contributed nothing to a person's degenerative spine. This would be completely medically unreasonable. It is my opinion that [appellant's] degenerative disease of her spine is at least in part industrial in etiology, as strenuous duties and repetitive duties do contribute and it is medically recognized as such to the development of degenerative disease." He also attributed appellant's bilateral knee conditions including the right knee's meniscal tear in part to walking, climbing, squatting and walking uneven surfaces as a letter carrier. Dr. Tauber opined that additional conditions in the left knee were likely.

By decision dated August 14, 2009, an OWCP hearing representative affirmed the October 7, 2008 decision.

Counsel requested reconsideration on September 24, 2009. Dr. Tauber completed a report on July 30, 2009. He opined that appellant had bilateral carpal tunnel syndrome which was established electrodiagnostically. Dr. Tauber noted that carpal tunnel syndrome was common in individuals who carried out repetitive motion duties like her. On August 27, 2009 he opined that appellant's work duties were a significant contributing cause of her carpal tunnel syndrome, back and knee conditions.

By decision dated December 22, 2009, OWCP denied modification of its prior decisions. It found that Dr. Tauber did not provide sufficient medical reasoning in support of his opinion that appellant's conditions were due to her employment duties.

Counsel requested reconsideration on February 17, 2010 and disagreed with OWCP's characterizations of the factual information. In a report dated January 25, 2010, Dr. Tauber opined that appellant's duties were a predominant contributing cause to the development of the arthritis in her knees and lumbar spine. He stated:

"An individual who has carried out extensive and repetitive lifting, bending, squatting and climbing such as a letter carrier performing these duties extensively over a seven-year period will have wear and tear on their joints that they otherwise would not have sustained. This applies to the knees and it applies to the

lumbar spine as well. In fact, it would be totally inappropriate for an individual to have these complaints after having performed such duties and for an examiner to state that those strenuous duties had a zero role in contributing to these conditions. Under federal law, unless there is a zero industrial contribution, that means that there is some contribution and that makes the condition industrial.”

On May 21, 2010 OWCP denied modification of its prior decisions. It noted that appellant stopped work in August 23, 2007 and found that Dr. Tauber had not differentiated the nature and effect of her work activities on any underlying degenerative condition or provided a reasoned medical opinion in the context of her complete work and medical history.

Counsel requested reconsideration on January 27, 2011. On January 6, 2011 Dr. Tauber stated that he performed arthroscopic surgery on appellant’s right knee and found significant degeneration. Appellant’s knee condition was related in part to her federal job duties including walking, climbing, squatting and heavy lifting. Dr. Tauber stated that the work activities contributed to the degenerative process of her knee. He diagnosed degenerative arthritis of the right knee and opined that appellant’s job duties contributed to the degeneration. Dr. Tauber also attributed carpal tunnel syndrome and a back pain to her accepted employment duties.

In a decision dated April 28, 2011, OWCP found that the medical evidence did not establish that the diagnosed conditions were causally related to the established work duties.

In a request for reconsideration dated July 29, 2011, appellant submitted a report from Dr. Tauber dated July 6, 2011. Dr. Tauber reiterated that her conditions were related to her work duties. On December 22, 2011 he again attributed appellant’s conditions to her employment duties.

In an October 11, 2012 decision, OWCP found that Dr. Tauber did not provide sufficient medical reasoning to explain how appellant’s underlying degenerative conditions were aggravated by her accepted employment duties.

In a request for reconsideration dated December 10, 2012, appellant submitted an October 18, 2012 report from Dr. Tauber, who noted that it was his opinion that she had to carry out “strenuous and repetitive duties” as a letter carrier and that such duties are known to contribute to degenerative disease. Dr. Tauber further stated, “These duties, when one carries out lifting and bending and stooping and squatting and climbing on uneven surfaces, will contribute to degeneration of the joints and the spine.” He concluded that appellant’s lumbar condition, knee condition and upper extremity condition were employment related.

By decision dated March 4, 2013, OWCP denied modification of its prior decisions and found that the new medical evidence was not sufficient to establish that appellant’s work duties caused or aggravated her claimed conditions.

### **LEGAL PRECEDENT**

OWCP’s regulations define an occupational disease as “a condition produced by the work environment over a period longer than a single workday or shift.”<sup>3</sup> To establish that an injury

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<sup>3</sup> 20 C.F.R. § 10.5(q).

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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.<sup>4</sup>

### ANALYSIS

Appellant sustained an accepted traumatic injury on June 17, 2006 under OWCP File No. xxxxxx777 (neck and shoulder sprain and left elbow contusion). She then filed an occupational disease claim alleging that she developed additional conditions due to her work duties after her traumatic injury. Appellant specifically noted that she stood all day and cased mail for eight hours a day. She submitted a series of reports from Dr. Tauber diagnosing bilateral knee and back conditions as a result of her employment duties.

Dr. Tauber has repeatedly opined that appellant's employment history of working at the employing establishment as a letter carrier for over six years contributed to her current degenerative spine and knee conditions. On January 15, 2009 he stated, "There is no physician who could reasonably say that six years of strenuous duties contributed nothing to a person's degenerative spine. This would be completely medically unreasonable. It is my opinion that [appellant's] degenerative disease of her spine is at least in part industrial in etiology, as strenuous duties and repetitive duties do contribute and it is medically recognized as such to the development of degenerative disease." Dr. Tauber also attributed an aggravation of appellant's bilateral knee conditions to walking, climbing, squatting and walking uneven surfaces as a letter carrier. On January 25, 2010 he stated, "An individual who has carried out extensive and repetitive lifting, bending, squatting and climbing such as a letter carrier performing these duties extensively over a seven[-]year period will have wear and tear on their joints that they otherwise would not have sustained. This applies to the knees and it applies to the lumbar spine as well. In fact, it would be totally inappropriate for an individual to have these complaints after having performed such duties and for an examiner to state that those strenuous duties had a zero role in contributing to these conditions."

These reports provided a history of injury, diagnoses and opinion that appellant's preexisting degenerative condition were exacerbated by her employment duties following the June 2006 employment injury. While these reports are not sufficient to meet her burden of proof, they do raise an uncontroverted inference of causal relation between her accepted

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<sup>4</sup> *Lourdes Harris*, 45 ECAB 545, 547 (1994).

employment duties and an exacerbation of her diagnosed condition and are sufficient to require OWCP to undertake further development of appellant's claim.<sup>5</sup>

On remand, OWCP should refer appellant to an appropriate physician to determine whether her employment duties contributed to her current degenerative spine and knee conditions. After this and such other development as OWCP deems necessary, it should issue a *de novo* decision.

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** March 4, 2013 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this opinion of the Board.

Issued: September 23, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>5</sup> See also *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354, 358-60 (1989).