

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

KEVIN T. O'CONNELL, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Roseville, CA, Employer**

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**Docket No. 06-311
Issued: April 4, 2006**

Appearances:

Thomas M. Flack, 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

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 21, 2005 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated April 4 and August 25, 2005 denying his claim that his medical condition was causally related to work and a November 2, 2005 decision denying his request for further review of the merits of his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit decisions and the nonmerit decision in this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On January 7, 2005 appellant, then a 64-year-old letter carrier, filed an occupational disease claim alleging that his degenerative disc disease and left leg sciatica was caused by his

federal employment. Appellant was initially aware of his condition and that it was caused by his employment on February 6, 2004. The employing establishment stated that appellant first reported his injury on January 6, 2005 and that he was last exposed to the conditions causing his injury on February 7, 2004.

In a report dated April 15, 2004, Dr. Donald Matthews, appellant's Board-certified orthopedic surgeon, stated that he treated appellant for spondylolisthesis at L4-5, with severe back and leg pain. A magnetic resonance imaging (MRI) scan revealed disc herniation on the right at L4-5 causing foraminal stenosis. He also noted severe degenerative disc stenosis with foraminal stenosis on the left at L5-S1. Dr. Matthews noted a history of hypertension and degenerative arthritis of the left knee with prior interventions. Appellant related problems with his left knee and believed he needed a knee brace. Dr. Matthews provided an injection for pain and placed appellant on total disability for three months. On May 20, 2004 he provided an epidural injection.

In a narrative dated December 24, 2004, appellant stated that he injured his left knee in 1960 and had a total knee replacement in 1964. He related a history of low back pain into his legs and that from February 6 to 8, 2004 he was off work due to pain. Appellant was off again from March 12 to July 31, 2004, with knee surgery on July 8, 2004. He stated that Dr. Matthews placed him on limited duty from November 30, 2004 until March 2005. Appellant alleged that constant bending and lifting heavy satchels contributed to an aggravation and worsening of his condition. On January 7, 2005 the employing establishment noted in an accident report appellant's complaints about employment-related pain in his lower back and left leg on February 6, 2004 which he alleged was caused by carrying a mailbag for over 20 years.

On January 14, 2005 appellant stated that his preexisting back condition was exacerbated by 20 years of work with the employing establishment. His job requirements as a letter carrier required him to stand, turn, twist, reach up and down, squat, pull, push and lift mail into trays, and load hampers in the postal vehicle. Appellant detailed his daily activities as the cause of his condition. Appellant noted that his diagnosed conditions of sciatica, degenerative disc disease and bulging disc at L4-5 and L5-S1 to his work. He submitted copies of his position descriptions. By letter dated February 2, 2005, the Office advised appellant that the information submitted in his claim was not sufficient to determine whether he was eligible for benefits and advised him to submit additional medical and factual evidence.

On February 7, 2004 Dr. Chun Y. Yih Yang¹ related a familiarity with appellant's left knee injury and low back pain. On examination, Dr. Yang found no spinal tenderness, and reported full flexion and extension to 10 degrees, normal straight leg raises bilaterally, a normal neurological examination and normal tip toe heel walk. He diagnosed low back pain.

On April 4, 2005 the Office denied the claim on the grounds that the medical evidence did not establish causal relationship between the diagnosed medical conditions and appellant's employment. On May 23, 2005 appellant filed a request for reconsideration.

¹ Dr. Yang's credentials could not be determined.

In a report dated May 9, 2005, Dr. Matthews noted appellant's history of treatment for low back pain. He reviewed a February 23, 2004 report from Dr. G. Palma, a neurologist, who read an MRI scan as revealing anterolisthesis at L4-5 and a herniated nucleus pulposus at L4. A March 26, 2004 report from Dr. Janos P. Ertl, a Board-certified orthopedic surgeon, recommended a left total knee replacement. Dr. Ertl also found a herniated nucleus pulposus at L4. Dr. Matthews stated that he initially treated appellant on April 15, 2004 for back and leg pain, at which time appellant experienced no sensory deficit and could walk one to two blocks at a time. Diagnostic tests revealed degenerative disc disease and foraminal stenosis at L5-S1 and spondylolisthesis and stenosis at L4-5. On May 20, 2004 Dr. Matthews provided injections for back pain. He stated that appellant underwent a total knee replacement surgery on July 8, 2004. Dr. Matthews saw him in a follow up for lumbar spondylolisthesis and degenerative disc disease at which time appellant complained of pain. Dr. Matthews returned appellant to modified duty from December 1, 2004 to March 1, 2005 and administered pain injections on January 22, 2004. He stated that appellant's occupation as a letter carrier contributed to his condition, adding that the added weight bearing "may" have aggravated a preexisting condition and caused the spondylolisthesis to progress. Dr. Matthews stated that appellant's condition was permanent and would be resolved only with surgical treatment.

On August 25, 2005 the Office denied modification of the April 4, 2005 decision, finding that Dr. Matthews' report did not establish that appellant's condition was causally related to his employment.

On October 12, 2005 appellant again requested reconsideration. In a report dated April 2, 1985, the Department of Veterans Affairs stated that appellant had a 10 percent service-related disability for his left knee, and a service-connected low back pain condition that did not merit a disability award. On February 18, 2004 Dr. John W. Kim, a radiologist, obtained an MRI scan of the lumbar spine. On February 23, 2004 Dr. Palma noted right buttocks pain. On November 30, 2004 Dr. Matthews diagnosed spondylolisthesis and degenerative disc disease at L4-5 and L5-S1. Appellant also submitted various treatment records.

On November 2, 2005 the Office denied appellant's request for reconsideration. The Office found that appellant's statements about his work and Dr. Matthews' November 30, 2004 report were repetitious of previously considered evidence, and that the remaining medical reports failed to provide new information regarding appellant's claim. The Office also found that appellant failed to present evidence that the Office erroneously applied or misinterpreted a point of law nor has he advanced a legal argument not previously considered.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that the essential elements of his 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

² 5 U.S.C. §§ 8101-8193.

for which compensation is claimed are causally related to the employment injury.³ 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.⁴

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 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, generally, 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 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.⁵

ANALYSIS -- ISSUE 1

It is not disputed that appellant carried a mail bag in his job or that he has diagnosed back conditions. However, the medical evidence is insufficient to establish that employment factors caused or aggravated his back or left knee conditions.

Dr. Yang's February 7, 2004 report noted appellant's low back pain from the prior year but reported essentially normal findings. He did not address the issue of causal relation. Medical opinion that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.⁶

In a May 9, 2005 report, Dr. Matthews reviewed appellant's history of treatment from February to December 1, 2004. He opined that appellant's job contributed to his condition and noted that the added weight bearing of appellant's mail satchel "may" have aggravated a preexisting condition and caused the spondylolisthesis to progress. However, this opinion is speculative in that Dr. Matthews did not fully describe how weight bearing in appellant's employment would cause or contribute to his preexisting back condition. The Board has held that medical opinions based on an incomplete history or which are speculative or equivocal in

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

⁶ *Conrad Hightower*, 54 ECAB 796 (2003); *Donald T. Pippin* 54 ECAB 631 (2003).

character are of diminished probative value.⁷ Dr. Matthews did not provide a reasoned medical explanation regarding how any of appellant's low back or left knee conditions would have been caused or aggravated by specific employment activities. Other reports by Dr. Matthews did not specifically address the issue of causal relation.

The other medical reports of record do not address whether appellant's employment caused or aggravated his medical conditions. While appellant believed that his duties as a letter carrier aggravated his low back condition, the record contains insufficient medical evidence that his activities as a letter carrier caused or aggravated the low back condition. No physician provided a rationalized medical opinion clearly establishing a causal relationship between his employment activities and his condition. In this regard, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁸ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹ Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

As there is no probative, rationalized medical evidence indicating that appellant's low back condition was caused and/or aggravated by factors of his employment, appellant has not met his burden of proof in establishing that he sustained a medical condition in the performance of duty causally related to factors of employment. The Board will affirm the Office's finding that appellant did not sustain a compensable injury.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”¹⁰

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting

⁷ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁸ *See Joe Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁹ *Id.*

¹⁰ 5 U.S.C. § 8128(a).

relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹¹

ANALYSIS -- ISSUE 2

With respect to the October 12, 2005 reconsideration request, appellant did not show that the Office erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by the Office.

The Board finds that appellant did not submit relevant and pertinent new evidence not previously considered by the Office. The underlying issue is medical in nature. He submitted a February 18, 2004 report from Dr. Kim, a February 23, 2004 report from Dr. Palma and a November 30, 2004 report from Dr. Matthews. Dr. Kim addressed an MRI of the lumbar spine without addressing the issue of causal relationship. Dr. Palma similarly noted right buttocks pain but did not address the relationship of such pain to appellant's employment. Dr. Matthews repeated the diagnoses of spondylolisthesis and degenerative disc disease but did not explain how appellant's work as a letter carrier caused or contributed to these conditions. For these reasons, the evidence is not relevant to the underlying issue.

Appellant also submitted material from the Department of Veterans Affairs regarding his disability status. However, this also is not relevant. In determining whether an employee is disabled under the Act, the findings of the other federal agencies such as the Department of Veterans Affairs are not determinative of disability under the Act. The Department of Veterans Affairs and claims brought under the Act have different evidentiary standards. Therefore, disability under one statute does not establish disability under the other statute.¹²

The Board finds that the October 12, 2005 reconsideration request did not show the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or provide relevant and pertinent new evidence not previously considered by the Office. The Board accordingly finds that the Office properly denied the reconsideration request without merit review of the claim.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty. The Board also finds that the Office properly denied appellant's October 12, 2005 request for reconsideration.

¹¹ *Eugene F. Butler*, 36 ECAB 393 (1984).

¹² *See James Robinson, Jr.*, 53 ECAB 417 (2002); *Daniel Deparini*, 44 ECAB 657 (1993).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 2, August 25 and April 4, 2005 are affirmed.

Issued: April 4, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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