

due to factors of his federal employment. Appellant stated that his position required him to spend long hours standing, bending, stooping and carrying heavy weights.¹

Appellant had a prior medial and lateral arthrotomy of the right knee in 1972 due to a college baseball injury, a lateral arthrotomy of the left knee in 1977 following a family football game and a second left knee surgery on February 16, 2001 due to increased symptoms with no specific cause.

The Office referred appellant to Dr. Ronald Gerson, a Board-certified orthopedic surgeon, for an impartial medical examination. In reports dated June 12, August 20, 2007 Dr. Gerson determined that appellant's knee osteoarthritis was not work related as his employment duties were not physically stressful beyond that which would be noted in the general population. He concluded, that the required job duties as a U.S. Postal Inspector did not result in osteoarthritis of the knees or aggravation of a preexisting osteoarthritis condition.

In an October 7, 2008 decision,² the Board found that Dr. Gerson did not resolve whether there was any aggravation of appellant's underlying degenerative condition by work, and if so, whether the aggravation was temporary or permanent. The Board remanded the case for selection of a new impartial medical examiner. The facts of the case as set out in the Board's prior decision are incorporated herein by reference.

On remand the Office referred appellant, a statement of accepted facts and list of questions to Dr. George P. Glenn, Jr., a Board-certified orthopedic surgeon. The statement of accepted facts included a copy of the physical requirements for appellant's position, noting that his duties were moderate to arduous, that the employee must be active in good health and sound physical condition. The statement of accepted facts noted that he was required to drive, sit, stand, walk and lift up to 25 pounds on a daily basis as well as heavier lifting on an occasional basis. Appellant was rarely required to perform prolonged walking, standing or rigorous physical activity while conducting surveillance and field investigations.

In a December 9, 2008 report, Dr. Glenn described appellant's employment duties chronologically, noting that for the first two years at the employing establishment appellant was required to climb ladders, conduct surveillance from vehicles and carry heavy files. Beginning in September 1977, his job activities were not as physically demanding and only required him to carry heavy files, perform surveillance and remove all the files from an office three or four times a year. Dr. Glenn performed a physical examination and found that appellant had five to seven degrees of flexion contracture in both knees, with no effusion and normal flexion. Appellant demonstrated patellofemoral crepitus and positive patellar grind test.

¹ The employing establishment submitted a copy of appellant's position description which included "moderate to arduous physical exertion" in the form of climbing ladders, occupying cramped crowded spaces for extended periods, physical force in arrests, search, pursuit and restraint of persons and the capacity to perform vigorous physical activities on a sustained basis.

² Docket No. 08-921 (issued October 7, 2008).

Dr. Glenn advised that appellant developed traumatic osteoarthritis due to the prior multiple surgeries as well as his nonemployment-related traumatic injuries. He reviewed appellant's oral history as well as the duties listed in the statement of accepted facts and stated that his employment activities would not in any way be a causal factor in the development of bilateral knee osteoarthritis. Dr. Glenn stated:

"This statement is all inclusive from the time of his employment and the approximately two and a half years of reported more strenuous activity in contrast to the less strenuous activity of his later years of employment. This opinion is based upon my knowledge of the literature and more importantly based upon my fifty years experience as a practicing orthopedic surgeon."

As to whether appellant's underlying osteoarthritis was aggravated by his employment, either his initial strenuous activities or later less strenuous duties, Dr. Glenn stated:

"It has been clearly shown repetitive persistent joint loading activities such as jogging, running, repetitive use of exercise equipment, which tends to abnormally load the joint, will cause an aggravation of an underlying osteoarthritic problem in a weight[-]bearing joint. It is furthermore well recognized that there is no need to restrict lesser degrees of these activities because these less strenuous activities have no effect on the involved joint and as a consequence are not considered an aggravating factor. The key causal factors in aggravation are the frequency of the activity, the duration of the activity and the excessive weight loading of the joint."

Dr. Glenn opined that appellant's stated history and the physical requirements for his position as listed in the statement of accepted facts did not rise to the level which would cause an aggravation to any degree to the preexisting, nonwork-related osteoarthritis in appellant's knees.

In a decision dated January 29, 2009, the Office found Dr. Glenn's report constituted the weight of medical opinion. Therefore, appellant had not established any causal relationship between his diagnosed bilateral knee osteoarthritis and his employment duties.

Appellant, through his attorney, requested an oral hearing that was held on May 27, 2009. Counsel contended that the statement of accepted facts was not accurate in the description of appellant's employment duties. Appellant alleged that Dr. Glenn incorrectly understood that his position was sedentary after the first two years. Following the oral hearing he submitted a June 22, 2009 statement from T.P. Anderson, Jr., a retired postal inspector, who worked with appellant and opined that he spent 25 to 35 percent of his time in the office setting while the remainder of the time was spent in vigorous physical activities.

By decision dated July 30, 2009, an Office hearing representative affirmed the January 29, 2009 decision, finding that the statement of accepted facts was accurate and that Dr. Glenn allowed appellant ample time to describe his employment duties.

LEGAL PRECEDENT

To establish whether 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 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.³

In situations where there are 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 on a proper factual background, must be given special weight.⁴

ANALYSIS

As noted, the Board remanded the case to the Office for referral of appellant for a new impartial medical examiner to resolve whether the osteoarthritis of both knees had any relationship to his employment duties. The Office referred appellant, a statement of accepted facts and a list of specific questions, to Dr. Glenn, a Board-certified orthopedic surgeon, to resolve the existing conflict of medical opinion evidence.

Dr. Glenn provided a thorough and detailed report dated December 9, 2008 which included appellant's description of his employment duties. Appellant related that for the first two years at the employing establishment he climbed ladders, conducted surveillance from vehicles and carried heavy files. He noted that beginning in September 1977 his job activities were not as physically demanding, but still required him to carry heavy files, perform surveillance and remove all the files from an office three or four times a year. Dr. Glenn also reviewed the statement of accepted facts which described appellant's job duties as moderate-to-arduous, requiring that he must be active, in good health and sound physical condition. The statement of accepted facts noted that appellant was required to drive, sit, stand, walk and lift up to 25 pounds on a daily basis as well perform heavier lifting on an occasional basis. The statement of accepted facts noted that he was rarely required to perform prolonged walking, standing or rigorous physical activity while conducting surveillance and field investigations.

³ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

⁴ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

Dr. Glenn opined that appellant had developed traumatic osteoarthritis and attributed this condition to his nonemployment-related traumatic injuries and resulting surgeries. He indicated that he had reviewed appellant's description of his job duties as well as the duties listed in the statement of accepted facts. Dr. Glenn concluded that his employment activities did not result in the development of bilateral knee osteoarthritis. He stated that he had considered all appellant's employment activities including the early more strenuous activities and the less demanding activities after the first two years as described by appellant. Dr. Glenn stated:

“It has been clearly shown repetitive persistent joint loading activities such as jogging, running, repetitive use of exercise equipment, which tends to abnormally load the joint, will cause an aggravation of an underlying osteoarthritic problem in a weight[-]bearing joint. It is furthermore well recognized that there is no need to restrict lesser degrees of these activities because these less strenuous activities have no effect on the involved joint and as a consequence are not considered an aggravating factor. The key causal factors in aggravation are the frequency of the activity, the duration of the activity and the excessive weight loading of the joint.”

Dr. Glenn concluded that appellant's stated history and the physical requirements for his position as listed in the statement of accepted facts did not rise to the level which would cause “any aggravation to any degree to the preexisting, nonwork related osteoarthritis” in his knees.

The Board finds that Dr. Glenn's report was based on a proper factual background. Dr. Glenn clearly considered job duties described in the statement of accepted facts which were based on the employing establishment's position description. He also gave credence to appellant's statements regarding the duration and intensity of specific job activities. There is nothing in the record to suggest that appellant's position required constant repetitive activities although, as noted by Dr. Glenn, he was required to climb ladders, move heavy boxes and conduct surveillance to some degree throughout his career. Based on the factual evidence, Dr. Glenn determined that appellant's employment activities did not cause or aggravate his osteoarthritis. He noted that repetitive persistent joint loading activities such as jogging, running or repetitive use of exercise equipment tended to abnormally load the joint and would cause an aggravation of an underlying osteoarthritic problem in a weight-bearing joint, but as appellant's position description did not require such repetitive persistent joint loading activities, there was no reason to attributed his diagnosed condition to his employment activities. This medical reasoning supports Dr. Glenn's conclusions. The Board finds that Dr. Glenn's report is sufficiently detailed and offers medical reasoning in support of the conclusion that appellant's bilateral knee condition was not causally related to his employment. Therefore, Dr. Glenn's report represents the special weight of the medical evidence and negates appellant's occupational disease claim.

On appeal, counsel contends that the description of appellant's job duties was not accurate and that Dr. Glenn stated that he relied solely on the statement of accepted facts rather than appellant's statements. As noted, the statement of accepted facts was based on appellant's position description and included the specific duties and the description of the position as moderate-to-arduous. Dr. Glenn noted that he reviewed this statement and included appellant's description of the specific duties that he was required to carry out within the general position description offered by the statement of accepted facts. The Board finds that the impartial referee

provided an accurate review of the duties performed and his report is entitled to the special weight of the medical evidence.

CONCLUSION

The Board finds that the weight of the medical evidence establishes that appellant's bilateral knee osteoarthritis was not caused or aggravated by his employment activities.

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 6, 2010
Washington, DC

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

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

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