

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

J.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 10-198
Issued: September 13, 2010**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 26, 2009 appellant filed a timely appeal of an October 8, 2009 decision of the Office of Workers' Compensation Programs concerning his claim for erectile dysfunction. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

ISSUE

The issue is whether appellant established that he sustained impairment of the penis causally related to his accepted employment injury.

FACTUAL HISTORY

This is the third time this case has been before the Board. In a decision dated May 16, 2006, the Board set aside the Office's January 4, 2005 decision granting a schedule award for a 16 percent permanent impairment of the right and left lower extremities and remanded the case

for further development.¹ The Board directed further explanation from an Office medical adviser regarding appellant's impairment. The Board also noted that, although Dr. George L. Rodriguez, a Board-certified physiatrist, had opined that appellant's erectile dysfunction was work related and assigned a 10 percent permanent impairment due to such a condition, the Office had not issued a decision as to whether such condition was consequential to the accepted injury. In a decision dated August 20, 2007, the Board affirmed the Office's September 13, 2006 decision.² The Board found that appellant had no more than 16 percent right leg impairment and 16 percent left leg impairment, for which he received a schedule award. The Board also found that appellant was not entitled to a schedule award based on erectile dysfunction and that a referral to a urologist was not appropriate. The Board noted that Dr. Rodriguez did not provide medical reasoning to support his opinion that appellant had any condition affecting the penis causally related to the accepted employment injury and the Office properly relied on the Office medical adviser's opinion to find that appellant had no work-related condition of the penis. The findings of fact and conclusions of law as set forth in the Board's prior decisions are hereby incorporated by reference.

The relevant facts indicate that the Office accepted appellant's claim for an acute lumbar strain with radiculopathy and approved subsequent surgical procedures of August 13, 1991, March 29, 1994, May 29, 1996, September 9, 1999 and May 2, 2001. The question of whether the work injury caused or affected appellant's erectile dysfunction and penile impairment was first raised in Dr. Rodriguez's July 9, 2004 report. Dr. Rodriguez recommended 10 percent impairment rating for erectile dysfunction, which he opined was employment related. In reviewing the medical record, the Office medical adviser, in an August 30, 2006 report, rejected Dr. Rodriguez's recommendation of an erectile dysfunction impairment on the basis of the second opinion report of Dr. Robert F. Draper, Jr., a Board-certified orthopedic surgeon, dated May 10, 2004, who examined appellant and found a normal stance and gait and no motor or sensory deficits of the lower extremities based on the L1, L2, L3, L4, L5 and S1 nerve roots. The Office medical adviser found that Dr. Draper had carried out appropriate testing on the nerve roots while Dr. Rodriguez had incorrectly referenced actual nerves. On that basis, he found Dr. Draper's report to be more detailed and credible than Dr. Rodriguez's report. As Dr. Draper found no evidence of neurologic abnormalities, the Office medical adviser opined that it would be highly unlikely that appellant would have an erectile dysfunction as a result of his work-related injury.

In an April 8, 2008 letter, appellant, through his attorney, requested reconsideration of the denial of his claim for erectile dysfunction. In support of his request, he submitted a February 14, 2008 report from Dr. Michael R. Lobis, a Board-certified urologist, who noted seeing appellant on February 5, 2008. Dr. Lobis noted the history of injury as set forth in an amended statement of accepted facts and that appellant had an ongoing problem with erectile dysfunction for the past 9 or 10 years that started after one of his back surgeries. He explained that erectile function was dependant on the proper neurologic pathway from the sacral spinal

¹ Docket No. 06-240 (issued May 16, 2006). Appellant's claim was accepted for an acute lumbar strain with radiculopathy. He underwent lumbar discectomy at L4-5 with facetectomy at L5-S1, discectomy at L5-S1 and lumbar decompressive surgeries.

² Docket No. 06-2147 (issued August 20, 2007).

cord to the penile tissues and, when there was a disruption of this normal neurologic function, the penile tissues lose the ability to get the proper neurologic input that increases the blood flow which causes the patient to have an erection. Dr. Lobis stated that appellant's chronic back pain with compression of the lumbosacral nerves as well as his other risk factors of age, hypertension and a history of smoking could give erectile dysfunction. He opined that, while there may be a multifactorial source for appellant's erectile dysfunction, given his known back disease, he suspected that his back condition represented 50 plus percent of the causation of his erectile dysfunction. Dr. Lobis discounted appellant's other risk factors of hypertension, age and prior smoking as appellant had no problems with his erections prior to the beginning of his injury.

By decision dated October 8, 2009, the Office denied modification of its prior decisions.

LEGAL PRECEDENT

An employee seeking compensation under the Act has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.³

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁴ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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 Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁶

ANALYSIS

The Board finds that appellant has not established that he has an erectile dysfunction condition causally related to the work injury or that he is entitled to a schedule award for erectile dysfunction secondary to his accepted work-related injury.⁷ It is a claimant's burden to submit

³ *Michael S. Mina*, 57 ECAB 379 (2006); *Gary J. Watling*, 52 ECAB 278 (2001).

⁴ *Frankie A. Farinacci*, 56 ECAB 723 (2005); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁵ *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁶ *Daniel O. Vasquez*, 57 ECAB 559 (2006); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁷ Appellant has not submitted any new evidence or argument pertaining to the schedule award decision for the right and left lower extremities. Thus, the issue adjudicated in the Board's August 20, 2007 decision is res judicata and not subject to further consideration by the Board in this appeal. 5 U.S.C. § 8128; *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

sufficient evidence to establish entitlement to a schedule award.⁸ In this case, the Office has not accepted an erectile dysfunction as related to the employment-related back injury.⁹

The Board, in its August 20, 2007 decision, found that Dr. Rodriguez's report was insufficient to establish that appellant's erectile dysfunction was related to the accepted employment injury as the physician did not explain how any impairment for loss of sexual function was due to the accepted back condition.¹⁰ The Board found that the Office properly relied on the Office medical adviser's rationalized opinion that the absence of neurologic abnormality would render it highly unlikely that appellant would have an erectile dysfunction as a result of his work-related injury.

The February 14, 2008 report of Dr. Lobis is insufficient to establish that appellant's erectile dysfunction is related to the accepted employment injury as he did not provide a fully-rationalized explanation as to how appellant's condition was employment related. To be of probative value, the physician must provide rationale for the opinion reached.¹¹ Dr. Lobis' opinion that appellant's erectile dysfunction resulted from his chronic back pain with compression of the lumbosacral nerves is at best speculative in nature. He advised that appellant had several risk factors for erectile dysfunction and suspected that appellant's back condition was a cause. Dr. Lobis did not provide any reasoning referencing findings of appellant's attending neurosurgeons in addressing the cause of appellant's erectile dysfunction. This is especially important given that Dr. Draper, the second opinion physician, found no neurologic abnormalities in his May 10, 2004 report. Although Dr. Lobis noted seeing appellant, he did not report any examination findings or indicate that he reviewed any diagnostic testing in diagnosing erectile dysfunction in arriving at his opinion on causal relationship. It is well established that medical opinions based on an incomplete history or which are speculative or equivocal are of diminished probative value.¹² Furthermore, the Board has held that a temporal relationship alone is insufficient to establish causal relationship.¹³ The mere assertion that appellant had no problems with his erections prior to the beginning of his injury is insufficient to show that his erectile condition is caused or aggravated by his employment injury.

Appellant has not submitted sufficient medical evidence to establish that his erectile dysfunction condition is a consequence of his accepted employment injury. Consequently, there is no basis for payment of a schedule award for permanent impairment of the penis.

⁸ *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁹ Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury. *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁰ See 20 C.F.R. § 10.404(a); *Wade Baker*, 54 ECAB 198 (2002).

¹¹ *Jean Culliton*, 47 ECAB 728 (1996).

¹² *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹³ *Louis R. Blair, Jr.*, 54 ECAB 348, 350 (2003).

On appeal, appellant's attorney asserts that the evidence is sufficient to accept that appellant's claimed erectile dysfunction is employment related or that the evidence is sufficient to require further medical development. As noted, the Board previously found that appellant had not shown that his erectile dysfunction was employment related and that further medical referral was not appropriate. Although appellant subsequently submitted Dr. Lobis' report, this report, as discussed, is of insufficient probative value to establish appellant's claim or to require further medical development.

CONCLUSION

The Board finds that appellant has not established that he has an erectile dysfunction condition causally related to the work injury or that he is entitled to a schedule award for erectile dysfunction secondary to his accepted work-related injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated October 8, 2009 is affirmed.

Issued: September 13, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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