

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

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**J.M., Appellant**

**and**

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

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**Docket No. 10-1525  
Issued: March 17, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 18, 2010 appellant, through counsel, filed an appeal from a May 5, 2010 decision of the Office of Workers' Compensation Programs denying his claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant established that he sustained erectile dysfunction causally related to his accepted back injury.

On appeal, appellant, through his attorney, contends that the impartial medical examiner's opinion is outweighed by new evidence that disproves appellant's sexual dysfunction is due to vascular insufficiency.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts and circumstances as set forth in the Board's prior decisions are hereby incorporated by reference. The relevant facts are set forth below.

On October 28, 1995 appellant, then a 41-year-old letter carrier, injured his back and right leg while he was lifting trays of mail out of a hamper. The Office accepted his claim for lumbar strain and a herniated disc at L5-S1. On November 28, 1995 appellant underwent a lumbar laminectomy and discectomy. He subsequently claimed erectile dysfunction as a result of his accepted back injury. In a January 26, 2010 decision, the Board affirmed the Office's denial of the claim. The Office found a conflict in medical opinion as to the causal relationship between his work injury and erectile dysfunction. Appellant was referred to Dr. Richard W. Pidutti, a Board-certified urologist, for an impartial medical examination, who found that appellant's loss of penile function was not due to his accepted injury or surgery; rather, Dr. Pidutti attributed appellant's dysfunction to vascular insufficiency which was ameliorated with the use of Viagra. The Board found that the special weight of the medical evidence was represented by the opinion of Dr. Pidutti.<sup>3</sup> The Board found that the subsequent opinion of Dr. Paul M. Hoover, a Board-certified physiatrist, was not sufficient to overcome the opinion of Dr. Pidutti.

By letter dated February 5, 2010, appellant, through his attorney, requested reconsideration. In a November 26, 2008 report, Dr. Steven O. Bossinger, a Board-certified urologist, reviewed appellant's medical records and conducted a physical examination. He disagreed with the opinion of Dr. Pidutti, stating that it did not make clinical sense and was not consistent with the history provided. Appellant had undergone vascular testing which would refute Dr. Pidutti's assessment of a vascular etiology for his condition. Dr. Bossinger noted that his clinical findings on physical examination were consistent with pudendal neuropathy, most significantly typified by a decreased sphincter reflex examination. He found that appellant had sexual dysfunction, not erectile dysfunction, from ongoing pain. Dr. Bossinger stated, "While certainly, there are no objective measures of pain, it is my clinical opinion that it is certainly plausible and likely that [appellant] is experiencing significant enough pain during sexual activity to result in the loss of his erection." Appellant's condition could not be alleviated with medical therapy and required back surgery for which he was hesitant to undergo.

By decision dated May 5, 2010, the Office denied modification of the prior decisions denying appellant's claim.

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<sup>2</sup> Docket No. 07-70 (issued June 15, 2007) (the Board affirmed the Office's September 27, 2006 schedule award decision finding a 13 percent impairment to his left leg); Docket No. 09-148 (issued January 26, 2010) (the Board affirmed an Office decision finding that appellant had not established that he suffered from erectile dysfunction causally related to his accepted back injury).

<sup>3</sup> Docket No. 09-148 (issued January 26, 2010).

## LEGAL PRECEDENT

The basic rule respecting consequential injuries is that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening cause. Once the work-connected character of an injury has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause. An employee who asserts that a nonemployment-related injury was a consequence of a previous employment-related injury has the burden of proof to establish that such was the fact.<sup>4</sup>

When there exist opposing medical opinions 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 upon a proper factual and medical background, will be given special weight.<sup>5</sup>

## ANALYSIS

The Board finds that the report of Dr. Bossinger is insufficient to overcome the special weight of the well-rationalized opinion of the impartial medical specialist, Dr. Pidutti. Appellant failed to establish that he sustained erectile dysfunction causally related to his federal employment.

Dr. Pidutti, in a well-rationalized medical opinion, determined that appellant's sexual dysfunction was the result of venous insufficiency and not related to his employment-related back injury or the accepted surgery. He explained that vascular insufficiency was the most common cause of erectile dysfunction and explained that this was also impacted by such risk factors as appellant's history of smoking and obesity. Dr. Pidutti found no neurologic basis for appellant's condition and pointed out that the vascular insufficiency was ameliorated with the use of Viagra.

Dr. Bossinger stated that Dr. Pidutti's opinion did not make clinical sense and was not consistent with the history provided. He noted that medical reports refuted any evidence of a vascular etiology for appellant's problem. Dr. Bossinger did not further explain his disagreement with Dr. Pidutti's opinion. He states that electromyogram testing documents a left pudendal neuropathy and that his clinical findings are consistent with pudendal neuropathy, most significantly typified by a decreased sphincter reflex on examination. Dr. Bossinger did not provide a well-rationalized discussion for associating the pudendal neuropathy with the accepted injury of lumbar sprain and herniated nucleus pulposus L5-S1. Although he states that, testing indicated that appellant did not have a vascular etiology for his sexual dysfunction, he does not explain how this dysfunction is causally related to appellant's accepted back condition. Furthermore, appellant had significant preexisting disease of the lumbar spine which was not addressed by Dr. Bossinger. He does not explain the causal relation to the accepted lumbar

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<sup>4</sup> See *Kathy A. Kelley*, 55 ECAB 206 (2004); *Carlos A. Marerro*, 50 ECAB 170 (1998).

<sup>5</sup> See *Carl Epstein*, 38 ECAB 539, 549 (1987).

sprain or recurrent herniated disc at L5-S1, for which surgery was performed. Finally, appellant's statement that a causal relationship was "certainly plausible" is speculative. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.<sup>6</sup>

**CONCLUSION**

The Board finds that appellant has not established that he sustained erectile dysfunction causally related to his accepted back injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 5, 2010 is affirmed.

Issued: March 17, 2011  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>6</sup> L.R., 58 ECAB 369 (2007).