

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

A.W., Appellant

and

**U.S. POSTAL SERVICE, AIR MAIL FACILITY,
Jacksonville, FL, Employer**

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**Docket No. 11-687
Issued: September 29, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 21, 2011 appellant, filed a timely appeal of a December 27, 2010 Office of Workers' Compensation Programs' (OWCP) merit decision denying appellant's claimed occupational disease. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c)(1) and 501.3, the Board has jurisdiction to consider the merits of the case

ISSUE

The issue is whether appellant has met his burden of proof in establishing that his back and knee conditions are due to his federal job duties.

FACTUAL HISTORY

On May 11, 2010 appellant, then a 49-year-old mail handler, filed an occupational disease claim alleging that he developed degenerative joint disease in his lower back and knees due to excessive pushing and pulling and heavy lifting required to perform his job duties. He

¹ 5 U.S.C. § 8101 *et seq.*

indicated that he first became aware of this condition and related it to his employment on April 7, 2003. Appellant stated that his neck and back hurt when he was required to look down for long periods of time. He also stated that his pain increased during the day as he fulfilled his work duties of throwing mail resulting in lower back, neck and knee pain.

In a report dated April 7, 2003, Dr. John M. Flinchbaugh, an osteopath, noted that appellant sustained a left knee injury in the performance of duty in 1998 including anterior cruciate ligament repair. Appellant again injured his left knee in 2001 pushing equipment at work which required a second anterior cruciate ligament repair. Dr. Flinchbaugh found that appellant had degenerative changes in the right knee on x-ray. He diagnosed status post left and right anterior cruciate reconstruction, lumbosacral strain and sprain as well as degenerative joint disease of the right knee and chondromalacia patella of the left knee. Dr. Flinchbaugh stated, "As far as his lumbar symptoms are concerned, I would recommend some flexibility exercise to his hamstrings and some proper utilization of his legs for lifting rather than using his back. [Appellant's] symptoms to his back will be intermittent and may cause him to lose two days a month referable to the low back. Depending on the amount of lifting may require further loss of work."

In a report dated April 27, 2010, Dr. Ronald James Stephens, an internist, diagnosed degenerative joint disease with painful knees and chronic back pain syndrome. He stated, "The patient's symptoms are aggravated by excessive pushing or pulling and heavy lifting which is limited to 25 pounds." On December 12, 2010 Dr. Stephens recommended that appellant be reassigned to a position that required less strenuous activity.

OWCP requested additional factual and medical evidence in a letter dated May 28, 2010. It allowed 30 days for a response. Appellant submitted no additional evidence.

By decision dated July 12, 2010, OWCP denied appellant's claim on the grounds that he failed to submit the necessary medical opinion evidence to establish that his neck, back and knee conditions were related to his employment duties.

Appellant requested an oral hearing. The employing establishment indicated that he had 10 percent armed services-related disability to his right knee. Appellant testified at the oral hearing on October 20, 2010 reviewing Dr. Flinchbaugh's report and statement that appellant should push with his legs properly or his back would begin hurting. He stated that his back began hurting two years earlier when he changed jobs and began twisting and bending. Appellant stated that his knees hurt all the time. He submitted an additional medical report and OWCP's hearing representative allowed an additional 30 days to submit other reports.

Dr. Patrick J. Burns, an osteopath, completed a report on January 24, 2009 and stated that appellant had bulges in his neck and lumbar spine. He stated that appellant's current job required heavy lifting and twisting. Dr. Burns recommended that appellant transfer to a less strenuous position with limited heavy lifting. On March 30, 2009 Dr. Vincent Galiano, a Board-certified family practitioner, noted that appellant wished to return to work and had experienced neck, low back and right shoulder injuries. He stated that appellant had right shoulder surgery and could not return to full-duty work which required heavy lifting, twisting and bending.

By decision dated December 27, 2010, OWCP's hearing representative denied appellant's claim on the grounds that there was no medical evidence opining that his job duties caused or aggravated his neck and back conditions. OWCP's hearing representative found that Dr. Stephens opined that appellant's symptoms were aggravated by work, but did not provide a firm diagnosis, objective findings or medical reasoning supporting that the underlying condition was caused or aggravated by work.

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."² 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 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

ANALYSIS

Appellant has alleged that he developed a back and knee condition due to his federal employment. He attributed his condition to excessive pushing and pulling and heavy lifting. Dr. Stephens diagnosed degenerative joint disease with painful knees and chronic back pain syndrome. The Board finds that, as found by OWCP, appellant had submitted the initial factual and medical evidence to establish the first two elements of an occupational disease claim. However, the Board further finds that he has not submitted the necessary rationalized medical opinion evidence to establish a causal relationship between his diagnosed condition of degenerative joint disease and chronic back pain syndrome and his accepted employment duties.

Dr. Flinchbaugh examined appellant on April 7, 2003 and provided a medical history including multiple left knee surgeries and a service-related right knee surgery. He diagnosed left and right anterior cruciate reconstruction, lumbosacral strain and sprain as well as degenerative joint disease of the right knee and chondromalacia patella of the left knee. Dr. Flinchbaugh did not specifically describe appellant's employment duties of looking down, excessive pushing, pulling and heavy lifting, but instead recommended that he utilize appropriate lifting protocol. He indicated that appellant's back symptoms could be variable and linked with the amount of lifting he performed. The Board finds that this report is not sufficiently detailed to meet appellant's burden of proof. Dr. Flinchbaugh did not attribute appellant's diagnosed conditions

² 20 C.F.R. § 10.5(q).

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

to his employment duties and did not clearly opine that his employment duties caused or aggravated his back and knee symptoms. Instead he suggested that appellant lift with his legs and that appellant's symptoms could be linked with the lifting performed. Without a clear opinion regarding the nature of the relationship between appellant's diagnosed condition and his employment, this report is not sufficient to meet his burden of proof.

Dr. Stephens opined that appellant's symptoms were aggravated by pushing or pulling and heavy lifting in the performance of his job duties. He did not provide any further explanation of his opinion. Dr. Stephens did not explain the basis for his opinion that appellant's job duties were causing either a temporary or permanent aggravation of appellant's underlying degenerative joint condition. Without medical reasoning explaining why and how appellant's employment activities resulted in an aggravation of his condition, this report is not sufficient to establish his claim for an occupational disease.

In a January 24, 2009 report, Dr. Burns diagnosed bulges in the neck and lumbar spine. He stated that appellant's current job required heavy lifting and twisting and recommended that appellant transfer to a less strenuous position with limited heavy lifting. This note is not sufficient to meet appellant's burden of proof as Dr. Burns did not provide a clear diagnosis and did not offer an opinion regarding whether appellant's current condition was caused or aggravated by his employment activity. Without a diagnosis, an opinion that this diagnosis was due to the accepted employment activity and medical rationale explaining that opinion, this report is not sufficiently detailed and well-reasoned to meet appellant's burden of proof.

In his March 30, 2009 report, Dr. Galiano stated that appellant had experienced neck, low back and right shoulder injuries. He did not offer any opinion as to the cause of these conditions. Dr. Galiano did not indicate that appellant should not work or should have limited duties due to his back or knee injuries, instead attributing appellant's disability to right shoulder surgery. The Board finds that this report does not provide the necessary medical opinion evidence to meet appellant's burden of proof. Dr. Galiano did not attribute any of appellant's diagnosed condition to specific employment duties. Without any medical opinion evidence, this report is not sufficient to meet appellant's burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish a causal relationship between his employment duties and his diagnosed back, knee, neck and shoulder conditions.

ORDER

IT IS HEREBY ORDERED THAT the December 27, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 29, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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