



urological conditions to this case or, in the alternative, arrange for a new impartial medical examination regarding the erectile dysfunction issue.

### **FACTUAL HISTORY**

This is appellant's fourth appeal before the Board.<sup>2</sup> The facts and history 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, filed a traumatic injury claim alleging that on that date he injured his back and right leg while he was lifting trays of mail out of a hamper. OWCP accepted his claim for lumbar strain and herniated nucleus pulposus L5-S1. On November 28, 1995 appellant underwent approved surgery consisting of a lumbar laminectomy and discectomy. He sought to expand his claim to include erectile dysfunction as a result of his accepted back injury.

In the most recent decision dated March 17, 2011, the Board found that appellant failed to establish that his erectile dysfunction was causally related to his accepted back injury.<sup>3</sup> The Board found that the weight of the medical evidence rested with the opinion of Dr. Richard W. Pidutti, a Board-certified urologist appointed by OWCP for an impartial medical examination. In his December 9, 2005 opinion, Dr. Pidutti noted that no objective evidence of permanent functional loss of use of the penis that can be attributed to the lumbar injury or subsequent surgery and opined that appellant's erectile dysfunction was unrelated to the injury or surgery. He attributed appellant's dysfunction to vascular insufficiency which was ameliorated with the use of Viagra. Dr. Pidutti noted that appellant's history of short-lived erections, history of smoking, obesity and inability to palpate pedal pulses are all consistent with vascular insufficiency and that vascular insufficiency is unrelated to neurologic injury. He also noted that he was unable to detect any objective signs of neurological cause for appellant's erectile dysfunction.

The Board reviewed reports by Dr. Steven O. Bossinger, a Board-certified urologist, who disagreed with Dr. Pidutti's opinion, stating that his clinical findings on physical examination were consistent with pudendal neuropathy. Dr. Bossinger indicated that it was his opinion that appellant was experiencing enough pain during sexual activity to result in the loss of his erection. However, the Board found that the weight of the evidence rested with the impartial medical examiner, noting that Dr. Bossinger did not fully explain his disagreement with Dr. Pidutti, nor did he provide a well-rationalized discussion for associating the pudendal neuropathy with the accepted injury of lumbar sprain and herniated nucleus pulposus L5-S1. The Board also noted that Dr. Bossinger's opinion was speculative and that he did not explain the causal relationship

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<sup>2</sup> Docket No. 07-70 (issued June 15, 2007) (The Board affirmed OWCP's September 27, 2006 schedule award decision finding that appellant had no more than a 13 percent impairment to his left leg); Docket No. 09-148 (issued January 26, 2010) (The Board affirmed OWCP's decision finding that appellant had not established that he suffered from erectile dysfunction causally related to his accepted back injury and properly denied his request for reconsideration); Docket No. 10-1525 (issued March 17, 2011) (The Board affirmed OWCP's decision that appellant had not established that he suffered from erectile dysfunction causally related to his accepted back injury).

<sup>3</sup> Docket No. 10-1525 (issued March 17, 2011).

of appellant's sexual dysfunction to the accepted lumbar sprain or recurrent herniated disc at L5-S1.

On March 21, 2011 appellant, through counsel, requested reconsideration before OWCP. In support thereof, he submitted a July 14, 2010 report by Dr. Paul M. Hoover, a Board-certified physiatrist, who indicated that he has been treating appellant for many years for his severe spinal disorders in the lumbar region stemming from an employment-related injury of October 28, 1995. Dr. Hoover noted that during the course of appellant's care he was found to have severe lumbar stenosis at the bottom levels with advancing radiculopathy and neuropathic pain. He noted that, since the employment-related injury, appellant has had consistent symptoms of groin burning, which is increased with gluteal tightening and sexual activity, with such severe burning pain in the groin that he experiences loss of erection. Dr. Hoover noted progressive lumbar polyradiculopathy based upon spinal stenosis, directly connected with the work injury of October 28, 1995. He noted that this polyradiculopathy is also at the left S3-5 level, creating his sexual dysfunction. Dr. Hoover opined that appellant does not have erectile dysfunction and that vascular insufficiency was ruled out by Doppler studies. He noted that appellant's diagnosis of sexual dysfunction due to left S3 and S5 radiculopathy is based upon EMG objective studies and that this diagnosis explained the groin burning symptoms that are increased with sexual activity and gluteal muscle tightening which causes his loss of erection and sexual dysfunction. Therefore, Dr. Hoover concluded that appellant's sexual dysfunction is directly connected with the work-related event of October 28, 1995.

By decision dated June 22, 2011, OWCP denied modification its prior decisions.

### **LEGAL PRECEDENT**

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.<sup>4</sup> 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 not 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>5</sup>

When there exists 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>6</sup>

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<sup>4</sup> *K.R.*, Docket No. 11-391 (issued December 21, 2011).

<sup>5</sup> *See Kathy A. Kelley*, 55 ECAB 206 (2004); *Carlos A. Marerro*, 50 ECAB 170 (1998).

<sup>6</sup> *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002); *M.C.*, Docket No. 10-2242 (issued July 7, 2011).

### ANALYSIS

The Board finds that the report of Dr. Hoover 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.

OWCP accepted appellant's claim for lumbar strain and herniated nucleus pulposus L5-S1. Counsel continues to argue that Dr. Pidutti's opinion is unrationalized. Once again, he contends that the report of Dr. Bossinger dated November 26, 2008 clearly and unequivocally establishes that appellant does not have vascular insufficiency, and therefore, Dr. Pidutti's opinion indicating that appellant's erectile dysfunction is caused by vascular insufficiency is unrationalized. This argument was addressed in the Board's prior opinion wherein this Board found that the opinion of Dr. Bossinger was not sufficient to outweigh the report of the impartial medical examiner, Dr. Pidutti.

As to the report of Dr. Hoover, it is also insufficient to overcome the special weight given of the impartial medical examiner. He attributes appellant's sexual dysfunction to severe lumbar stenosis with advancing radiculopathy and neuropathic pain. However, appellant's claim was only accepted for lumbar strain and herniated nucleus pulposus, L5-S1. Thus, Dr. Hoover has the burden of proof to establish an employment relationship.<sup>7</sup> He does not discuss appellant's significant preexisting disease of the lumbar spine. Finally, Dr. Pidutti noted that erectile dysfunction was almost certainly due to vascular insufficiency and that vascular insufficiency was unrelated to neurologic injury. He was unable to detect any objective signs of a neurologic cause for appellant's sexual dysfunction. Accordingly, the report of Dr. Hoover is not sufficient to overcome the special weight given to the well-rationalized opinion of the impartial medical examiner, Dr. Pidutti.

### CONCLUSION

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

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<sup>7</sup> See *Jaja K. Asaramo*, 55 ECAB 104 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 22, 2011 is affirmed.

Issued: April 2, 2012  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board