United States Department of Labor
Employees' Compensation Appeals Board

B.M., Appellant	)	
and	)	**Docket No. 11-1094**
	)	**Issued: January 19, 2012**
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, Employer	)	

Appearances:
Appellant, pro se
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 March 29, 2011 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs (OWCP) dated October 7, 2010, which denied his occupational disease claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he developed a degenerative condition of the cervical spine or shoulder in the performance of duty.

FACTUAL HISTORY

On June 19, 2008 appellant, then a 48-year-old city carrier, filed an occupational disease claim alleging that he developed degenerative disease of the neck and left shoulder from his

[1] 5 U.S.C. § 8101 *et seq.*

work. He first became aware of the conditions and relation to his work on July 20, 2007. Appellant stopped work on September 6, 2007.

In a June 19, 2008 statement, appellant noted that he carried a mailbag weighing approximately 35 pounds on his left shoulder, five to six days a week for approximately eight hours a day for 17 years. He stated that he engaged in twisting, and turning in his vehicle to load mail and that he carried the mail satchel while delivering the mail. Appellant alleged that he also held at least six inches of flat or magazine-type mail in his left arm while trying to balance the load of the mail and mail satchel while climbing hills, crossing lawns of all sorts, and also while climbing up and down stairs. He indicated that he noticed his left shoulder was starting to ache and cause a lot of pain, which he attributed to carrying his mailbag. Additionally, appellant noted that he switched the bag to his right shoulder and began to develop pain.

In a March 11, 2008 report, Dr. Garth Russell, a Board-certified orthopedic surgeon, noted that he first saw appellant on July 20, 2007 for problems with the left shoulder, left knee and right foot. Appellant related that his job included a walking mail route and required that he carry a mailbag on his left shoulder weighing about 35 pounds. He shifted the bag to his right side but the pain continued. Dr. Russell also noted that appellant was treated for his right shoulder since 2001. He diagnosed degenerative disc disease, cervical, right carpal tunnel syndrome with surgical decompression, degenerative joint disease of the left knee and bunionectomy of the right foot secondary to congenital bunion. Dr. Russell further advised that appellant was developing chronic depression. He opined that appellant was totally disabled.

In a June 27, 2008 disability certificate, Dr. Randall Barnes, a Board-certified family practitioner and osteopath, advised that appellant was unable to work or perform his duties until August 31, 2008 "due to illness."

In a July 10, 2008 statement, Connie Sample, postmaster, controverted the claim. She noted that appellant did not have any history of neck, shoulder or back problems before his July 20, 2007 visit with his treating physician. Ms. Sample also noted that appellant was on vacation for the period July 30 to August 12, 2007. She stated that his route was "completely flat, without hills" and that the "amount of stairs on any route is extremely limited." Ms. Sample noted that appellant claimed that his mailbag weighed approximately 35 pounds; but there were no routes that required eight hours of carrying a 35-pound mailbag.

On July 24, 2008 OWCP requested additional factual and medical evidence from appellant. It allotted appellant 30 days within which to submit the requested information.

In a July 30, 2008 statement, appellant identified the job activities that he believed caused or aggravated his condition. He stated that his job required that he twist, turn, bend, reach, stoop and climb stairs. Appellant also noted that his hobbies included fishing, playing chess, playing music and singing. His prior injuries included bunion surgery and carpal tunnel release surgery. Regarding the guitar, appellant explained that approximately 90 to 95 percent of the time, he was sitting and holding the guitar in his lap. He noted that his band had a gig about once every three to four months and he took 15- to 20-minute breaks during a two and a half hour show. Appellant stated that there were numerous times he could not play due to the pain in his shoulder and numbness in his hands.

In a July 31, 2008 addendum, Dr. Russell reviewed appellant's history and diagnosed degenerative disc disease with degenerative joint disease of the cervical spine. He explained that appellant was a mail carrier who walked a route, which was 12 to 14 miles long and carried a mailbag weighing about 35 pounds. Dr. Russell noted that appellant had worked the route for approximately 18 years. He explained that the physical examination revealed marked restriction of motion in the neck secondary to degenerative joint disease and chronic muscle spasm. Dr. Russell indicated that appellant carried his head to the side with winging of the scapula, and he developed shoulder/hand syndrome and subsequent release of the volar carpal ligaments in his wrist. He explained that the neck also revealed degenerative disc disease and degenerative joint disease. Dr. Russell explained that appellant was unable to perform his duties as he had severe reactive depression and anxiety from reacting to the chronic pain and stress of the inability to carry out his job. He also addressed appellant's degenerative knee condition.

In a September 9, 2008 report, Dr. Barnes noted treating appellant since December 2007 for anxiety and depression associated with his position at the employing establishment. He noted that appellant was diagnosed with severe osteoarthritis of the knees associated with "pounding the pavement" and climbing in and out of work vehicles for many years. Dr. Barnes opined that appellant's anxiety was "so bad that he can[no]t even walk by the [employing establishment]" "without having an anxiety attack of some kind. He breaks out in sweats just thinking about it." Dr. Barnes opined that appellant was "100 percent" disabled and "incapable of carrying out his normal duties" due to his anxiety/depression and osteoarthritis of the knees.

By decision dated December 19, 2008, OWCP denied appellant's claim. It found that the medical evidence did not establish that the claimed cervical or shoulder condition causally related to established work-related events.[2]

On January 15, 2009 appellant requested a telephonic hearing, which was held on May 11, 2009. At the hearing, his treating physician, Dr. Russell testified that he first saw appellant on July 20, 2007 for complaints to the left shoulder and left upper back, and left knee and right foot pain. He advised that the carrying of 10 to 30 pounds constantly at work "causes a depression of the shoulder, with a counter-motion within his neck." Dr. Russell stated that, "based on reasonable medical certainty, that the carrying of this bag on his shoulder was the -- significant and prevailing factor in his pain within his neck and his upper back, right upper extremities, and that this -- 17 years of performing this duty and several hours a day had produced this discomfort." Appellant also noted that his guitar playing was a minor activity; and referred to his approved claim for cervical radiculitis in 2001. Additionally, he confirmed that he occasionally worked overtime.

On August 11, 2009 OWCP's hearing representative vacated the December 19, 2008 decision. She found that Dr. Russell provided a rationalized opinion that carrying the mailbag led to degenerative disc disease. The hearing representative remanded the case to refer appellant to a Board-certified specialist for a rationalized opinion addressing causal relationship between his mail carrier duties and the neck or left shoulder conditions.

[2] OWCP noted that appellant's knee and psychiatric conditions were addressed in other claims. Appellant's other claims are not before the Board in the present appeal.

On August 31, 2009 OWCP referred appellant for a second opinion examination with Dr. Donet Christopher Main, a Board-certified orthopedic surgeon and osteopath.

In a September 11, 2009 report, Dr. Main reviewed appellant's history of injury and treatment, which included a left knee injury while playing freshman football. Appellant's outside activities included household chores, driving his kids to school, using a riding lawn mower and minimal gardening. He related that he began developing problems while on his mail route in early 2001 from the neck down into the right upper extremity. Dr. Main also inquired into appellant's musical activities and the amount of time he spent playing the guitar. He noted that there were discrepancies with regard to the amount of time devoted to his musical pursuits as represented by investigative reports from the employing establishment and appellant's "subjective" responses.[3]

On examination, appellant demonstrated the ability to walk about the clinic in an upright manner without any assistive devices. In the standing position, his shoulders appeared level, he had a slightly forward head posture and some slight rounding of the shoulders anteriorly. Appellant's cervical range of motion included: forward flexion to roughly 25 degrees, backward bending to 20 degrees, rotation to the right to 45 degrees and to the left to 25 degrees; side bending to the right of 35 degrees and to the left of 25 degrees. Additionally, he found the Spurling's sign was negative bilaterally. Range of motion about the bilateral shoulders demonstrated active forward elevation and abduction of approximately 165 degrees; internal rotation to 75 degrees; external rotation to 70 degrees, and a negative Speed's and O'Brien's test. Dr. Main indicated that acromioclavicular (AC) joint compression testing elicited pain and crepitation overlying the AC joint to the left shoulder. Sensory examination of the upper extremities demonstrated decreased sensation along the C5 and C6 dermatomes of the left upper extremity; no signs of deficits on the right with exception of the area overlying the median nerve distally and reflexes of 2+ and symmetric at the bilateral biceps, triceps and brachial radialis. When standing, appellant had no difficulty with balance or equilibrium. Dr. Main diagnosed multilevel degenerative disc disease of the cervical spine, severe C5-6 and C6-7, moderate C2-3 and C4-5; cervical spinal neuroforaminal stenosis, C6-7 left and right; AC joint arthrosis, left shoulder; osteoarthritis bilateral knees; gait disorder; obesity; history of prior ligamentous injury to left knee and depression. He observed the severity of appellant's advanced arthritic conditions in his neck and knees, especially the left knee. Dr. Main determined that the conditions were more of an age-related, weight-related and nonoccupational hazard. He opined to a reasonable degree of medical certainty that appellant's current complaints regarding the neck, shoulder and knees were not related to his employment but rather "more due to nonoccupational hazards."

By decision dated September 24, 2009, OWCP denied appellant's claim for an injury to his neck or shoulders in the performance of duty.

On September 29, 2009 appellant requested a telephonic hearing, which was held on February 4, 2010. He submitted several letters dated September 29, 2009 that disagreed with

[3] The record contains information from an employing establishment investigation documenting the time that appellant spent performing in a band that played at a wedding reception.

Dr. Main's report. Appellant stated that Dr. Main informed him that he was against employees being compensated for repetitive job injuries.

By decision dated March 30, 2010, OWCP's hearing representative affirmed the prior decision.[4]

On June 7, 2010 appellant requested reconsideration.

In a May 7, 2010 report, Dr. Russell referred to appellant's left knee condition and his neck condition. He explained that, as to the cervical region, appellant had extensive degenerative disease within the facet joints of the neck along with cervical spinal, neural foraminal stenosis at C6-7. Dr. Russell determined that appellant lost approximately 50 percent of the motion within his neck, which was a result of extensive degenerative changes. He explained that for this to "appear in a person prior to 50 years of age is extremely rare, almost unknown unless other significant physical components are present such as the type of occupation or multiple injuries." Dr. Russell opined that it "is my opinion based on his observation of mail carriers doing walking routes that the mailbag placed upon the shoulder puts the neck in an unbalanced position and contributes to the severity of the degenerative changes." He explained that "[d]egenerative disease of the facet joints and disc do have a genetic or inherited component but do not usually appear until the mid to late fifth decade of life." Dr. Russell opined that it was therefore his "opinion that Dr. Main's statement that this is simply due to aging is not correct." Furthermore, he explained that in his opinion the "repetitive motion in an abnormal position as performed by [appellant] over the extended period of time was the significant and prevailing cause of his advanced degenerative disease with symptoms that have occurred.

On September 2, 2010 Patty Zewiski, a health and resource management specialist with the employing establishment, questioned the reliability of Dr. Russell's report, and noted appellant's outside activities.

On September 28, 2010 appellant provided comments and asserted that Dr. Russell was more experienced and should represent the weight of the evidence.

By decision dated October 7, 2010, OWCP denied modification of its prior decision denying appellant's claim for neck and shoulder conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitations of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to

[4] OWCP's hearing representative noted that appellant had an open claim under File No. xxxxxx351, which was accepted for cervical radiculitis and right-sided carpal tunnel syndrome. This claim is not presently before the Board.

the employment injury."[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

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 medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors identified by the claimant.[7]

ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant alleged that he developed a degenerative medical condition of the cervical spine or shoulder as a result of performing his mail carrier duties, which consisted of carrying a mailbag weighing approximately 35 pounds for eight hours a day for 17 years.

Appellant's treating physician, Dr. Russell, demonstrated familiarity with appellant's history and opined that appellant's degenerative conditions of the cervical spine or shoulder were causally related to his work duties. Dr. Main, the second opinion physician, reviewed the record, examined appellant and opined that his conditions were not work related but rather were due to his age and weight.

Section 8123(a) of FECA provides, in pertinent part: If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[8] The Board finds that there is a conflict in medical opinion on this issue. On remand, OWCP should refer appellant to an appropriate Board-certified physician to resolve the issue of whether he sustained a condition of the cervical spine or shoulder causally related to his accepted employment injury.

[5] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[6] *Michael E. Smith*, 50 ECAB 313 (1999).

[7] *Solomon Polen*, 51 ECAB 341 (2000).

[8] 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan*, 45 ECAB 207, 210 (1993).

Following this and any further necessary development, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the October 7, 2010 decision of the Office of Workers' Compensation Programs is set aside and remanded.

Issued: January 19, 2012
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