

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

C.S., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Trenton, NJ, Employer

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**Docket No. 12-880
Issued: February 26, 2013**

Appearances:

*Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 13, 2012 appellant, through her attorney, filed a timely appeal from the December 19, 2011 Office of Workers' Compensation Programs' (OWCP) decision, which denied certain conditions as causally related to her accepted employment injuries. Pursuant to the Federal Employees' Compensation Act¹ (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 her burden of proof to establish that her claim should be expanded to include additional conditions.

FACTUAL HISTORY

On December 10, 2007 appellant, then a 34-year-old clerk, filed an occupational disease claim alleging that she developed osteoarthritis from standing on a cement floor while working from three to six hours a day in October 2007. She explained that October 8, 2007 x-rays

¹ 5 U.S.C. § 8101 *et seq.*

showed both knees were “bone-on-bone.” Appellant had no problems until management removed the stools from where she worked and she could not relieve her discomfort by sitting. The employing establishment controverted the claim. It stated that appellant’s claim was filed in response to a disciplinary action. The employing establishment noted that there were several issues pertaining to leave, customer complaints and sitting on a chair while at the window conducting business and servicing customers.

In an October 2, 2007 disability slip, Dr. William Stanley, an internist, noted that appellant could return to work on October 8, 2007. On October 28, 2007 he noted that she had bilateral leg pain, especially in her knees, which she believed might be work related as she stood for most of her day. Dr. Stanley was unable to find a “precipitating cause of her arthritis” and recommended that she work in a sedentary capacity pending more intensive evaluation of her symptoms.

In a December 28, 2007 report, Dr. Mark Filippone, a Board-certified physiatrist, noted appellant’s history and diagnosed repetitive stress disorder in both upper and lower extremities, internal derangement of the right shoulder, possible bilateral carpal tunnel syndrome, low back derangement, and internal derangement of both knees and ankles. He stated that “the above abnormalities are directly and solely the result of overuse phenomenon as a result of [appellant’s] repetitive work as she outlines in her detailed 22-year history of working for the [employing establishment].” Dr. Filippone completed an attending physician’s report on January 16, 2008 and checked the box “yes” that he believed her condition was caused or aggravated by an employment activity. He indicated that appellant was totally disabled as of October 2007. Dr. Filippone continued to treat her and submit reports. In a March 5, 2008 report, he indicated that appellant could return to full-time limited duty.

In a January 28, 2008 report, Dr. Teofilo Dauhajre, a Board-certified orthopedic surgeon, examined appellant and diagnosed impingement syndrome of the right shoulder, right rotator cuff tear, right acromioclavicular (AC) joint arthropathy, tri-compartmental degenerative joint disease of the right and left knees and internal derangement of both knees.

In a January 15, 2008 statement and an undated statement received on January 23, 2008, appellant denied that her claim had anything to do with a disciplinary action. She explained that there was “never” a problem related to using chairs at the front desk until January 2007. Afterwards, appellant was informed that she was not to sit in a chair while servicing customers. She described her duties as: lifting, carrying heavy parcels and placing the parcels on containers that were very heavy and pushing them. Appellant also had to stand at one spot on unprotected flooring. She stated that the prolonged duties hurt her back, shoulders, knees, hands and ankles. In a January 16, 2008 letter, appellant indicated that she believed that she was in a hostile work environment.

By decision dated March 11, 2008, OWCP denied appellant’s claim.

Counsel requested a hearing, which was held on August 28, 2008. In an April 17, 2009 decision, OWCP’s hearing representative set aside the March 11, 2008 decision and directed referral for a second opinion evaluation to determine whether her employment factors caused or contributed to the diagnosed degenerative conditions of both knees.

In an April 23, 2009 report, Dr. Filippone opined that appellant's claim should include repetitive stress disorder in both upper and lower extremities, internal derangement of the right shoulder, bilateral carpal tunnel syndrome, rule out ulnar nerve neuropathy, internal derangement of both ankles and internal derangement of both knees to rule out tarsal tunnel syndrome. He opined that she was totally disabled.

OWCP referred appellant to Dr. Andrew Hutter, a Board-certified orthopedic surgeon. In a May 21, 2009 report, Dr. Hutter noted appellant's history of injury and treatment. He examined her and diagnosed bilateral knee arthritis, low back pain and right rotator cuff tear. Dr. Hutter explained that appellant was "significantly over weight" and noted that, while it might be uncomfortable for her to stand for prolonged periods of time, it was his medical opinion that her work was not the cause nor did it significantly aggravate her condition. He indicated that the degenerative conditions in her knees were a natural progression of her degenerative condition. Dr. Hutter advised that appellant could perform sedentary work with no standing more than 15 minutes at a time or walking for more than 15 minutes at a time. He indicated that she should be given a high back chair to perform her duties, which was due to her general medical condition and not a work-related condition. In a June 5, 2009 addendum, Dr. Hutter opined that appellant's work restrictions were guarded, her restrictions were permanent and no further medical treatment was warranted.

In an August 18, 2009 decision, OWCP denied the claim.

Appellant requested a hearing. On January 21, 2011 OWCP's hearing representative vacated the prior decision finding that a conflict was created between appellant's physicians, Dr. Filippone and Dr. Dauhajre² and the second opinion physician, Dr. Hutter, regarding whether appellant's work duties aggravated her degenerative knee conditions.

On February 15, 2011 OWCP referred appellant, the record and a statement of accepted facts Dr. James Taitsman, a Board-certified orthopedic surgeon, to resolve the conflict. In a March 16, 2011 report, Dr. Taitsman reviewed her history of medical treatment. Appellant was morbidly obese with slight tenderness of the cervical and upper thoracic spine and slight pain on cervical spine range of motion. She had tenderness in the biceps, AC joint and musculotendinous junction of the supraspinatus and infraspinatus of the right shoulder with limited forward elevation and pain and slight decreased internal rotation. There was slight tenderness over the lumbosacral spine and right SI joint. Appellant had a normal gait, some pain on forward flexion past 85 degrees and no pain on bilateral straight leg raising. She had left knee pain at the superolateral aspect of the patella and pain on ballottement of the patella bilaterally and some medial joint line tenderness on the right and medial hamstring on the left. Ankle range of motion was full without crepitation. Dr. Taitsman stated that appellant's findings did not completely correspond with her subjective complaints. He referred to diagnostic study findings and noted that she related a history of low back pain with progressive arthritis of her knees with a patellar dislocation as a child. Appellant also had patellofemoral osteoarthritis, generalized osteoarthritis of both knees and low back pain with occasional radicular symptoms. Dr. Taitsman opined that "it would not be unusual for someone with this body habitus to develop

² Dr. Dauhajre submitted an October 12, 2010 report supporting that appellant's work duties aggravated her preexisting degenerative joint disease in both knees.

lumbar arthritis and radicular symptoms, arthritis of the knees and [AC] joint.” He noted that, “in terms of repetitive stress injuries, the [AC joint] arthrosis would be a predisposing factor” and “the repeated pitching of mail could cause impingement on the rotator cuff with partial tear of the rotator cuff and which may be work related” and would require activity modification and possible surgery.”

Dr. Taitsman opined that, even with surgery, appellant would need activity modification. He stated that “the preexisting condition of her knees and her current body habitus would be the predisposing factors for the development of the arthritis in her knees. With the type of work that [appellant] describes, even with standing for long periods of time, there is no significant high impact stress on her knees that one would expect necessary to cause her progression of osteoarthritis to be more rapid than normal. Preexisting patellofemoral arthritis may have been exacerbated by appellant’s repetitive bending but I doubt that long standing or walking would have any significant effect.” Dr. Taitsman noted that it would be difficult to attribute excessive standing as the cause of accelerated progression of knee osteoarthritis but that “preexisting patellofemoral dislocations, subluxation and obesity ... may have exacerbated her condition.” For the right shoulder, repetitive stress with pitching mail would be a causative factor to impingement and rotator cuff tear but there was significant preexistent predisposing factor of arthrosis of the AC joint. Dr. Taitsman stated that there was no obvious diagnosis for appellant’s ankle pain other than a strain from abnormal stress to her knees, arthritis and *pes planus* and some posterior tendinitis, which would not be work related. There was minimal evidence of right rotator cuff damage and no significant right shoulder symptoms. Appellant’s disability was primarily due to her low back symptoms. Dr. Taitsman stated that she could not walk or stand for long periods due to knee arthritis and was not “primarily work related” and she could do a seated job with limitations. Appellant could not perform her job due to difficulty pitching mail as a right-hand dominant person with rotator cuff tear and impingement. There were no objective findings to support a work aggravation of preexisting knee conditions. Dr. Taitsman indicated that appellant’s work contributed to the repetitive stress exacerbating her underlying shoulder conditions and were permanent. He opined that there were no objective findings of any current disability due to the work-related aggravation other than slight tenderness. Dr. Taitsman noted that appellant had not reached maximum medical improvement and would need further medical care for her shoulder, including possible surgery. He opined that it was unlikely that she would return to work due to other causes and, even with shoulder surgery, it was unlikely that she could return to pitching mail as she would have limited use of her right arm.

On May 18, 2011 OWCP accepted the claim for aggravation of a preexisting rotator cuff tear with impingement, right. It also found that the weight of the medical evidence did not support that any back or knee problems were causally related to the accepted work factors.

Counsel requested a telephonic hearing, which was held on September 20, 2011. In a June 21, 2011 report, Dr. Filippone examined her and opined that all of her abnormalities were due to injuries she sustained at work. He disagreed with the findings of Dr. Taitsman. Dr. Filippone noted that appellant had a fall on ice in 2003 and that she had extensive locking of both knees and that her knees buckled. He indicated that she explained that she was able to do everything and did not have any problems until October 2007. Dr. Filippone advised that he could not attribute the worsening of appellant’s knee condition to her being “fat.” He and Dr. Dauhajre continued to treat appellant and submit reports.

By decision dated December 19, 2011, OWCP's hearing representative affirmed OWCP's May 18, 2011 decision.

LEGAL PRECEDENT

When an employee claims that he or she sustained an injury in the performance of duty, the employee must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The employee must also establish that such event, incident or exposure caused an injury. Once an employee establishes an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, which the employee claims compensation, is causally related to the accepted injury.³ To meet his or her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.⁴ Medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relation.⁵

FECA provides that, if there is disagreement between the physician making the examination for OWCP and the employee's physician, OWCP shall appoint a third physician who shall make an examination.⁶ In cases where OWCP has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁷

In a situation where OWCP secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from such specialist requires clarification or elaboration, OWCP has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original opinion. If the specialist is unwilling or unable to clarify and elaborate on the opinion, the case should be referred to another appropriate impartial medical specialist.⁸

ANALYSIS

The Board finds that this case is not in posture for decision. OWCP found a conflict in the medical opinion between appellant's physicians and Dr. Hutter, a referral physician. It referred appellant to Dr. Taitsman to resolve the conflict regarding whether appellant's work duties aggravated her degenerative knee condition.

³ See *Leon Thomas*, 52 ECAB 202 (2001).

⁴ See *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ *Albert C. Brown*, 52 ECAB 152 (2000).

⁶ 5 U.S.C. § 8123(a); *Shirley Steib*, 46 ECAB 309, 317 (1994).

⁷ *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

⁸ *Guiseppe Aversa*, 55 ECAB 164 (2003).

The report from Dr. Taitsman is insufficient to resolve the conflict of whether appellant's work duties aggravated her degenerative knee conditions. Consequently, there remains an unresolved conflict in the medical evidence. While Dr. Taitsman opined that there were no objective findings to support a work-related aggravation of preexisting knee conditions, he also advised that appellant's preexisting patellofemoral arthritis may have been exacerbated by her repetitive bending but he doubted that long standing or walking had any significant effect. He noted that she was unable to do long periods of standing or walking because of the arthritis of her knees. Dr. Taitsman also noted that appellant's inability to walk or stand for long periods due to knee arthritis was not "primarily work related." He did not adequately explain his opinion on causal relation as to the exacerbation of her arthritis by factors of her work as a mail clerk. The Board, therefore, finds that the case must be remanded for a supplemental opinion from Dr. Taitsman regarding whether appellant's work duties aggravated her degenerative knee conditions. Following this and such further development as deemed necessary, 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 December 19, 2011 decision is set aside and the case remanded for further action consistent with this decision.

Issued: February 26, 2013
Washington, DC

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

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

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