

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

W.C., Appellant

and

**U.S. POSTAL SERVICE, MAIN POST OFFICE,
Washington, DC, Employer**

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**Docket No. 15-1878
Issued: January 6, 2016**

Appearances:

*Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On September 14, 2015 appellant, through counsel, filed a timely appeal from a June 30, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that his diagnosed medical conditions were causally related to factors of his federal employment.

On appeal appellant, through counsel, contends that he submitted sufficient evidence to establish his claim or, at the minimum, sufficient evidence to require further development of the medical evidence.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 18, 2012 appellant, then a 55-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that, as a result of his federal duties, he suffered from bilateral osteoarthritis of his hips, aseptic necrosis of the bone, and stiffness. He noted that as a carrier his job consisted of repetitive movements of the hip, such as walking up and down steps, twisting and turning, bending, lifting, and standing long periods of time on cement floors for six to eight hours, five days a week for 24 years.

In support of his claim, appellant submitted a March 31, 2011 report from Dr. Shital S. Desai, a Board-certified family practitioner. Dr. Desai indicated that appellant was first seen in his office for hip pain on November 18, 2005, and that he has had similar complaints on May 10, June 26, and July 31, 2006; April 1, 2009; December 13, 2010; February 9, 22, and 23, and March 9, 2011. He noted that appellant had been diagnosed with iliotibial band syndrome and arthritis of the hip, both of which can happen with overuse from prolonged walking.

By letter to appellant dated March 5, 2012, OWCP informed appellant of the information, including medical evidence that was needed to support his claim. Appellant responded to questions regarding the activities of his federal employment, but did not submit any new medical evidence.

By decision dated April 19, 2012, OWCP denied appellant's claim because he had not submitted medical evidence establishing that a diagnosed medical condition was causally related to the accepted factors of his employment.

On June 8, 2012 appellant requested reconsideration. In support of his request, he submitted a May 14, 2012 report from Dr. Desai wherein he listed appellant's active problems as hypertension, abnormal glucose tolerance test (prediabetes), iliotibial band syndrome, history of flexible sigmoidoscopy, shoulder region pain, osteoarthritis of hip, and severe obesity. Dr. Desai noted that appellant's iliotibial band syndrome and shoulder region pain were overuse injuries that may be due to his work-related activities of walking and lifting of mail. He noted that appellant has successfully completed required imaging, physical therapy and orthopedics consult for these issues, and was taking medications for the pain. Dr. Desai noted that the x-ray of his shoulder on January 7, 2011 showed no fracture or dislocation, but did show arthritic changes in the acromioclavicular joint with a large spur in the inferior border of the distal clavicle. He noted that appellant had a magnetic resonance imaging (MRI) scan of his hips on February 27, 2011 that showed advanced degenerative changes involving the bilateral hips, probably avascular necrosis involving the left hip, and probably cystic lesion involving the right iliac bone. Appellant submitted a copy of the x-ray and MRI scan reports that Dr. Desai referenced in his opinion. He also submitted a copy of an x-ray taken on February 9, 2011 which was interpreted as showing advanced osteoarthritis/avascular necrosis (AVN) of both hips.

By decision dated September 12, 2012, OWCP denied modification of the April 19, 2012 decision.

On December 5, 2012 appellant again requested reconsideration. He submitted a new undated report by Dr. Desai, which OWCP received on December 5, 2012. Dr. Desai detailed his treatment of appellant, noting that he first saw him for iliotibial band syndrome which had

worsened. He noted that appellant was referred to physical therapy for seven visits. Dr. Desai noted that appellant saw him again on December 13, 2010 for the same complaint, and he referred him to physical therapy for 10 visits. He noted that during this time period appellant had an MRI scan of his hip that showed advanced arthritis of both hips and probable AVN of the left hip. Dr. Desai noted that appellant continued to see him for hip pain from September 8, 2011 through October 1, 2012. He noted that in these visits appellant complained that continuous standing, bending and stair climbing aggravated his pain, and that he appeared to do better with rest and avoidance of these activities. Dr. Desai also noted that appellant was first seen for a right shoulder injury on January 7, 2011 after tripping over a trash can. He opined that appellant's iliotibial band syndrome, hip arthritis, and shoulder arthritis appeared to be overuse injuries that may be due to his employment-related activities of walking and lifting of mail. Dr. Desai noted that appellant had successfully completed the required imaging, physical therapy and orthopedics consult for these issues and was also treated with medication for his pain.

By decision dated February 22, 2013, OWCP denied modification of its prior decisions.

On February 22, 2013 appellant again requested reconsideration. He submitted a report signed by Dr. Desai and also signed by appellant on February 8, 2013. This report was identical to the last report by Dr. Desai except that he noted that appellant's iliotibial band syndrome, hip arthritis, and shoulder arthritis were overuse injuries due to his employment-related activities of walking and lifting mail.

Appellant also submitted another request for reconsideration on July 25, 2013, stating his belief that his present condition was a direct result of the prolonged climbing, walking, bending, stooping, and kneeling that were requirements of a letter carrier's duties. He also contended that the medical document was sufficient to establish his claim.

By decision dated October 23, 2013, OWCP denied modification of its prior decisions.

On March 25, 2014 appellant again requested reconsideration. He submitted a statement detailing the duties of his federal employment. In further support of his claim, appellant submitted a March 21, 2014 report wherein Dr. Desai reiterated his treatment of appellant and his diagnoses. Dr. Desai noted that after careful discussion with appellant of his employment duties, it was his medical opinion that appellant's iliotibial band syndrome, hip and shoulder arthritis, were likely a direct result of several specific work duties, including heavy lifting of up to 20 to 30 pounds of mail, repetitive movement of the shoulder with letter sorting, pulling several heavy tubs of mail up and multiple steps, and prolonged walking/standing/bending and climbing which were part of his duties as a letter carrier for the past 20 plus years.

By decision dated April 14, 2014, OWCP denied modification of the prior decisions.

On April 7, 2015 appellant, now through counsel, requested reconsideration. In his supporting brief, counsel argued that appellant has submitted medical evidence sufficient to establish his claim, as the evidence unequivocally established that the debilitating medical conditions were caused by the compensable factors of appellant's employment. Counsel further argued that at a minimum OWCP failed to develop the evidence and must refer appellant to an appropriate Board-certified specialist for a medical examination.

By decision dated June 30, 2015, OWCP denied modification of its prior decision. In this decision it noted Dr. Desai's opinion that appellant's iliotibial band syndrome, hip and shoulder arthritis were overuse injuries related to his work activities. OWCP found, however, that the record did not contain probative medical evidence establishing causal relationship between appellant's diagnosed conditions, and his employment factors.

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 timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.² 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.³

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁴ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his diagnosed conditions are causally related to his federal employment.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *See S.P.*, 59 ECAB 184, 188 (2007).

⁵ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see also P.W.*, Docket No. 10-2402 (issued August 5, 2011).

⁶ *I.J.*, 59 ECAB 408 (2008); *supra* note 3.

Appellant alleged that his diagnosed conditions of iliotibial band syndrome, hip arthritis, and shoulder arthritis were causally related to the accepted factors of his federal employment. He submitted his own statements explaining what he believed to be the causal relationship between his work factors and his medical conditions. However, the Board has held that the statement of a layperson is not competent evidence on the issue of causal relationship.⁷

Appellant also submitted multiple reports by Dr. Desai as well as the results of diagnostic studies. In a March 31, 2011 report, Dr. Desai noted that iliotibial band syndrome and arthritis of the hip can happen with overuse from prolonged walking. In a May 14, 2012 verification of treatment form, he indicated that appellant's iliotibial band syndrome and shoulder region pain were overuse injuries that may be due to his employment-related activities of walking and lifting mail. In another report, received by OWCP on December 5, 2012, Dr. Desai opined that appellant's iliotibial band syndrome, hip arthritis, and shoulder arthritis appeared to be overuse injuries that may be due to his employment-related activities of walking and lifting mail. Another medical report, dated February 8, 2013, provided similar opinions, with the exception that Dr. Desai noted that appellant's aforementioned conditions were overuse injuries.

The first reports of Dr. Desai are insufficient to establish appellant's claim as they are speculative in nature, as evinced by the use of terms "can happen," "maybe due to," and "appear to be." The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.⁸

The February 8, 2013 report was more definitive but lacked a through physiological explanation supporting causal relationship. The opinion of a physician supporting causal relationship must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁹ In his March 21, 2014 report, Dr. Desai opined that appellant's condition was likely a direct result of several specific work duties, including heavy lifting of 20 to 30 pounds of mail, repetitive movement of the shoulder with letter sorting, pulling several heavy tubs of mail multiple steps, and prolonged walking/standing/bending and climbing that were part of his duties as a letter carrier for the past 20 years. Although Dr. Desai was more specific in the March 21, 2014 report when he related appellant's employment duties to his medical condition, once again he couches his conclusion in speculative terms, noting that appellant's "condition is likely a direct result of several specific work duties." Dr. Desai never provided a probative medical explanation as to how specific employment duties caused any specific medical condition. Accordingly, Dr. Desai's reports are insufficient to establish causal relationship.

⁷ See *James A. Long*, 40 ECAB 538 (1989); *Susan M. Biles*, 40 ECAB 420 (1988); see also *J.S.*, Docket No. 15-0619 (issued July 17, 2015).

⁸ *D.D.*, 57 ECAB 183 (2005); see also *C.M.*, Docket No. 15-0677 (issued June 24, 2015).

⁹ *I.J.*, *supra* note 6; see also *A.F.*, Docket No. 14-1392 (issued October 21, 2014).

The Board further notes that the medical record contains diagnostic evidence. However, this evidence is insufficient to establish causal relationship because it does not address causal relationship.¹⁰

Appellant has not met his burden of proof as he has not submitted rationalized medical evidence which describes specific employment factors and explains how these factors caused any medical condition.

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 met his burden of proof to establish that his medical conditions are causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 30, 2015 is affirmed.

Issued: January 6, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁰ *G.M.*, Docket No. 14-2057 (issued May 12, 2015).