United States Department of Labor
Employees' Compensation Appeals Board

C.W., Appellant	)	
and	)	**Docket No. 16-1336**
	)	**Issued: March 7, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Kansas City, MO, Employer	)	

Appearances:
Terry Smedley, for the appellant[1]
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 June 14, 2016 appellant, through his representative, filed a timely appeal from a January 6, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 left knee, hip, neck, and back conditions causally related to his federal employment duties.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 10, 2014 appellant, then a 61-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained continued pain in his knee, hip, neck, and back as a result of walking, standing, casing mail, loading his vehicle, and distributing mail as part of his federal employment duties.

In a supplemental statement, appellant explained that he had worked as a letter carrier for 15 years. He related that as a letter carrier he spent several hours a day casing and sorting letters and flats, which required standing, reaching, and twisting his body from side to side. Appellant noted that carriers also routinely loaded their vehicles with the cased mail and mounted and dismounted vehicles depending on the type of delivery route. He reported that casing and delivering mail required repetitively grasping mail, reaching to deposit mail in cases or receptacles, and twisting to retrieve mail, as well as intermittent sitting, bending, squatting, climbing, walking, and lifting. Appellant related that the pain in his knee, hip, neck, and back worsened to the point that he had trouble performing the everyday duties of his job. He described the medical treatment he received and asserted that his conditions were a result of continued aggravation of his joints and muscles in the performance of his duties as a letter carrier.

Appellant submitted various annual comprehensive physical examinations dated August 2, 2007 to July 22, 2010 from Dr. Robert K. Thomen, a Board-certified family practitioner. Dr. Thomen noted that appellant had a history of osteoarthritis of the knees, neck, back, left inguinal hernia repair in 2006, and right rotator cuff repair in April 2010. He related that appellant complained of pain in both feet, left knee, and left shoulder and of pain from carrying his mailbag and walking every day. In the July 22, 2010 report, Dr. Thomen related that appellant complained of stiffness in his right shoulder with some difficulty with weightlifting due to pain. He provided findings on examination. Dr. Thomen diagnosed osteoarthritis, history of right inguinal hernia, and status post right rotator cuff repair in continued pain.

Dr. M. Stephen Wilson, an occupational medicine and pain management specialist, began to treat appellant in 2014 and indicated in October 21 and 29, 2014 narrative reports that he had examined appellant for injuries to appellant's cervical spine, lumbar spine, left hip, and left knee as a result of his work-related duties as a city carrier for the employing establishment. He explained that to prepare for his route appellant sorted letters and packages, which required repetitive lifting, reaching, bending, and twisting. Dr. Wilson reported that appellant also had to walk for prolonged periods on concrete and walked up and down stairs several times a day. He related that, over the past couple of years, appellant developed increasing pain in his neck, back, left hip, and left knee. Dr. Wilson described appellant's complaints of increasing pain over the years and reviewed his history. He noted that x-rays of the lumbar spine revealed degenerative changes and marginal spur formation, x-rays of the left hip were negative for acute abnormalities, x-rays of the cervical spine demonstrated changes with large anterior osteophytes at C5-6 and C6-7, and x-rays of the left knee revealed moderate medial joint space narrowing with small medial osteophytes.

Upon physical examination of appellant's cervical spine, Dr. Wilson observed tenderness to palpation in the bilateral paraspinal musculature from C3 through C6 and restricted range of motion. He also reported decreased sensation to monofilament testing at the C7-T1 nerve distribution of the bilateral upper extremities. Examination of the lumbar spine revealed muscle spasms that were palpable from L1 through S1, multiple trigger points palpable throughout the lumbar spine, and restricted range of motion. Straight leg raise testing was negative on the right and positive at 50 degrees on the left. Dr. Wilson reported that physical examination of the left hip revealed restricted range of motion and tenderness to palpation over the lateral aspect. Physical examination of the left knee revealed tenderness to palpation over the medial and lateral joint lines and crepitation. Range of motion was restricted and McMurray's sign was positive, medially.

Dr. Wilson diagnosed cumulative trauma injury to the cervical spine resulting in anatomical abnormalities due to degenerative changes and possible disc bulges causing upper extremity radiculopathy, cumulative trauma injury to the lumbar spine resulting in anatomical abnormalities due to degenerative changes in disc bulging causing lower extremity radiculopathy, cumulative trauma injury to the left hip resulting in anatomical abnormalities consistent with trochanteric bursitis, and cumulative trauma injury to the left knee resulting in anatomical abnormalities consistent with chondromalacia and degenerative joint disease. He opined that appellant had sustained injury to his cervical spine, lumbar spine, left hip, and left knee as a result of his work-related duties while employed by the employing establishment as a letter carrier.

By letter dated December 11, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he respond to the attached questionnaire in order to substantiate the factual elements of his claim and that he provide additional medical evidence to establish a diagnosed condition causally related to his federal employment. A similar letter was sent to the employing establishment.

On December 24, 2014 OWCP received appellant's response to its request for further information. Appellant asserted that he believed that his original narrative statement was explicit regarding his job duties as a letter carrier and substantiated how the cumulative effect of the job duties contributed to his diagnosis. He resubmitted the statement he provided with his claim form.

OWCP also received progress reports dated November 19, 2014 and January 6, 2015, from Dr. Wilson. Dr. Wilson noted that appellant had begun wearing braces on his left knee and believed that they helped. Upon examination of appellant's cervical spine, he observed decreased range of motion and strength in all planes, as well as tenderness to palpation over the paraspinal musculature. Examination of his lumbar spine demonstrated decreased range of motion and strength and radicular symptoms on the left in the L5 and S1 distribution. Straight leg raise testing was negative on the right and positive on the left. Upon examination of appellant's left hip, Dr. Wilson noted tenderness to palpation over the lateral aspect of the hip and weakness in all planes. Examination of the left knee revealed restricted range of motion and decreased strength, as well as tenderness to palpation over the joint medial line. McMurray's sign was positive, medially. Dr. Wilson diagnosed cumulative trauma injury to the cervical spine resulting in anatomical abnormalities due to degenerative changes and possible disc

bulging causing upper extremity radiculopathy, cumulative trauma injury to the lumbar spine resulting in anatomical abnormalities due to degenerative changes in disc bulging causing lower extremity radiculopathy, cumulative trauma injury to the left hip resulting in anatomical abnormalities consistent with trochanteric bursitis, and cumulative trauma injury to the left knee resulting in anatomical abnormalities consistent with chondromalacia and degenerative joint disease.

On January 13, 2015 OWCP received a letter dated January 7, 2015 from an employing establishment health and resource management specialist, in response to its development letter. Ms. Anderson related that appellant's supervisor confirmed that appellant had told him on a few occasions that he was going to a massage therapist to help with his back pain. She reported that appellant's duties as a city carrier required frequent lifting, pushing, pulling, bending, and stooping. Ms. Anderson explained that all city carriers were given a 10-minute break in the morning and a 10-minute break in the afternoon, as well as a 30-minute lunch break. She provided a position description for a city carrier.

OWCP denied appellant's claim in a decision dated February 20, 2015. It accepted appellant's employment duties as a letter carrier and that he sustained various diagnosed conditions to his lumbar spine, cervical spine, left knee, and left hip, but denied his claim finding that the medical evidence submitted failed to establish that his condition was causally related to factors of his federal employment.

On March 16, 2015 OWCP received appellant's request for a telephone hearing before an OWCP hearing representative, held on October 16, 2015. Appellant stated that he had worked for the employing establishment since April 2000 and retired on May 30, 2015 because the pain was too great. He related that he walked anywhere from 12 to 15 miles a day delivering mail and began experiencing pain in his neck, back, and left leg in 2014. Appellant noted that he did not experience any pain in his leg and back before he worked for the employing establishment. He reported that he had hernia surgery in 2006 and two shoulder surgeries in 2009 and 2011, but he pointed out that he used his own sick leave and insurance because none of his doctors handled workers' compensation cases. Appellant indicated that his union representative recommended Dr. Wilson, so when he began to experience pain in his neck and back he went to see him. He noted that he worked with restrictions up until he retired and the aspect of his job that he found more difficult was carrying the satchel on his back and having to twist to retrieve mail if he had a third bundle. Appellant related that his route was all walking and no mounted delivery. He alleged that Dr. Wilson's reports were sufficient to establish his claim.

Appellant submitted a narrative report dated March 5, 2015 by Dr. Wilson who noted that he was treating appellant in regard to injuries he sustained to his cervical spine, lumbar spine, left hip, and left leg/knee as a result of his work-related duties as a city carrier for the employing establishment. Dr. Wilson related that, as he mentioned in his October 21, 2014 report, appellant worked for the employing establishment for over 15 years. He described that in order to sort letters and packages appellant performed repetitive lifting, reaching, bending, and twisting while pushing, and handling mail on a daily basis. Dr. Wilson noted that appellant also walked for prolonged periods of time on concrete and up and down stairs several times per day on his delivery route. He explained that the repetitive motion could cause undue pressure and trauma to the muscle, tendons, and ligaments of the neck and back, as well as to the hip and knee joints,

which could result in progressively worsening pain. Dr. Wilson reported that these repetitive motions could also cause disc injury, often resulting in compression of the nerves due to disc bulging. He opined that appellant performed physically demanding repetitive job movements which caused progressively worsening pain in his neck and low back and radiculopathy into his left lower extremity, which limited his ability to function normally on a daily basis. Dr. Wilson related that appellant's repetitive work activities required him to bend, stoop, squat, and walk for prolonged periods as well as to climb up and down stairs daily, which has caused significant issues with his left hip and left knee. This type of activity has also been known to exacerbate any underlying changes causing pain, weakness, and loss of range of motion.

Dr. Wilson further explained that cumulative trauma disorders were injuries of the musculoskeletal system to include joints, muscles, tendons, and ligaments, due to overuse syndrome and repetitive motion. He noted that these symptoms developed from the accumulation of repeated small injuries or stresses to our musculoskeletal system in response to excessive or repeated demands on our body without enough time to recover before adding more stress. Dr. Wilson related that appellant was performing his repetitive duties on a daily basis and had little to no rest. He diagnosed cumulative trauma injury to the cervical spine resulting in anatomical abnormalities due to degenerative changes and possible disc bulging causing upper extremity radiculopathy, cumulative trauma injury to the lumbar spine resulting in anatomical abnormalities due to degenerative changes in disc bulging causing lower extremity radiculopathy, cumulative trauma injury to the left hip resulting in anatomical abnormalities consistent with trochanteric bursitis, and cumulative trauma injury to the left knee resulting in anatomical abnormalities consistent with chondromalacia and degenerative joint disease.

In a decision dated January 6, 2016, an OWCP hearing representative affirmed the February 20, 2015 decision. She found that the medical evidence of record failed to provide adequate medical rationale to support a causal relationship between appellant's medical conditions and his employment. The hearing representative noted that Dr. Wilson failed to address the related progress of the degenerative conditions and determined that his opinion regarding causal relationship was speculative.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative, and substantial evidence[3] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[4] In an occupational disease claim, appellant's burden requires submission of the following: (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

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan,* 20 ECAB 55, 58 (1968).

[4] *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton,* 40 ECAB 1143, 1145 (1989).

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 medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[6] The opinion of the physician 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.[7]

ANALYSIS

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

Appellant alleged that he sustained various conditions to his neck, back, left knee, and left hip as a result of the repetitive duties of working as a letter carrier. In a detailed statement, he explained that as a letter carrier he spent several hours a day casing and sorting letters and flats, which required standing, reaching, and twisting his body from side to side and delivering mail, which required repetitively grasping mail, reaching to deposit mail in cases, and intermittent bending squatting, climbing, walking, and lifting.

In support of his claim, appellant submitted various reports dated October 21, 2014 to March 5, 2015 from Dr. Wilson, who noted that appellant worked as a city carrier. He related that appellant sorted letters and packages, which required repetitive lifting, reaching, bending, and twisting, and walking for prolonged periods of time. Dr. Wilson reviewed appellant's history and provided findings on examination. He diagnosed degenerative changes and disc bulges in the cervical and lumbar spines, upper and lower extremity radiculopathy, trochanteric bursitis of the left hip, and chondromalacia and degenerative joint disease of the left knee. He opined that appellant sustained an injury to his cervical spine, lumbar spine, left hip, and left knee as a result of his work-related duties while employed by the employing establishment as a letter carrier. In a March 5, 2015 report, Dr. Wilson explained how repetitive motion could cause undue pressure and trauma to the muscle, tendons, and ligaments of the neck, back, hip, and knee joints, as well as disc injury often resulting in compression of the nerves due to disc bulging. He reported that appellant's repetitive activities requiring him to bend, stoop, squat, climb stairs, and walk for prolonged periods daily caused significant issues with his left hip and left knee. Dr. Wilson further described that this type of activity had also been known to exacerbate underlying changes causing pain, weakness, and loss of range of motion. Dr. Wilson noted that appellant performed repetitive duties on a daily basis without rest and diagnosed cumulative trauma injury to the cervical spine resulting in anatomical abnormalities due to degenerative changes and possible disc bulging causing upper extremity radiculopathy, cumulative trauma injury to the lumbar spine resulting in anatomical abnormalities due to

[5] *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[6] *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

degenerative changes in disc bulging causing lower extremity radiculopathy, cumulative trauma injury to the left hip resulting in anatomical abnormalities consistent with trochanteric bursitis, and cumulative trauma injury to the left knee resulting in anatomical abnormalities consistent with chondromalacia and degenerative joint disease.

Accordingly, the Board notes that Dr. Wilson provided an affirmative opinion on causal relationship. The Board further finds that Dr. Wilson's reports, when read together, identified employment factors which appellant claimed caused his condition, identified findings upon examination, and explained how the identified employment factors, specifically the repetitive duties of bending, stooping, squatting, and walking for prolonged periods, caused or aggravated appellant's medical conditions. The Board finds that Dr. Wilson's opinion, while not sufficiently rationalized to meet appellant's burden of proof, is sufficient, given the absence of any opposing medical evidence, to require further development of the record.[8] It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[9] OWCP has an obligation to see that justice is done.[10]

The case will be remanded to OWCP for further action consistent with this decision. On remand, after such further development of the case record as OWCP deems necessary, a *de novo* decision shall be issued.

CONCLUSION

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

[8] *See A.F.*, Docket No. 15-1687 (issued June 9, 2016). *See also John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

[9] *See e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

[10] *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for additional development consistent with this decision.

Issued: March 7, 2017
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