

while carrying an average weight of over 35 pounds on a daily basis; and driving in awkward positions for five hours daily. Appellant first became aware of his condition on February 10, 2001. He realized that his condition was caused by his employment on February 12, 2006. Supervisor Christopher Tracey stated that appellant had not worked for two years.¹

The record contains a February 20, 2003 x-ray of the bilateral knees, which showed mild narrowing of bilateral medial compartments, suggestive of mild degenerative joint disease. The record contains laboratory reports for the period from March 23, 2004 to June 21, 2005 from Rideout Memorial Hospital; a March 24, 2004 report of an x-ray of the lumbar spine; a July 20, 2005 report of x-rays of both feet; a July 22, 2005 report of a bone length study; and a July 28, 2005 report of a magnetic resonance imaging (MRI) scan of the lumbar spine. Appellant also submitted a December 10, 1998 report from Dr. Robert G. Hamilton, a Board-certified orthopedic surgeon, who provided an impression of right knee pain and possible degenerative tear of the medial meniscus.

Appellant submitted numerous reports by Dr. Jay D. Grassell, a treating physician, relating to appellant's foot, back and knee conditions, for the period from January 25, 2002 through February 9, 2006. On November 24, 2004 Dr. Grassell diagnosed lower back pain. He indicated that appellant's symptoms were agitated by bending or twisting of his back and that he had ongoing problems with his neck, knees, feet, ankles and hands. On July 19, 2005 Dr. Grassell provided an assessment of bilateral foot pain and lower back pain without current sciatica. On August 5, 2005 he reviewed the results of a report of an x-ray and an MRI scan of the lumbar spine dated July 28, 2005. The x-ray showed mild degenerative joint disease at L5-S1 with mild grade retrolisthesis. The MRI scan revealed mild diffuse posterior disc bulge at L5-S1 with moderate bilateral neural foraminal narrowing. On September 12, 2005 Dr. Grassell assessed right hand CTS. He indicated that appellant had undergone right hand CTS. On October 31, 2005 Dr. Grassell noted that appellant anticipated tarsal tunnel surgery. On November 22, 2005 he assessed chronic pain syndrome consisting of multiple orthopedic problems, spondylolisthesis and osteoarthritis.

In a narrative report dated February 9, 2006, Dr. Grassell reviewed his treatment of appellant, which began on December 20, 2001. He stated that on April 12, 2004 appellant complained of low back pain and a lumbar spine x-ray showed Grade 1 retrolisthesis at L5-S1. On October 13, 2004 appellant had an increased amount of low back pain and a foot x-ray revealed a spur of the right heel. On November 22, 2005 Dr. Grassell indicated that low back pain was felt to be a factor in appellant's ability to be employed. On December 16, 2005 appellant was seen for examination prior to his tarsal tunnel surgery. Dr. Grassell opined that appellant's employment disability was certainly aggravated, if not solely caused by, his orthopedic problems, including right CTS, osteoarthritis of the cervical and lumbar spine, osteoarthritis of the knees and tarsal tunnel syndrome and some osteoarthritis of the knees as well. He further opined that the subsequent chronic pain syndrome was secondary to the above-referenced orthopedic problems.

¹ Appellant received wage-loss benefits under a May 1, 2000 claim that was accepted for bilateral carpal tunnel syndrome (CTS); tenosynovitis on the right; and lesion radical nerve on the right. He also has an unadjudicated claim filed on June 7, 1998 for injury to ankles and feet.

Appellant submitted a job description for a letter carrier. In a narrative statement dated February 22, 2006, he indicated that he began to experience low back pain five years before and that it became increasingly difficult to case mail and load mail into delivery trucks and deliver his route. Appellant stated that he felt pain when he bent over to retrieve parcels and that the pain limited his range of motion and affected his job productivity. He noted that his job required him to stand and case mail for two to two and a half hours per day, during which time he had to reach, twist, bend, lift, push and pull repeatedly. Appellant was required to deliver mail, which involved sitting in a delivery vehicle and walking with up to 72 pounds of weight on his back, for approximately five and a half hours per day.

The record contains a salary history for appellant. On February 24, 2004 the employing establishment controverted appellant's claim on the grounds of untimeliness, contending that he had failed to file a claim within three years of the date of the awareness of his injury.

The record contains a March 8, 2004 report of an MRI scan of the cervical spine; a March 24, 2004 report of an x-ray of the neck; a September 17, 2004 report of an x-ray of the right foot and bilateral ankles; and a July 28, 2005 report of an x-ray of the lumbar spine.

By letter dated March 9, 2006, the Office informed appellant that the information submitted was insufficient to establish his claim and advised him to submit a doctor's opinion, with medical reasons, explaining the cause of his diagnosed condition. The Office also asked appellant to specify when he became aware that his condition was caused or exacerbated by factors of his employment. The Office informed appellant that he had 30 days to submit additional evidence to support his claim.

Appellant submitted a report dated February 14, 2006 from Dr. Jason S. Boynton, a treating physician, who treated appellant for "tarsal tunnel syndrome, possibly secondary to diabetic double compression neuropathy." Dr. Boynton opined that it was "reasonable that [appellant's] condition was exacerbated through his work as a letter carrier for 23 years." He indicated that activities involved in appellant's job as a letter carrier could contribute to the development of varicosities with the tarsal tunnel. Additionally, Dr. Boynton stated that carrying mailbags may contribute to or exacerbate plantar fasciitis. He also noted that possible factors contributing to appellant's peripheral neuropathy included his diabetes, degenerative disc disease and bulging discs and foraminal narrowing at the L5-S1 area.

On March 22, 2006 appellant stated that, although his low back pain began five years prior, it was not described as being related to factors of employment until February 9, 2006. Likewise, although his bilateral knee condition began seven years prior, he was not aware that it was related to his employment until February 9, 2006. Although appellant noted on his occupational disease claim form that he was aware of his low back and foot condition on February 1, 2001, he was not aware that these conditions were employment related until February 9, 2006. Therefore, there was no delay in filing.

In a memorandum dated April 14, 2006, the Office forwarded a copy of appellant's job description and a statement of accepted facts to the district medical adviser and requested an opinion as to whether appellant's knee and low back conditions were causally related to conditions of his employment. On April 20, 2006 the medical adviser opined that there was no

obvious medical documentation to support any causal relationship between appellant's diagnosed conditions and factors of his employment. He noted that appellant had been diagnosed with: bilateral plantar fasciitis; status post right tarsal tunnel release; degenerative joint/degenerative disc disease of the lumbar spine with lumbar disc bulging at L3-4, L4-5 and L5-S1 with Grade 1 retrolisthesis at L5-S1; bilateral degenerative joint disease of the knees and ankles; and adult onset diabetes mellitus with probable diabetic neuropathy. The medical adviser stated that Dr. Grassell did not provide any medical explanation or documentation to support his opinion that appellant's conditions resulted from his employment activities.

By decision dated May 26, 2006, the Office denied appellant's claim, finding that the medical evidence did not demonstrate that the claimed bilateral knee and low back conditions were causally related to established work-related exposure. On July 5, 2006 appellant requested reconsideration. He contended that his diabetes and obesity were not related to his lower back and knee conditions. Appellant also indicated that he had not received a diagnosis of rheumatoid arthritis.

In support of his request for reconsideration, appellant submitted a June 9, 2006 report from Dr. Grassell, in which he reiterated his view that appellant's "injuries and disabilities result[ed] from his postal service duty." He addressed the Office's contention that he had failed to discuss appellant's diabetes, obesity and possible rheumatology syndrome in relation to his occupational disease claim. Dr. Grassell stated that diabetes was not relevant to appellant's back and knee conditions; that obesity was not an issue for consideration; and that appellant does not have a rheumatology syndrome. He opined that appellant's back and knee conditions were certainly exacerbated, if not solely caused, by his 20 years of work as a letter carrier.

By decision dated September 28, 2006, the Office denied modification of its previous decision, finding that the medical evidence of record failed to establish a causal relationship between appellant's diagnosed back and knee conditions and factors of his federal employment. The Office stated that Dr. Grassell did not explain how appellant's underlying condition was altered by work activities.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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 the employment injury.³ 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.⁴

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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 causal relationship, generally, 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. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁵

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁶ However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁷

ANALYSIS

The Board finds that this case is not in posture for decision regarding whether appellant sustained an injury in the performance of duty.

The record contains numerous reports from appellant's treating physician, Dr. Grassell. On November 24, 2004 Dr. Grassell diagnosed lower back pain, indicating that appellant's symptoms were agitated by bending or twisting of his back. On August 5, 2005 after reviewing x-ray and MRI scan results, he diagnosed mild degenerative joint disease at L5-S1 with mild grade retrolisthesis and a mild diffuse posterior disc bulge at L5-S1 with moderate bilateral neural foraminal narrowing. On November 22, 2005 Dr. Grassell assessed chronic pain syndrome consisting of multiple orthopedic problems, spondylolisthesis and osteoarthritis. In a February 9, 2006 narrative report, he reviewed his treatment of appellant, which began on December 20, 2001. Dr. Grassell opined that appellant's employment disability was certainly aggravated, if not solely caused by, his orthopedic problems, including right CTS, osteoarthritis

⁵ *Id.*

⁶ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁷ *Phillip L. Barnes*, 55 ECAB 426(2004); *see also Virginia Richard*, claiming as executrix of the estate of (*Lionel F. Richard*), 53 ECAB 430 (2002); *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

of the cervical and lumbar spine, osteoarthritis of the knees and tarsal tunnel syndrome. He further opined that the subsequent chronic pain syndrome was secondary to the above-referenced orthopedic problems. On June 9, 2006 Dr. Grassell reiterated his view that appellant's "injuries and disabilities result[ed] from his postal service duty" and opined that appellant's back and knee conditions were certainly exacerbated, if not solely caused, by his 20 years of work as a letter carrier. Although it is not fully rationalized, Dr. Grassell's opinion on causal relationship is clear and unequivocal.

The Office forwarded a copy of appellant's job description and a statement of accepted facts to the district medical adviser and requested an opinion as to whether appellant's knee and low back conditions were causally related to conditions of his employment. The medical adviser opined that there was no obvious medical documentation in the record to support any causal relationship between appellant's diagnosed conditions and factors of his employment. The Board notes that the medical adviser did not render an opinion on causal relationship. Rather, he provided only an opinion on the probative value of the evidence of record.

The Board notes that, while none of the medical reports submitted in support of appellant's claim is completely rationalized, all of the reports are consistent in indicating that he sustained employment-related back and knee conditions. Moreover, they are not contradicted by any substantial medical or factual evidence of record. The Office found that appellant's physician had not explained how the work exposure had caused his diagnosed conditions. However, the Board notes that the Office failed to provide his physician with a statement of accepted facts which delineated his job functions, as they provided to their own medical adviser. While Dr. Grassell's reports are not sufficient to meet appellant's burden of proof to establish his claim, they raise an uncontroverted inference between his claimed conditions and the identified employment factors and are sufficient to require the Office to further develop the medical evidence and the case record.⁸

On remand, the Office should prepare a statement of accepted facts which includes a detailed employment history, job descriptions for each position held, specific functions performed by appellant in each position and the restrictions imposed by his treating physicians. It should submit the statement of accepted facts to a second opinion examiner, in order to obtain a rationalized opinion as to whether his current condition is causally related to factors of his employment.

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant sustained an injury in the performance of duty.

⁸ See Jimmy A. Hammons, 51 ECAB 219 (1999); John J. Carlone, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the September 28 and May 26, 2006 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further development consistent with this decision.

Issued: March 26, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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