

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DOROTHY S. WINCEK and U.S. POSTAL SERVICE,  
CORONADO POST OFFICE, Coronado, Calif.

*Docket No. 96-2255; Submitted on the Record;  
Issued August 5, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that her back condition is causally related to factors of her employment.

On October 17, 1994 appellant, then a 34-year-old letter carrier, filed a claim for acute thoracolumbar strain, sprain subluxation, sciatica, and acute somatic dysfunction. She noted that she had a previous injury on April 1, 1991. She indicated that on September 20, 1994 her station manager had her carry mail after a year and a half of working as a router. She stated that after she began carrying mail she developed pain in the thoracic and lower back regions, pulled her back and shoulder while lifting heavy mail trays, developed pain in her wrists and shoulders while pushing a heavy mail cart and, on one occasion, felt a pinching of a nerve in the right hip accompanied by a feeling that her right leg wanted to give way.<sup>1</sup> In a March 15, 1995 decision, the Office denied appellant's claim on the grounds that she had not met her burden of proof in establishing a causal relationship between her employment activities in September 1994 and the numerous back conditions she alleged in her October 17, 1994 claim for compensation. In a September 8, 1995 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was cumulative, repetitious or irrelevant and immaterial and therefore was insufficient to warrant review of the prior decision. In a February 9, 1996 merit decision, the Office denied appellant's request for modification of the prior decision. In a June 17, 1996 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious, cumulative and irrelevant and immaterial and therefore was insufficient to warrant review of the Office's prior decisions.

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<sup>1</sup> In a September 9, 1994 letter, the Office of Workers' Compensation Programs had informed appellant that it proposed to terminate her compensation and medical benefits arising from an April 1, 1991 employment injury that was accepted for thoracic and lumbar strains and subluxations. The Office stated that the medical evidence of record showed that the residuals of the employment injury had ceased. In a July 5, 1995 decision, the Office terminated appellant's compensation and medical benefits arising from the April 1, 1991 injury.

The Board finds that appellant has not met her burden of proof in establishing that her back conditions are causally related to her employment duties beginning in September 1994.

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;<sup>2</sup> (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>3</sup> 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.<sup>4</sup> 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,<sup>5</sup> must be one of reasonable medical certainty,<sup>6</sup> 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.<sup>7</sup>

In an October 29, 1994 report, Dr. Andrew L. Kulik, an osteopath, diagnosed chronic strain, sprain and subluxation of the cervical, thoracic and lumbar regions of the spine, cervical brachial radiculitis and radiculopathy, lumbar radiculopathy, joint hypermobility and ligamentous laxity of the cervical, thoracic and lumbar regions, and facet arthropathy of multiple segments of the cervical, thoracic and lumbar regions. He related appellant's conditions to the April 1, 1991 employment injury. He stated that the diagnosis was confirmed by "neuro selective current perception threshold" testing which yielded abnormal values for the right distal radial branches of the peroneal nerve, the right sural nerve, the left palmar branch of the palmar nerve, the right distal digital branches of the ulnar nerve and median nerve bilaterally.

In an April 29, 1995 report, Dr. Kulik diagnosed strain, sprain and subluxation of the cervical, thoracic and lumbosacral regions of the spine, thoracic and lumbosacral radiculitis and radiculopathy and ligamentous laxity and joint hypermobility of the cervical, thoracic and lumbosacral regions of the spine. He stated that physical examination offered sufficient evidence to support the diagnoses, referring to his October 29, 1994 report. He stated that these conditions were caused by the appellant's change in job assignments on September 20, 1994

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<sup>2</sup> See *Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>3</sup> See *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

<sup>4</sup> See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

<sup>5</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>6</sup> See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>7</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

which required her to carry mail and lift gang boxes weighing greater than her 20-pound lifting restriction. He also noted that appellant had a satchel cart that was difficult to control. He reported that an MRI (magnetic resonance imaging) test showed almost complete atrophy of the right infraspinatus muscle of unknown etiology. He commented that this puzzling finding explained the chronic nature of appellant's back problems. He stated that the functional loss of this muscle would cause numerous adaptive and compensatory effects on the cervical, thoracic and lumbosacral regions, rendering these regions vulnerable to injury.

In a November 25, 1995 report, Dr. Kulik indicated that an MRI scan showed atrophy of the right infraspinatus muscle which was of uncertain etiology, either congenital or acquired. He commented that the infraspinatus muscle was involved in externally rotating the shoulder, lying along the posterior part of the scapula. He noted that the other muscle involved in the external rotation of the shoulder was the teres minor. He stated that both muscles were supplied by the fifth and sixth cervical nerves through the suprascapular nerve. He commented that appellant demonstrated significant somatic dysfunction in the C5 and C6 vertebral levels. He stated that it would be easy to understand how dysfunction at the C5 and C6 levels could effect the suprascapular nerve and therefore directly affect the function of the infraspinatus muscle. He reported that appellant also demonstrated profound somatic dysfunction of the upper and mid thoracic spinal regions. He indicated that appellant's right trapezius, rhomboid minor and major, latissimus dorsi, levator scapulae and serratus anterior muscles all had to overcompensate for appellant's altered function with regard to the right shoulder. He stated that this compensatory mechanism, as well as the asymmetry between the muscles of the neck and upper back on the left and right sides accounted for the chronic findings of vertebral subluxations as well as costotransverse subluxations. He noted that appellant suffered from episodes of acute and severe epigastric abdominal pain. He indicated that it was not a coincidence that the sympathetic and parasympathetic nerves that supplied the lower esophagus and stomach region arose from the vertebral levels most significantly affected in appellant's case by somatic dysfunction of the mid-thoracic spine. Dr. Kulik stated that the atrophy involving the posterior right shoulder was permanent. He indicated that treatment goals should consist of modifying appellant's job requirements, physical therapy and exercises to help her to adequately compensate for her deficiencies. He stated that appellant's condition met the criteria for chronic somatic dysfunction.

The reports of Dr. Kulik are insufficient to show that appellant's back conditions, as diagnosed by Dr. Kulik, are causally related to the factors of employment after July 20, 1994. Dr. Kulik diagnosed multiple strains, sprains and subluxation of all regions of appellant's spine. However he attributed these conditions to appellant's previous injury on April 1, 1991. The Office subsequently terminated appellant's compensation and benefits. In his April 29, 1995 report, Dr. Kulik, after appellant filed her claim for the incidents after September 20, 1994, stated that the conditions he originally related to the employment injury of April 1, 1991 were now related to appellant's change of duties beginning September 20, 1994. He did not explain the change in his position. He also did not give a full physiological explanation on how the change in appellant's duties would cause the numerous diagnoses. His April 29, 1995 report therefore has little probative value as it is lacking in adequate rationale in relating appellant's employment duties to her diagnosed back conditions. In the November 25, 1995 report, Dr. Kulik stated that appellant had a somatic dysfunction at the C5 and C6 levels which could

have effected her suprascapular nerve and affected the function of the infraspinatus muscle. This statement is speculative and rests on a faulty foundation because Dr. Kulik assumed without any explanation or rationale that the somatic dysfunction of the C5 and C6 levels which he diagnosed were causally related to factors of appellant's employment. Additionally, Dr. Kulik stated that appellant had somatic dysfunction in the thoracic spine region and related muscles due to overcompensation for the altered function of the right shoulder. Since the doctor did not present a rationalized physiological explanation on how appellant's right shoulder condition was causally related to the factors of appellant's employment, his assumption that the thoracic somatic dysfunction and overcompensation of the related muscles was related to the right shoulder and thence to appellant's employment was unsupported by any rationale. The November 25, 1995 report therefore is based on unrationalized assumptions and speculation and therefore has very limited probative value. The medical reports of Dr. Kulik does not provide sufficient support for appellant to meet her burden of proof in establishing that she sustained an occupational injury after September 20, 1994 that was causally related to factors of her employment.

The decisions of the Office of Workers' Compensation Programs, dated June 17 and February 8, 1996, and September 8, 1995, are hereby affirmed.

Dated, Washington, D.C.  
August 5, 1998

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member