

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BERT NORVILLE and U.S. POSTAL SERVICE,  
POST OFFICE, Washington, DC

*Docket No. 99-254; Submitted on the Record;  
Issued May 4, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a back condition causally related to factors of his federal employment.

On July 31, 1997 appellant, then a 51-year-old custodian, filed a notice of occupational disease and claim for compensation alleging that he developed a back condition in the performance of duty.<sup>1</sup>

In support of his claim, appellant submitted a July 24, 1997 report from Dr. Roy Goodman, a Board-certified neurologist, which noted that appellant was treated since 1994 for complaints of neck and back pain. He indicated that a magnetic resonance imaging (MRI) scan revealed a disc-osteophyte complex at C5-6 causing compression of the exiting root nerve and cervical [spondylitis] with C6 radiculopathy.<sup>2</sup> Dr. Goodman stated:

“Flexing the neck, working in low places, lifting and swinging the arms from side to side as is required in buffing and mopping clearly agitates [appellant’s] nerve root irritation. He should be [provided] with a job for medical reasons that involve lifting no more than 20 pounds. [Appellant] should not work in low places where his neck is flexed for long periods of time and should not do tasks requiring swinging or pulling movements of the shoulders. Driving should be a suitable alternative medically to his current work.”

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<sup>1</sup> On October 11, 1994 appellant filed a traumatic injury claim alleging that he experienced pain in his neck and right shoulder while lifting a mailbag.

<sup>2</sup> The record contains an MRI scan dated September 10, 1993, predating the alleged work injury, revealed “degenerative disc changes at L4-5 and L5-S1 with some central disc bulge at L4-5.”

By letter dated August 1, 1997, the Office notified appellant of the type of medical and factual evidence required to establish his claim.

In an August 22, 1997 letter, appellant related the physical requirements of his job as a mailhandler, letter carrier and custodian. He noted that, in 1994, he fell while delivering mail and developed right shoulder pain. Appellant stated that his supervisor took him to the emergency room after the injury and that he was had a dull pain in the right shoulder and right hand, along with tingling in the right index finger ever since the fall. He further noted that he began to develop pain in the right elbow.

In a decision dated October 10, 1997, the Office denied compensation on the grounds that appellant failed to establish that he sustained a back condition causally related to factors of his federal employment.

Appellant requested a hearing, which was held on April 22, 1998.<sup>3</sup>

Appellant submitted hospital records from the Washington Industrial Medical Center dated October 27, 1994, indicating that he was treated on that date for a sprain in the thoracic region. The date of injury listed on the report was October 11, 1994.

Appellant also submitted an October 27, 1994 report from Dr. Laurie Feinberg, a physician specializing in physical medicine and rehabilitation. She noted that appellant noticed onset of right neck and shoulder pain on October 11, 1994 when he lifted his mailbag at work that day. Dr. Feinberg reported physical findings and diagnosed that appellant had a possible cervical radiculopathy at C6 or C7 on the right, along with mild rotator cuff tendinitis and a torticollis. She advised that appellant not carry anything on his shoulder and recommended that he be assigned to limited duty. Dr. Feinberg gave him lifting restrictions of 20 pounds no more than 2 hours per day.

In a September 2, 1997 report, Dr. Goodman reported that appellant continued to be treated for cervical nerve root irritation secondary to cervical disc disease. He noted that appellant was unable to perform his maintenance job and should not lift more than 20 pounds. Dr. Goodman also stated that appellant's condition appeared to be permanent.

An electromyogram (EMG) dated January 30, 1998 confirmed the existence of C6 radiculopathy, mild chronic enervation in the C6 root distribution and mild entrapment of the median nerves at the carpal ligament bilaterally. An MRI scan dated February 10, 1998 revealed early cervical spondylosis at C5-6.

In a decision dated June 29, 1998, an Office hearing representative affirmed the Office's October 10, 1997 decision.

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<sup>3</sup> Appellant testified that he filed a traumatic injury claim related to the October 1994 injury but that it was denied. He stated that he began work as a letter carrier in 1992 and was required to carry a heavy mailbag over his right shoulder. After October 1994, appellant worked as a custodian. He argued that his job duties either aggravated, exacerbated or contributed to his back condition.

Appellant requested reconsideration and submitted a July 30, 1998 report by Dr. Goodman. He noted that he had previously outlined appellant's cervical diagnosis and treatment and those components of work that aggravated appellant's condition in his July 24, 1997 report. Dr. Goodman related that, in October 1994, while carrying a sack of mail, appellant tripped and fell down a small flight of stairs and tried to break his fall with an outstretched arm. He indicated that appellant developed the onset of pain in the right arm and cervical spasm, for which Dr. Feinberg diagnosed cervical radiculopathy. He concluded:

“[Appellant] sustained a fall at that time and his balance was impaired by carrying the heavy mail sack and the consequences of the fall were magnified by [him] carrying the heavy mail sack.... The cervical disc resulted from [his] work-related fall and the carrying of the mail sack. The causal relationship between [appellant's] cervical disc disease and his work cannot be disputed.”

In a decision dated September 30, 1998, the Office denied modification following a merit review.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>4</sup> 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 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.<sup>5</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

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 a 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 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 claimant.<sup>7</sup>

The medical evidence required to establish causation, 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

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton* 40 ECAB 1143 (1989).

<sup>6</sup> *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *Woodhams*, *supra* note 6.

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 claimant.<sup>8</sup>

In the instant case, the Office found that appellant did not provide a rationalized medical opinion to establish that his back condition was caused by factors of her employment. The Office specifically noted that, “Dr. Goodman has indicated that [appellant’s] cervical disc disease disables him from performing his regular duties, which agitate the underlying symptoms of that condition. However, he does not express a definite opinion that [appellant’s] cervical condition was causally related to the job duties.”

Contrary to the Office’s finding, while the report of Dr. Goodman is not completely rationalized, the Board finds that it is supportive of appellant’s position that his preexisting cervical condition was aggravated or worsened by his job duties as a mail carrier beginning in 1992 and as a custodian after October 1994. Although his opinion is not entirely sufficient to meet appellant’s burden of proof to establish the claim, it raised an uncontroverted inference between the claimed injury and appellant’s employment and is sufficient to require the Office to further develop the evidence.<sup>9</sup>

Furthermore, the Board finds that this case should have been doubled with appellant’s prior traumatic injury claim of October 11, 1994 since the issue involved is whether appellant is disabled or entitled to medical benefits for a back condition causally related to his employment. Both claims involve the spine and are pertinent to one another.<sup>10</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> *Richard E. Konnen*, 47 ECAB 388 (1996).

<sup>10</sup> FECA Bulletin No. 97-10 (issued February 15, 1997) provides that cases should be doubled when a new injury case is reported for an employee who has filed a previous injury claim for the same part of the body.

The decisions of the Office of Workers' Compensation Programs dated September 30 and June 29, 1998 are hereby vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, D.C.  
May 4, 2000

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Bradley T. Knott  
Alternate Member