

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT K. LANNON and U.S. POSTAL SERVICE,  
BULK MAIL CENTER, Denver, CO

*Docket No. 03-1098; Submitted on the Record;  
Issued July 14, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof in establishing that his cervical disc condition was causally related to employment factors.

On November 26, 2001 appellant, a 42-year-old postal clerk, filed an occupational disease claim alleging his cervical disc condition was due to factors of his employment. He noted that he first became aware of his illness on November 9, 2001.

In support of his claim, appellant submitted a November 12, 2001 progress note by Dr. Kathleen McGrady, an attending Board-certified internist. She noted appellant's history of the injury and his employment duties, which included repetitive keying and moving packages weighing approximately 40 pounds during an 8-hour workday. Dr. McGrady diagnosed brachial plexus neuropathy and possible intervertebral disc disorder and concluded that the condition was "likely work related, given the type of work he does and worsening at work."

In a letter dated December 10, 2001, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

The employing establishment controverted the claim. In its December 27, 2001 letter, the employing establishment noted that "[e]mployees usually key packages up to six hours a day," but a break is given every two hours and employees "are rotated to a different position for two hours a day." Moreover, the employing establishment stated that the weight of most of the packages was between 10 and 25 pounds, not the 40 pounds alleged by appellant.

In response to the Office's request, appellant submitted a January 2, 2002 statement detailing the duties he believed caused his condition, a December 27, 2001 electromyogram (EMG) test and a December 21, 2001 report by Dr. Bruce B. Cazden, an attending physician

diagnosed a C6-7 disc extrusion based upon the December 19, 2001 magnetic resonance imaging (MRI) scan test.

In his letter, appellant noted that he used a “ten key with my right hand” and his left hand was used to reach for packages and place them on the conveyer belt. He noted at times he handled packages weighing 70 pounds and that he processed on average between 5,000 and 10,000 parcels a day. In a January 29, 2002 response, the employing establishment noted: “It is not a continual thing that they receive parcels weighing 40 to 70 pounds. This may happen, but not as an ongoing practice.”

The December 27, 2001 EMG revealed “borderline slowing of the median nerve across the wrist without evidence of axonal involvement” and a “slight decreased recruitment and increased insertional activity in the triceps” suggested C6-7 distribution nerve irritation.

Dr. Cazden noted appellant’s work duties included “a ten-key with the right hand and pushing packages with the left hand that may weigh up to 40 to 70 pounds” and this work involves “significant stress on the left upper extremity and a twisting motion in reaching for packaging and pushing it behind.” He attributed appellant’s condition to his work duties. In support of this conclusion, Dr. Cazden stated:

“[Appellant] has developed radiating pain into the left shoulder and down to the elbow also associated with tingling and numbness into the left index finger. [He] had no prior neck or arm problems. There is no specific work injury event, but [appellant] has noted this onset of pain in the neck and upper extremity.... He saw an orthopedist, Dr. McGrady, who felt that this was probably work related as a result of chronic overuse syndrome. I do agree that it is medically probable that [appellant’s] medical condition is related to [his] employment. [He] has no prior history of any problems to the neck or upper extremity. This is the only activity that [appellant] does that requires repetitive ongoing pushing and pulling of heavy items.”

On February 6, 2002 the Office requested that Dr. Cazden provide a more detailed report explaining how the work factors mentioned by appellant would have contributed to or aggravated his cervical disc condition.

In a decision dated March 15, 2002, the Office denied appellant’s claim on the grounds that the medical evidence was insufficient to establish that his condition was caused by employment factors.

Appellant disagreed with the Office’s decision and requested an oral hearing. A hearing was held on October 23, 2002. At the hearing appellant submitted a May 30, 2002 report by Dr. Cazden. In his report, Dr. Cazden noted appellant’s employment duties as including processing “approximately 5,000 to 10,000 parcels a day. These parcels weigh anywhere from 40 to 70 pounds” and the job required twisting and using his left hand to move the parcels. In

conclusion, Dr. Cazden opined that appellant's condition was due to his employment. In support of this conclusion, he opined:

"I believe that the repetitive nature of [appellant's] job with pushing, pulling and twisting of packages between 40 and 70 pounds over many years is the cause of this herniated disc. Medical injury would occur from this type of repetitive use with pulling and pushing of this weight. [Appellant] has no other medical reason for this. So, it is my opinion that this injury is causally related to his employment."

In a decision dated January 9, 2003, the hearing representative affirmed the denial of appellant's claim.

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

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his 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, 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>2</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease claim.<sup>3</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 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.<sup>4</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.<sup>5</sup> 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Gabe Brooks*, 51 ECAB 184 (1999).

<sup>4</sup> *Robert A. Boyle*, 54 ECAB \_\_\_\_ (Docket No. 02-2177, issued January 27, 2003); *Donna L. Mims*, 53 ECAB \_\_\_\_ (Docket No. 01-1835, issued August 13, 2002).

<sup>5</sup> *John W. Montoya*, 54 ECAB \_\_\_\_ (Docket No. 02-2249, issued January 3, 2003)

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup>

In the instant case, appellant submitted reports from Dr. McGrady and Dr. Cazden in support of his claim. Dr. McGrady related appellant's work duties, diagnosed brachial plexus neuropathy and possible intervertebral disc disorder and concluded that this condition was "likely work related given the type of work he does and worsening at work." The Board has held that equivocal opinions of causal relationship are of insufficient probative value.<sup>7</sup> Because Dr. McGrady's report is basically speculative with respect to whether appellant has a cervical condition due to work factors, the Board finds her opinion to be speculative and insufficient to establish a work-related cervical back condition.

Dr. Cazden, in his May 30, 2002 report, attributed appellant's left cervical herniated disc to his repetitive work duties. He noted the duties that appellant performed and that the cumulative effect of these duties would cause a herniated disc in the neck. The record reflects that appellant was required to receive parcels weighing between 40 and 70 pounds, although, not on a regular basis. Proceedings under the Act are not adversary in nature, nor are the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>8</sup> In this case, appellant's treating physician's reports constitute substantial, uncontradicted evidence in support of his claim and raise an uncontroverted inference of causal relationship between his cervical disc problem and his employment duties of twisting, pushing and pulling packages over the many years of employment and subsequent noted symptoms. While Dr. Cazden overstated the weight of the packages appellant currently works with, his opinion is still relevant and there is no contrary medical opinion evidence. The evidence is sufficient to require further development of the case record by the Office.<sup>9</sup>

The case will be remanded to the Office for the preparation of a statement of accepted facts including a description of the number and weight of packages appellant handles, questions to be resolved and the relevant case records, to be followed by a referral to an appropriate physician for a rationalized opinion on whether appellant's condition is causally related to his employment duties.

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<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *See Geraldine H. Johnson*, 44 ECAB 745 (1993).

<sup>8</sup> *Betty J. Smith*, 54 ECAB \_\_\_\_ (Docket No. 02-149, issued October 29, 2002); *William J. Cantrell*, 34 ECAB 1233 (1983).

<sup>9</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

The January 9, 2003 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further development consistent with the above opinion.

Dated, Washington, DC  
July 14, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member