

**United States Department of Labor
Employees' Compensation Appeals Board**

FAITH S. DUGAL, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
North Dartmouth, MA, Employer**

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**Docket No. 04-142
Issued: March 12, 2004**

Appearances:
Faith S. Dugal, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On October 23, 2003 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated June 25 and October 10, 2003 which denied her occupational injury claim. The Board has jurisdiction of the merits on appeal under 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether appellant sustained an injury causally related to factors of her federal employment.

FACTUAL HISTORY

On April 23, 2003 appellant, then a 47-year-old letter carrier, filed an occupational disease claim alleging that on April 14, 2003 she became aware that the muscles in her right shoulder and back were all knotted up due to repetitive movement in the postal vehicle. She stated that her condition began on April 14, 2003 while in the vehicle and worsened as the week

progressed. Appellant's supervisor noted that appellant returned to limited duty with no use of her right shoulder and no casing on October 12, 2003.

In a routing slip dated April 18, 2003, appellant stated that she hurt her back three days prior but was not sure how. Appellant experienced difficulty doing her job but was unsure whether she hurt her shoulder at home or at work. In a note dated April 22, 2003, a nurse practitioner, Katherine Benevides, stated that appellant had a right shoulder strain. A physical therapist's note dated April 29, 2003 stated that appellant had pain and spasms down to her thumb and had insidious onset for two or three weeks.

By letter dated May 2, 2003, the Office informed appellant that additional evidence was needed to establish her claim, including a narrative report from her treating physician addressing how exposure or incidents in her employment contributed to her condition.

In a duty status report dated May 6, 2003, appellant's treating physician, Dr. James R. Lippincott, a Board-certified family practitioner, diagnosed shoulder strain due to repetitive motion of the shoulder and opined that appellant was unable to work for two weeks.

In a report dated April 22, 2003, Ms. Benevides stated that appellant came in stating that her shoulder had been bothering her for the past week. Appellant told the nurse that she had 400 stops a day on her job, that she pulled the emergency brake each time which, along with turning the wheel, aggravated the pain. Appellant also told Ms. Benevides that she was right-hand dominant and carried a shoulder bag which aggravated her right shoulder. Ms. Benevides noted that appellant had no direct trauma and had not hurt her shoulder in the past.

In an undated statement received by the Office on May 27, 2003, appellant noted that her postal route consisted of 416 stops and there was constant lifting up and down with her right arm. Appellant stated that sometimes her mailbag could get very heavy due to special deliveries and she carried the bag on her right shoulder. With every stop, she had to pull up the emergency brake, curve the wheels, shut the truck off and take the key out, and she had to do that for six to eight hours. She first experienced pain on April 15, 2003. She reported it to her supervisor and, as the week went on, the pain worsened. Appellant stated that she did not engage in any sports, play an instrument or own a computer. She noted no prior problems with her back or shoulder.

By decision dated June 25, 2003, the Office denied appellant's claim, finding that the medical evidence did not establish that the claimed medical condition was related to the established factors of her employment.

In an undated letter received by the Office on August 4, 2003, appellant requested reconsideration of the Office's June 25, 2003 decision and submitted additional evidence. In a report dated July 3, 2003, Dr. Lippincott considered appellant's history of injury, noting that appellant told him that she had over 400 stops a day; that she pulled the emergency brake each time, which, along with turning the wheel constantly, caused and aggravated the pain in her right shoulder. He also noted that appellant was right-hand dominant, and carried a right shoulder bag which she felt caused and aggravated the right shoulder pain. Dr. Lippincott performed a physical examination and diagnosed an ongoing right shoulder strain which he felt had been caused and aggravated by her postal work. He prescribed light-duty work and medication.

In a merit decision dated October 10, 2003, the Office denied modification of the June 25, 2003 decision, finding that appellant did not submit medical documentation identifying the specific activities in her federal employment which caused her shoulder condition.

LEGAL PRECEDENT

To determine whether a federal employee has sustained an injury in the performance of duty, the Office begins with an analysis of whether “fact of injury” has been established. Generally, “fact of injury” consists of two components which must be considered in conjunction with one another.¹ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.² Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.³

To establish that an occupational injury was sustained in the performance of duty, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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 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 appellant’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 appellant.⁴

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.⁵

¹ *Deborah L. Beatty*, 54 ECAB ____ (Docket No. 02-2294, issued January 15, 2003).

² *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

³ *Id.*

⁴ *See Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ *Lucrecia M. Nielsen*, 42 ECAB 583, 593 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

ANALYSIS

Appellant attributed her right shoulder condition to the work required on her postal route. She described the route as requiring work in a postal vehicle with over 400 stops. Appellant identified the motions of pulling the brake and turning the wheel and carrying her mailbag as factors which produced pain. The question then is whether the medical evidence of record is sufficient to establish that appellant's federal employment duties caused or contributed to her right shoulder condition.⁶

The only medical report that addresses causation is the July 3, 2003 report of Dr. Lippincott, an attending Board-certified family practitioner, in which he opined that appellant's ongoing right shoulder strain was caused and aggravated by her postal work position.⁷ Earlier in his report, he noted that appellant's position consisted of braking and turning the wheel at 400 stops a day and carrying a right shoulder bag. Ms. Benevides also noted the same description of appellant's work.⁸ It is consistent with appellant's description in her statement.

While Dr. Lippincott's opinion does not contain a rationalized medical opinion sufficient to establish that appellant's employment caused or contributed to her shoulder condition, his opinion generally stated that appellant's job at work caused and aggravated her right shoulder strain and he had described her work activities. Proceedings under the Act⁹ are not adversarial in nature and the Office shares responsibility in the development of the evidence.¹⁰ In this case, there is an uncontroverted inference of causal relationship between the diagnosed condition and the work injury.

CONCLUSION

The case shall be remanded for the Office to refer appellant, with the case record and a statement of accepted facts, to an appropriate medical specialist for an evaluation to determine whether appellant's duties at work caused or contributed to her shoulder condition. After any further development as it deems necessary, the Office shall issue a *de novo* decision.

⁶ See *Michael E. Smith*, 50 ECAB 313, 316 (1999).

⁷ The reports in the record by the nurse and physical therapist are not probative on causation as they are not physicians within the meaning of the Federal Employees' Compensation Act. *Vickey C. Randall*, 51 ECAB 357, 360 n.4 (2000); *Joseph N. Fassi*, 42 ECAB 677, 679 (1991).

⁸ Although a nurse's opinion is not probative on causation, her description of how the injury occurred may be probative since in that context she is not offering a medical opinion. See *Caroline Thomas*, 51 ECAB 451, 452, (2000); *Joseph N. Fassi*, *supra* note 7.

⁹ 5 U.S.C. § 8101 *et seq.*

¹⁰ *Shirley A. Temple*, 48 ECAB 404, 409 (1997).

ORDER

IT IS HEREBY ORDERED THAT the June 25 and October 10, 2003 decisions of the Office of Workers' Compensation Programs be set aside and the case remanded for further action consistent with this decision.

Issued: March 12, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member