United States Department of Labor
Employees' Compensation Appeals Board

CHARLA AKUNNA, Appellant **and** **U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Los Angeles, CA, Employer**	)	**Docket No. 04-444** **Issued: May 18, 2004**

Appearances:
Charla Akunna, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 9, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 15, 2003, which denied her back condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she developed a back condition due to factors of her federal employment.

FACTUAL HISTORY

On July 20, 2002 appellant, then a 44-year-old video coding technician, filed a notice of occupational disease, alleging that she developed a herniated cervical disc which caused severe pain in her neck and arms as well as headaches. Appellant first became aware of her condition on October 24, 1989 and attributed this condition to her employment on July 6, 2002. She stated

that her condition was due to driving for one hour, "repetitive and monotonous work." Appellant alleged that it was "difficult to speak eight hours" and "to sit at computer screen for eight hours holding [her] neck up."[1]

The Office requested additional factual and medical evidence by letter dated September 11, 2002. By decision dated October 15, 2003, the Office denied appellant's claim finding that she had not attributed her condition to her actual employment duties.[2] The Office found that appellant was not required to sit for eight hours and that she was not required to move her neck as alleged.

LEGAL PRECEDENT

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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relation.[3]

ANALYSIS

Appellant submitted medical reports pertaining to her treatment for cervical spondylosis with a herniated disc and lumbar spondylosis with low back pain. She attributed her condition to work activities in her federal employment.

In a narrative statement, appellant attributed her condition to driving up to one hour each way to and from work which she stated required her to turn her neck frequently. The Board has recognized as a general rule that off-premises injuries sustained by employees having fixed hours and place of work, while going to or coming from work, are not compensable as they do not arise out of and in the course of employment.[4] Therefore, any injury to appellant's neck or back as a

[1] Appellant filed a second claim on May 28, 2003 alleging that on July 1, 2002 she became aware of an injury to her cervical and lumbar spines.

[2] The Office stated in its October 15, 2003 decision, that it was rescinding an August 18, 2003 decision under a separate claim number. As the August 18, 2003 decision is not included in the record before the Board and as appellant did not file an appeal from that decision on December 9, 2003, the Board will not address that decision on appeal. 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[3] *Lourdes Harris*, 45 ECAB 545, 547 (1994).

[4] *Melvin Silver*, 45 ECAB 677, 681 (1994).

result of her daily commute would not be considered to have occurred in the performance of her federal duties and would not support her claim for compensation.

Appellant also attributed her neck and back condition to lengthy walks from the "parking lot" to her workstation in the employing establishment. The record does not contain evidence addressing whether the parking lot described by appellant is on the premises of the employing establishment or in an area which may be considered part of the employing establishment for compensation purposes.[5] The record does not indicate the distance that appellant was required to walk from her vehicle to the employing establishment. As appellant has not submitted the necessary evidence regarding the level of control of the parking lot by the employing establishment, she has not established that this is a compensable factor of employment.[6]

Appellant also attributed her back and neck conditions to a 100-yard walk from the employing establishment security kiosk to her workstation. Appellant also attributed her back and neck condition to environmental factors such as the high temperature, bright lighting and dust concentrations at her workstation. She alleged that she did not have a comfortable chair, that she sat for eight hours a day, that she spoke for eight hours a day, that she "held her neck up" for eight hours a day, that she stared at a computer screen and that she moved her head back and forth to evaluate information on two separate computer screens.

The employing establishment provided appellant's position description which indicated that appellant could sit or stand as needed for comfort with a 5-minute break every hour and a 30- or 45-minute lunch during an 8-hour work shift. The position description indicated that appellant read addresses into a headset microphone as individual pieces of mail were displayed on a computer screen. The employing establishment stated on June 4, 2003 that computers were used individually and that "you sit [and] talk." On June 5, 2002 Marie L. Lucero, the manager of distribution operations, stated that the chairs used at appellant's workstation were ergonomically designed and that appellant was not assigned "anything that is pertinent to the movement of any type of matter of any extreme size or weight." The employing establishment also noted that appellant's duty station was an enclosed room with a thermostat, but acknowledged that dust was prevalent.

In evaluating the factual evidence, the Office determined that appellant had not established that she sat for eight hours a day as alleged. The Office further found that the "employing [establishment] stated that you are not required to do any type of movement on the job." The Board notes that a claimant's statement alleging that an injury occurred, in a given manner, is of great probative value and will stand unless refuted by strong or persuasive evidence.[7] The evidence from the employing establishment establishes that appellant failed to perform the employment duties alleged as causing or contributing to her diagnosed condition. The employing establishment asserted that appellant could sit or stand as her comfort dictated and noted that "computers are used individually." The record establishes that appellant was

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[5] *Kimberly Kelly*, 51 ECAB 582, 583-84 (2000).

[6] *Lawrence W. Willis*, Docket No. 96-1471 (issued December 6, 1999); *Joann Marshall*, Docket No. 95-153 (issued October 4, 1996).

[7] *Earl David Seal,* 49 ECAB 152, 154 (1997).

responsible for monitoring one computer as opposed to two and she was not required to move her neck as alleged.

As appellant failed to attribute her diagnosed condition to an established requirement of her federal job, she failed to meet her burden of proof and the Office properly denied her claim for a back and neck condition as a result of her employment duties.

CONCLUSION

The Board finds that appellant failed to establish that her back or neck condition were due to the requirements of her federal employment. The Office properly denied her claim finding that she failed to establish fact of injury due to this deficiency in the factual evidence.

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member