

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

HAZEL V. ROWLETTE, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Fairfield, OH, Employer**

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**Docket No. 04-1360
Issued: September 13, 2004**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On April 26, 2004 appellant filed a timely appeal from the April 7, 2004 merit decision of the Office of Workers' Compensation Programs, which denied her claim for failure to establish the element of causal relationship. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the Office's April 7, 2004 decision. The Board also has jurisdiction to review the Office's merit decisions of September 25 and October 28, 2003.

ISSUE

The issue is whether appellant's cervical subluxations are causally related to her federal employment.

FACTUAL HISTORY

On August 9, 2003 appellant, then a 56-year-old distribution clerk, filed a claim alleging that she injured her neck while working a postal machine: "This activity of sweeping packets consists of movements to the right and back to a forward position, while gripping mail in both hands for depositing in letter trays."

In a decision dated September 25, 2003, the Office denied appellant's claim for compensation. The Office accepted that the events occurred as alleged but found that there was no medical evidence from a physician providing a history and diagnosis directly attributed to such events. Appellant requested reconsideration and submitted medical records from her attending chiropractor, Dr. B. Kirk Brown.

In a decision dated October 28, 2003, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office noted that Dr. Brown did not diagnose a subluxation from the x-rays taken on August 6, 2003; he diagnosed cervical and dorsal strains. For this reason the Office found that Dr. Brown did not meet the statutory definition of a "physician" and that his reports had no probative value in establishing appellant's claim.

Appellant requested reconsideration and submitted additional medical records from Dr. Brown, (many duplicates) among them a November 7, 2003 explanation of the reason "subluxation" did not appear as a diagnosis on his prior reports. Dr. Brown clarified that appellant's main subluxations were at the C5-6 level, for which his office provided treatment. In a similar explanation dated March 17, 2004, Dr. Brown stated that appellant had subluxations at C3 and C7. He stated that it was generally implied that any manipulation or adjustment was directed at reducing the subluxations found on the x-ray.

In a decision dated April 7, 2004, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office found that Dr. Brown diagnosed a subluxation but did not provide the actual x-ray report that demonstrated the subluxation. In addition, the Office found that while Dr. Brown provided an accurate history of injury, he made no connection between appellant's subluxation and her work on the postal machine in question.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.²

Causal relationship is a medical issue,³ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete

¹ 5 U.S.C. §§ 8101-8193.

² See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

factual and medical background of the claimant,⁴ must be one of reasonable medical certainty,⁵ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁶

Section 8101(2) of the Act provides that the term “physician,” as used therein, “includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.”⁷

ANALYSIS

The Office accepted that the events occurred as alleged, namely, that appellant worked a postal machine and swept packets with movements to the right and back to a forward position while gripping mail in both hands for deposit in letter trays. The question for determination is whether the established employment activity caused an injury. This is a medical question that requires a physician’s well-reasoned explanation.

Dr. Brown is a “physician” under the Act. The record shows that he obtained x-rays on August 6, 2003 and that he diagnosed appellant with vertebral subluxations in the cervical spine. The record also supports that he provided manipulation of the spine to reduce subluxations. Dr. Brown, however, offered no medical opinion on whether the established employment activity caused or aggravated appellant’s diagnosed subluxations. Without a well-reasoned medical opinion on causal relationship, his reports have no probative value in establishing an essential element of appellant’s claim.⁸ For this reason appellant has not met her burden of proof.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her cervical subluxations are causally related to her federal employment. She has submitted no medical opinion evidence, with sound reasoning, to support the essential element of causal relationship.

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁷ 5 U.S.C. § 8101(2).

⁸ *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions). Dr. Brown must also explain the reason the identified levels of subluxation changed from C5-6 to C3 and C7. The Office’s April 7, 2004 decision indicates that he should submit to the Office “the x-ray report that outlines the specific impressions found.”

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 7, 2004, October 28 and September 25, 2003 are affirmed.

Issued: September 13, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member