

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

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**WILLIAM D. GORE, Appellant**

**and**

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

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**Docket No. 04-1988  
Issued: January 19, 2005**

*Appearances:*

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member

**JURISDICTION**

On August 5, 2004 appellant filed a timely appeal from a July 12, 2004 decision of an Office of Workers' Compensation Programs' hearing representative, affirming a November 3, 2003 Office decision finding that appellant had not established a cervical condition as causally related to his federal employment. 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 his burden of proof to establish a cervical condition causally related to his federal employment as a flat sorter operator.

**FACTUAL HISTORY**

On July 1, 2002 appellant, then a 53-year-old flat sorter operator, filed an occupational disease claim for compensation (Form CA-2) alleging that he sustained a left knee injury as a result of repetitive twisting of the knee while performing his job duties. A report dated June 19, 2002 from Dr. Kevin Paley, an orthopedic surgeon, diagnosed left knee meniscus tear, left

cubital tunnel syndrome and left carpal tunnel syndrome and opined that the conditions were causally related to appellant's federal employment. On August 28, 2002 the Office accepted left knee meniscus tear, left cubital tunnel syndrome and left carpal tunnel syndrome as employment related.

By report dated February 26, 2003, Dr. Paley indicated that appellant recently had a magnetic resonance imaging (MRI) scan of his cervical spine, and his cervical condition was causing upper extremity numbness. In a report dated May 13, 2003, Dr. Marcos Amongero, an orthopedic surgeon, provided results on examination and diagnosed a C5-6 left-sided herniation based on MRI scan results.<sup>1</sup>

The Office advised appellant in a June 30, 2003 letter that cervical surgery was not authorized. Appellant underwent left knee surgery on July 1, 2003; he returned to light-duty work on September 15, 2003. On July 29, 2003 he filed another CA-2 claim alleging that he sustained a cervical condition causally related to work as flat sorter operator. The Office developed the claim as part of the existing occupational claim filed on July 1, 2002. Appellant was advised that he needed to submit a comprehensive medical report that included a reasoned opinion on causal relationship between a neck condition and federal employment.

By decision dated November 5, 2003, the Office determined that the medical evidence did not establish causal relationship between a cervical condition and factors of appellant's federal employment. Appellant request an oral hearing before an Office hearing representative, which was held on May 19, 2004. He submitted periodic reports from Dr. Paley with respect to his knee and arm conditions. In a decision dated July 12, 2004, the Office hearing representative affirmed the November 5, 2003, finding that the medical evidence was not sufficient to meet appellant's burden of proof.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup> In order to establish causal relationship, a physician's opinion must be based on a complete factual and medical background, 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 activities.<sup>4</sup>

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<sup>1</sup> The record contains an MRI scan report dated February 8, 2003 stating that appellant had degenerative spondylosis with mild disc narrowing at C5-6 and C6-7 and at C5-6 a left paracentral mild disc bulge with osteophyte without focal herniation or central canal stenosis.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Gary L. Fowler*, 45 ECAB 365 (1994).

### ANALYSIS

In this case appellant alleged that his employment duties contributed to a cervical condition. It is appellant's burden to submit probative medical evidence on causal relationship between a diagnosed condition and the identified employment factors. Dr. Paley did not provide an opinion on causal relationship in his reports; he noted in a February 26, 2003 report that an MRI scan had been performed, that he believed a cervical condition was contributing to appellant's complaints of numbness and that appellant was being referred to Dr. Amongero. In his May 13, 2003 report, Dr. Amongero diagnosed a C5-6 herniation, without providing an opinion on causal relationship with federal employment.

The record does not contain a reasoned medical opinion, based on a complete and accurate factual and medical background, on causal relationship between a diagnosed cervical condition and factors of appellant's employment as a flat sorter operator. In the absence of such evidence, appellant did not meet his burden of proof and the Office properly denied acceptance of a cervical condition.

### CONCLUSION

The Board finds that appellant did not meet his burden of proof as the medical evidence of record, including reports from Drs. Paley and Amongero, do not provide a reasoned medical opinion on causal relationship between a cervical condition and appellant's federal employment.

### ORDER

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated July 12, 2004 and November 5, 2003 are affirmed.

Issued: January 19, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member