

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

MARK C. HOLST, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
St. Louis, MO, Employer**

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**Docket No. 04-2139
Issued: March 8, 2005**

Appearances:
Mark C. Holst, 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 September 1, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 28, 2004 denying modification of an August 7, 2003 decision finding that appellant had not established an injury occurring on June 25, 2003. 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 met his burden of proof to establish that he sustained a neck injury in the performance of duty on June 25, 2003.

FACTUAL HISTORY

On June 25, 2003 appellant, then a 52-year-old mail handler, filed a traumatic injury claim alleging that, while pulling a heavy container of mail that day, he experienced a sharp pain in his neck which traveled down his right arm and into his right hand causing it to go numb. Appellant stopped work the same day. He submitted a June 25, 2003 duty status report and a

June 27, 2003 report from Dr. Mary Ann Hollman, a Board-certified family practitioner specializing in occupational medicine. She diagnosed neck pain/dysesthesia and a right upper extremity radiculopathy and opined that appellant was unable to resume work. Dr. Hollman noted that appellant had a history of a nonoccupational disc herniation/stenosis in his cervical spine for which he underwent a C-spine fusion and graft in 1998.

By letter dated July 3, 2003, the Office advised appellant that the evidence submitted was insufficient to establish his claim and informed him of the type of evidence needed to support his claim. Appellant was provided 30 days to submit such information.

Appellant submitted a statement and medical evidence. In a medical report dated June 26, 2003, Dr. Hollman reiterated appellant's history of the injury and diagnoses and disability findings. In a June 27, 2003 report, she noted that appellant had a magnetic resonance imaging (MRI) scan on June 25, 2003 which showed a rather extensive preexisting degenerative disc disease and evidence of C3-4 spinal cord impingement, which was "higher than his current symptoms" and surrounded by rather extensive bony hypertrophy subsequent to his 1998 surgery. Dr. Hollman advised that appellant should follow-up with his neurosurgeon with regards to his substantial C-spine changes. She opined that appellant's current symptoms were the result of a facet syndrome and that the C3-4 cord impingement was not the result of the recent work incident.

In a July 9, 2003 medical report, Dr. Barry L. Samson, a Board-certified orthopedic surgeon, noted the history of injury, that appellant had neck pain without arm pain for several years and that his neck surgery in 1998 did not relieve the neck pain. He diagnosed cervical radiculitis and recommended that appellant remain off work until the physician could get a better idea of what was going on anatomically as the June 25, 2003 MRI scan was obscured by previous surgeries and the details were difficult to ascertain. Dr. Samson recommended that a myelogram and a computerized axial tomography (CAT) scan be performed. In a July 23, 2003 report, Dr. Samson advised that he was no longer appellant's treating physician. He did not provide an opinion on the causal relationship of appellant's cervical radiculitis.

Appellant also submitted a copy of the June 25, 2003 MRI scan report together with September 2001 reports from Dr. Elbert H. Cason, an employing establishment physician, pertaining to a September 6, 2001 orthopedic fitness-for-duty examination.

In a decision dated August 7, 2003, the Office denied appellant's claim on the basis that fact of injury had not been established. The Office found that, while the claimed event occurred, there was no medical evidence which provided a diagnosis which could be connected to the claimed event.

In an undated letter received May 26, 2004, appellant requested reconsideration. He advised that he had surgery on November 28, 2003 to repair a broken screw in the original metal plate, had another metal plate implanted and had a bulging disc removed that was impinging on his spinal cord as seen by Dr. Hollman on the June 25, 2003 MRI scan. Appellant submitted copies of reports previously of record, medical reports and objective testing surrounding his July 17, 1998 surgery, a November 4, 2003 certificate of health care provider signed by Dr. Neill Wright, a Board-certified neurological surgeon, and two new medical reports. In a July 17, 2003

report, Dr. Stanley B. Martin, a Board-certified neurological surgeon, advised that appellant was known to him from his prior surgery of July 1998 in which he underwent a C5-6 corpectomy, multiple discectomies and a C4 to C7 fibular allograft and plate. Since then he has had chronic neck pain, intermittent right upper extremity pain and numbness and weakness in both upper extremities. Dr. Martin noted that appellant remained on light duty for four years postoperatively and returned to regular duty about a year prior. He noted that appellant was reinjured on July 26, 1998 while pulling a container of mail. Dr. Martin provided examination findings and recommended surgery as an option to appellant.

In a January 21, 2004 report, Dr. Wright noted that appellant was three months status post an anterior cervical discectomy and fusion, that his neurological examination was normal, and that appellant could return to work on January 27, 2004 with limited lifting. Dr. Wright noted that appellant was apparently pushing a carton of mail at work and felt something pop with the immediate onset of pains in his neck and arms. He opined that, “although [appellant] has significant degenerative disc disease in his neck previously as well as a previous cervical spine fusion, both of which placed him at risk for further degeneration, it is likely this type of activity at work at a minimum contributed to his current disorder.”

In a decision dated June 28, 2004, the Office denied modification of the August 7, 2003 decision on the basis that causal relationship had not been established.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing that the essential elements of his or her 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 within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a “fact of injury” has been established. 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.⁴ 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.⁵

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.*

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused by his employment. Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant'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 the claimant.⁶

ANALYSIS

It is not disputed that the claimed incident of June 25, 2003 occurred. However, appellant has not provided sufficient rationalized medical opinion evidence to support a causal relation between his cervical condition and the employment incident of June 25, 2003, pulling a heavy container. The medical evidence, which notes appellant's preexisting degenerative disc condition and 1998 cervical fusion, fails to provide a discussion of how the June 25, 2003 incident caused or contributed to his neck condition, resulting in his disability for work.

Dr. Hollman noted that the June 25, 2003 MRI scan showed extensive preexisting degenerative disc disease and evidence of C3-4 spinal cord impingement. However, she opined that appellant's substantial cervical spine changes were the result of a facet syndrome and that the C3-4 cord impingement was not the result of the June 25, 2003 work incident. Dr. Martin noted that appellant had returned to regular duty and that he was reinjured pulling a container of mail. However, the physician related the history of injury as provided by appellant and did not otherwise provide a reasoned opinion regarding the causal relationship of appellant's current cervical symptoms and the employment incident on June 25, 2003. Dr. Wright noted that appellant was three months status post an anterior cervical discectomy and fusion and opined that it was "likely" that appellant's activity at work had, at a minimum, contributed to his current disorder. Dr. Wright's report, however, is insufficient to establish appellant's claim because it is speculative⁷ and did not provide any medical explanation to support his stated conclusion that appellant's current cervical symptoms had been caused or aggravated by his employment.⁸ Additionally, Dr. Wright did not specifically address appellant's employment activities or explain how his work responsibility of pulling heavy containers caused or contributed to a material worsening of his preexisting cervical degenerative disc disease and previous cervical spine fusion.⁹

⁶ *Claudio Vazquez*, 52 ECAB 496 (2001); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁷ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

⁸ *Claudio Vazquez*, *supra* note 6.

⁹ *Id.*

While appellant believed that his pulling of a heavy container at work on June 25, 2003 caused his current cervical condition, there is insufficient probative, rationalized medical evidence addressing and explaining why appellant's medical condition and subsequent need for surgery were caused or aggravated by factors of his employment. In this regard, the Board has held that the mere fact that a condition or disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹⁰ 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 relationship.¹¹ Causal relationship must be resolved by probative medical evidence, which is appellant's responsibility to submit.¹²

For these reasons, appellant has not met his burden of proof in establishing that he sustained a medical condition in the performance of duty on June 25, 2003.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that his neck condition was caused or aggravated by his employment on June 25, 2003.

¹⁰ See *Joe T. Williams*, 44 ECAB 518 (1993).

¹¹ *Id.*

¹² *Margaret Cravello*, 54 ECAB ____ (Docket No. 03-256, issued March 24, 2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 28, 2004 is affirmed.

Issued: March 8, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member