

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

NANCY JEAN CULBERTSON, Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
CITIZENSHIP & IMMIGRATION SERVICES,)
Dallas, TX, Employer)

Docket No. 05-493

Issued: May 13, 2005

Appearances:

Nancy Jean Culbertson, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 21, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 20, 2004 which denied modification of its July 20, 2004 decision finding that appellant did not sustain a shoulder and neck injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether appellant has met her burden of proof in establishing that she sustained a shoulder and neck injury in the performance of duty.

FACTUAL HISTORY

On June 7, 2004 appellant, then a 56-year-old adjudication officer, filed a claim for traumatic injury alleging that on May 25, 2004 she was lifting a box of files in a mail tub and injured her shoulders and neck. Appellant did not stop work.

In a letter dated June 22, 2004, the Office advised appellant of the type of evidence needed to establish her claim and requested that she submit such evidence.

In support of her claim, appellant submitted a report from Dr. Gary C. Hutchison, a Board-certified neurologist, dated June 10, 2004. He noted that appellant sustained an employment-related injury on May 25, 2004 while lifting a mail tub full of files. Appellant reported that she experienced an onset of neck pain radiating to her right shoulder and arm. Dr. Hutchison advised that appellant had undergone two cervical spine operations in 1990 and 2000, for an anterior cervical disc removal and fusion at C6-7. He noted limitation of motion of the neck, tenderness of the right shoulder, and diminished sensation in her right thumb and index finger. Dr. Hutchison indicated that appellant continued to work at home. His report of June 21, 2004 noted findings upon examination of normal flexion and extension without subluxation. Dr. Hutchison also noted that an x-ray revealed mild narrowing of the C5-6 interspace with a spur on the posterior inferior edge of the C5 vertebral bodies. He diagnosed C6 radiculopathy which correlated with her degenerative disc disease at C5-6 and C6-7.

In a decision dated July 20, 2004, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that her condition was caused by factors of her federal employment.

In a letter dated September 25, 2004, appellant requested reconsideration and submitted additional medical evidence. In a report dated August 23, 2004, Dr. Hutchison noted treating appellant since 2000 when he performed an anterior cervical disc removal and fusion at C6-7. He advised that appellant was recently treated for shoulder and neck pain which occurred after lifting a number of boxes while working. Dr. Hutchison indicated that a magnetic resonance imaging (MRI) scan of the cervical spine performed on July 23, 2004 revealed a solid old anterior fusion at C6-7, mild degenerative disc disease, and joint disease at both C4-5 and C5-6. An electromyography (EMG) revealed chronic right C7 level radiculopathy. Dr. Hutchison opined that appellant's current episode of cervical difficulty represented an exacerbation and aggravation of her previous C7 problem. He further opined that the C7 radiculopathy represented an old problem at C6-7 which was aggravated when appellant lifted boxes while working for Homeland Security. In an attending physician's report dated September 22, 2004, Dr. Hutchison noted that appellant injured her left and right neck and shoulders while lifting boxes. He diagnosed degenerative disc disease at C4-5 and C5-6 and radiculitis at C7. Dr. Hutchison noted with a checkmark "yes" that appellant's condition was caused or aggravated by her employment duties.

By decision dated October 20, 2004, the Office denied modification of the July 20, 2004 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing 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 filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which

compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.¹

In order to determine whether an employee actually 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. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.² The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.³

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 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.⁴ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

ANALYSIS

In the instant case, it is not disputed that on May 25, 2004 appellant was lifting a mail tub as alleged. The Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that her preexisting cervical radiculopathy was aggravated by factors of her federal employment. The Board notes that the medical evidence submitted by appellant generally supports that she sustained an aggravation of her preexisting cervical radiculopathy from lifting a mail tub of files. The August 23, 2004 report of Dr. Hutchison noted that appellant experienced shoulder and neck pain after lifting a number of boxes while working. He advised that an EMG revealed chronic right C7 level radiculopathy. Dr. Hutchison opined that appellant's current episode of shoulder and neck pain represented an exacerbation and aggravation of her previous C7 problem. Dr. Hutchison opined that the C7 radiculopathy

¹ *Gary J. Watling*, 52 ECAB 357 (2001).

² *Michael E. Smith*, 50 ECAB 313 (1999).

³ *Id.*

⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁵ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

represented an old problem at C6-7 which was aggravated when she lifted boxes while working on May 25, 2004. On September 22, 2004 Dr. Hutchison again noted that appellant injured her left and right neck and shoulders while lifting boxes. He diagnosed degenerative disc disease at C4-5 and C5-6 and C7 radiculitis. Dr. Hutchison noted with a checkmark “yes” that appellant’s condition was caused or aggravated by her employment duties. Although the physician’s reports are not sufficiently rationalized to meet appellant’s burden of proof in establishing her claim, they stand uncontroverted in the record and are sufficient to require further development of the case.⁶

Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.⁷

The Board will remand the case to the Office for preparation of a statement of accepted facts concerning appellant’s working conditions and referral to an appropriate medical specialist to determine whether appellant sustained any aggravation or exacerbation of her preexisting cervical radiculopathy as a result of her employment duties. Following this, and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant’s claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

⁶ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁷ *John W. Butler*, 39 ECAB 852 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 20 and July 20, 2004 are hereby set aside and the case is remanded for further development in accordance with this decision of the Board.

Issued: May 13, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member