

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

ROSEMARY NEGRON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bellevue, FL, Employer**

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**Docket No. 05-999
Issued: September 22, 2005**

Appearances:
Ronald S. Webster, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 24, 2005 appellant, through her attorney, filed a timely appeal from a February 11, 2005 merit decision of the Office of Workers' Compensation Programs denying modification of its finding that she had not established an employment-related cervical condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that she sustained a cervical condition causally related to her December 21, 1988 employment injury; and (2) whether appellant has established that she sustained an aggravation of her preexisting cervical condition due to factors of her federal employment.

FACTUAL HISTORY

On August 27, 2001 appellant, then a 58-year-old postal clerk, filed an occupational disease claim, Office File No. 062042393, alleging that she sustained a dislocated disc in her neck which she attributed to her federal employment. Specifically, she stated:

“On December 21, 1988 I was walking through the counter, I lifted the section of the counter and leaned it against the wall and when I went to lock the door it fell on my head with such an impact that my head hurt for days. When the accident happen[ed] I felt that my neck was injured. Strenuous physical work caused [a] recurrence.”¹

Appellant indicated that she first realized the condition and its relationship to her federal employment on December 8, 2000.

In a statement accompanying her claim, appellant related that a magnetic resonance imaging (MRI) scan study obtained on December 8, 2000 revealed that she had an injury to three of the discs in her neck. She indicated that she believed that her December 22, 1988 employment injury caused her neck condition.² Appellant stated: “The reason I did [not] have any symptoms until now is because I have [not] been doing any heavy lifting until about two years ago, when my job was changed...” She related that starting two years ago her job required lifting and pulling for three to five hours per day and that the “doctor said that heavy lifting would definitely make the injury to my neck worse.”³

An MRI scan, obtained on October 20, 2000, showed “a mildly abnormal cervical spine MRI scan without contrast due to the presence of multi-level lower cervical bulging discs.”

In a report dated December 8, 2000, Dr. Alfredo L. Jacome, a Board-certified neurologist, discussed appellant’s two-year history of “occasional cervical pain, imbalance, left facial hypersensitivity and LUE [lower extremity] pain.” He noted that she “had a head injury in 1988 that may be a contributing factor.” Dr. Jacome diagnosed cervical bulging discs “with secondary polyradicular symptoms” and indicated that she required work restrictions.

In a report dated August 17, 2001, Dr. Jacome diagnosed bulging discs at C4-5, C5-6 and C6-7 “with no evidence of central canal or bilateral neuroforaminal stenosis.” He recommended a lumbar MRI scan to evaluate “the hyperesthetic feelings in her feet.”

In a duty status report dated September 28, 2001, Dr. Jacome diagnosed cervical bulging discs and found that appellant could work in her usual employment. Appellant, in a statement

¹ The record reveals that the Office accepted this claim for a head contusion under Office File No. 060452964 with no lost time.

² Although appellant indicated the date of injury as December 22, 1988, the evidence of record establishes that it was December 21, 1998.

³ In a statement received by the Office on September 10, 2001, Patty Wise, the postmaster of the employing establishment, noted that on August 9, 2000 appellant told her that she had sustained an injury at home.

received by the Office on October 16, 2001 noted that the December 1988 employment injury was the only injury she had sustained capable of causing bulging discs. She again related that she began to have neck problems when her job requirements changed and she began lifting and unloading mail. Appellant also noted that she had problems with her right arm, numbness in her face and balance.

By decision dated December 10, 2001, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish a condition caused by her December 21, 1988 employment injury.

In a letter dated November 18, 2002, appellant, through her representative, requested reconsideration. He indicated that he was submitting a deposition from Dr. Jacome.

The Office denied merit review under 5 U.S.C. § 8128 in a decision dated January 3, 2003. Appellant appealed to the Board and in an order dated December 11, 2003, the Board remanded the case in response to the Director's motion for the Office to conduct a review of Dr. Jacome's deposition.⁴ The Board noted that the Office had not advised appellant's representative that Dr. Jacome's deposition was missing from the record.

In the deposition dated November 12, 2002, Dr. Jacome related that he began treating appellant on October 13, 2000 for multiple bulging discs. He found that the 1988 "incident" likely precipitated her condition "because it [is] about the only incident that we know of that could cause problems with her cervical area or neck area. And, of course, her present conditions could be the reflection of the gradual progression of such a thing." Dr. Jacome noted that appellant's job duties required heavy lifting beginning around 1998, which "could prompt neurological and neuromuscular symptoms." He described how the 1988 employment injury, when a heavy object fell on appellant's head causing a head contusion, could result in a neck injury due to the "sudden acceleration or deceleration movement of the head and neck." Dr. Jacome responded affirmatively that he believed this occurred in appellant's case as it was "a likely mechanism of injury, particularly, knowing that that seems to be about the only injury she [has] ever had."

By decision dated February 12, 2004, the Office denied modification of its February 10, 2001 decision on the grounds that appellant had not established a cervical condition due to factors of her federal employment. The Office noted that appellant's December 21, 1988 employment injury was accepted for a head contusion with no time lost. The Office declined to address whether her 1988 employment-related traumatic injury caused her cervical condition.

Appellant again appealed to the Board. The Board dismissed the appeal at appellant's request on September 24, 2004.⁵

⁴ Order remanding case, Docket No. 03-803 (issued December 11, 2003).

⁵ Order granting remand, Docket No. 04-1350 (issued September 24, 2004).

On October 29, 2004, appellant, through her representative, requested reconsideration. The representative argued that appellant meant to file a recurrence of disability rather than an occupational disease claim.

Appellant submitted a deposition from Dr. Jacome dated July 14, 2004.⁶ Dr. Jacome stated:

“[Appellant’s] cervical complaints relate to the fact that she has cervical bulging discs which have also caused cervical dystonia and muscle contraction headaches. And all this was initially prompted by the original injury of 1988.”

He opined that appellant’s lifting duties aggravated her condition “[a]t least temporarily” but that he would have to review the record to determine the specific dates. Dr. Jacome asserted that her symptoms were currently manageable because she was working within her restrictions.

By decision dated February 11, 2005, the Office denied modification of its prior decision. The Office found that appellant had not submitted rationalized evidence relating her condition “solely to work activities beginning in December 2000.”⁷

LEGAL PRECEDENT -- ISSUE 1

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 while 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. 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.⁸

LEGAL PRECEDENT -- ISSUE 2

To establish that an injury was sustained in the performance of duty in an occupational disease claim, appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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

⁶ The record further contains evidence from appellant and the employing establishment relevant to another of appellant’s claims.

⁷ The Office noted that it was evaluating her “claim for a new injury in this case,” Office File No. 060452964, as she listed additional work factors on her occupational disease claim form and thus it could not consider whether she had sustained a recurrence of disability due to her December 21, 1988 employment injury.

⁸ *Rebecca LeMaster*, 50 ECAB 254 (1999).

factors identified by the claimant.⁹ The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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.¹⁰ Such an opinion of the physician 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.¹¹

When employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation.¹² When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased, even if the employee is medically disqualified to continue employment because of the effect work factors may have on the underlying condition.¹³

ANALYSIS -- ISSUES 1 & 2

In this case, the Office accepted that appellant sustained a head contusion due to an employment injury on December 21, 1988 under Office File No. 060452964. She subsequently filed an occupational disease claim in Office File No. 062042393 alleging that she sustained cervical disc derangement as a result of her December 21, 1988 employment injury. Appellant also alleged that her job duties changed such that she had to lift and load mail which aggravated her preexisting cervical condition. In its December 10, 2001 decision, the Office found that appellant failed to establish a medical condition due to her December 21, 1988 employment injury. In subsequent decisions denying modification, the Office determined that she did not establish a medical condition resulting from the identified employment factors.

Appellant submitted a deposition from Dr. Jacome dated November 12, 2004. He diagnosed cervical bulging discs and opined that the December 21, 1988 employment injury caused her condition because it was the only known incident likely to have caused cervical problems. He further described the mechanism by which the December 21, 1988 employment injury could cause a neck injury because of the "sudden acceleration or deceleration movement of the head and neck" and responded affirmatively that this had occurred in appellant's case. He further noted that her job duties starting in 1998 necessitated heavy lifting which could cause symptoms. In a deposition dated July 14, 2004, Dr. Jacome diagnosed cervical bulging discs, cervical dystonia and muscle contraction headaches, which he opined were "initially prompted by the original injury of 1988." He asserted that appellant's lifting duties temporarily aggravated her cervical condition.

⁹ *Charles E. Burke*, 47 ECAB 185 (1995).

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *Id.*

¹² *Chris Wells*, 52 ECAB 445 (2001).

¹³ *Raymond W. Behrens*, 50 ECAB 221 (1999).

Proceedings under the Act are not adversarial in nature and, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁴ In his reports, Dr. Jacome described the mechanism of injury to appellant's neck in 1988 and further found that her more recent lifting duties beginning in 1998 aggravated her condition "[a]t least temporarily." Although Dr. Jacome does not provide sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence her allegations that she sustained a cervical disc injury due to her December 21, 1988 employment injury and that her cervical condition was subsequently aggravated by her work duties, the reports raise an inference of causal relationship sufficient to require further development by the Office.¹⁵ Additionally, there are no opposing medical reports of record.

The case will, therefore, be remanded to the Office for further development of the medical evidence to determine whether appellant sustained a cervical condition due to her December 21, 1988 employment injury and/or whether she sustained an aggravation of her preexisting cervical condition due to factors of her federal employment and, if so, the nature and extent of any disability resulting therefrom.

CONCLUSION

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

¹⁴ *Allen C. Hundley*, 53 ECAB 551 (2002).

¹⁵ *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 11, 2005 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: September 22, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board