

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

T.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Trenton, NJ, Employer**

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**Docket No. 06-1070
Issued: August 2, 2006**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On April 6, 2006 appellant filed a timely appeal of a March 17, 2006 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established an upper extremity condition causally related to factors of her federal employment.

FACTUAL HISTORY

On August 21, 2002 appellant, then a 48-year-old letter carrier, filed an occupational claim (Form CA-2) alleging that she sustained injuries as result of employment activity in a modified position. Appellant indicated that she had sustained a traumatic injury on October 12, 1995 and as a result was placed in a light-duty position. She indicated that the duties involved repetitive activity related to computer entry and answering telephones. The medical conditions alleged included thoracic outlet syndrome, aggravation of cervical disc disease, cervical

radiculopathy and bilateral ulnar neuropathy. Appellant submitted an August 7, 2002 report from Dr. Scott Fried, an osteopath, who diagnosed spondylosis with disc space narrowing C3-7.

By decision dated March 6, 2003, the Office denied the claim for compensation on the grounds that the medical evidence was insufficient to establish the claim. Appellant requested reconsideration by letter dated December 9, 2003. He indicated that he was submitting a November 24, 2003 report from Dr. Fried.

In a decision dated March 10, 2004, the Office modified the previous decision to accept the condition of aggravation of preexisting degenerative cervical disc disease. The Office reviewed a November 24, 2003 report from Dr. Fried, noting that appellant had an accepted claim for left shoulder sprain/strain and aggravation of degenerative cervical disc disease on October 12, 1995. According to the Office there was a conflict in that claim regarding additional upper extremity conditions, and the "reports" of Dr. Fried were found not supported by medical rationale. The Office concluded that Dr. Fried's report was not sufficiently rationalized.

The decision was appealed to the Board and the case was remanded to the Office as the case record was incomplete. The Board noted that Dr. Fried's November 24, 2003 report was not of record.

The case record contains a copy of the November 24, 2003 report from Dr. Fried, stamped as received by the Office on December 8, 2005. He provided a history and diagnosed "cumulative strain injury culminating in left acute brachial plexus long thoracic nerve injury from October 12, 1995, median and especially ulnar neuropathy bilaterally progressive secondary to same" and long thoracic neuritis. Dr. Fried reviewed appellant's job duties in the modified position. He further stated,

"The position described above is repetitive upper extremity activity and [appellant] sustained regular and repeated cumulative trauma to her upper extremities performing these activities. This is essentially repetitive strain injury and although she had initially injury on October 12, 1995 she has new and acute injuries secondary to her modified work duties, which are still repetitive in nature. [Appellant] has an acute repetitive strain injury with progressive neuropathies in her median, ulnar and radial nerves as well as proximal brachial plexopathies secondary to the repetitive use of her upper extremities. There is direct cause and effect relationship between the repetitive activities as described in the January 26, 2003 statement of [appellant] and her current multilevel neuropathies."

Dr. Fried concluded that appellant had an initial work injury on October 12, 1995, with a second work injury of an aggravation of her preexisting condition as well as a new injury secondary to modified work activities.

By decision dated March 17, 2006, the Office stated that it had reviewed the case on its merits and it was reissuing the March 10, 2004 decision to protect appellant's appeal rights.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.²

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.³ Although appellant has the burden of proof to establish the essential elements of her claim, the Office shares responsibility in the development of the evidence.⁴

ANALYSIS

The March 10, 2004 Office decision, reissued on March 17, 2006, found that an aggravation of degenerative cervical disc disease was the result of repetitive activity in appellant's modified position, but no additional conditions were employment related. The Office appeared to assess the medical evidence in terms of a prior claim for traumatic injury on October 12, 1995 that was accepted for left shoulder sprain/strain and aggravation of degenerative cervical disc disease. There is a reference to the "reports" of Dr. Fried in that claim, which are described as both being of sufficient probative value to create a conflict and not supported by medical rationale. The issues in this case are not identical to the traumatic injury claim and it is not clear what evidence was contained in the traumatic injury claim. In this case, appellant has alleged an occupational injury resulting from her modified job duties, and the issue is causal relationship between diagnosed conditions and the identified work factors.

Dr. Fried indicated in the November 24, 2003 report that he reviewed the job duties and he provided an unequivocal, and uncontroverted, opinion that upper extremity nerve neuropathies were causally related to the repetitive work activity. In view of this probative medical evidence, the Office should further develop the medical evidence.⁵ After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

Appellant has submitted medical evidence of sufficient probative value to require further development of the evidence.

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Gary L. Fowler*, 45 ECAB 365 (1994).

⁴ *See Udella Billups*, 41 ECAB 260, 269 (1989).

⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 17, 2006 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: August 2, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board