

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

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**MARSHA K. SMITH, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Indianapolis, IN, Employer**

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**Docket No. 06-90  
Issued: February 10, 2006**

*Appearances:*  
*Marsha K. Smith, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 14, 2005 appellant filed a timely appeal from the October 29, 2004 merit decision of the Office of Workers' Compensation Programs, which found the medical evidence insufficient to establish fact of injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the denial of appellant's claim.

**ISSUE**

The issue is whether appellant's duties as a modified distribution clerk caused or aggravated her cervical disc condition.

**FACTUAL HISTORY**

On May 28, 2003 appellant, then a 52-year-old distribution clerk, filed a claim alleging that her cervical spondylosis and disc herniation at C4-6 was a result of repetitive motion at work, including sorting letters by hand. She first became aware of her condition on June 15, 2000. In an attached narrative, appellant stated that her neck pain started in June 2000 while she was sorting letters. She was off work from November 2002 to March 2003, recovering from surgery for a cervical disc herniation and returned to her permanent rehabilitation

restrictions. “By the end of the third week of my return, the repetitive motion of continually casing letters, twisting and turning to throw letters into the case and the wing of the case aggravated my neck and lower back to the point that I became physically ill from the pain. I was not even casing the letters above shoulder level.”<sup>1</sup> Appellant stated that she had been off work since April 13, 2003.

On July 5, 2003 appellant’s supervisor stated that prior to this claim appellant was on limited-duty working a modified case. The supervisor noted that appellant was allowed to go on detail to the Logistics Office, where she worked on the computer and answered the telephone intermittently. The supervisor added: “This employee has *not* worked a case since April 2000.” (Emphasis in the original.)

A July 25, 2000 magnetic resonance imaging (MRI) scan report stated that appellant had moderate spondylotic changes at C4-6 with fairly prominent central and diffuse bulging of the annulus at C4-5 with some angulation of the both C5 root sleeves and a less pronounced but similarly configured lesion at C5-6, again with some angulation of the root sleeves.

Dr. Richard A. Hutson reported in November 2000, that appellant had degenerative disc disease in her cervical spine, which “would not be unusual for a lady of her age.” He stated that activities of daily living could cause her to have some pain. He indicated that she was not, and should not, do any overhead lifting.

On July 14, 2003 the Office asked appellant to submit additional information to support her claim, including a reasoned medical opinion on causal relationship:

“Provide a comprehensive medical report from your treating physician which describes your symptoms; results of examinations and tests; diagnosis; the treatment provided; the effect of treatment; and the doctor’s opinion, which medical reasons, on the cause of your condition. Specifically, if your doctor feels that exposure or incidents in your [f]ederal employment contributed to your condition, an explanation of how such exposure contributed should be provided.

“Please note: This evidence is crucial to the consideration of your claim. You may wish to provide your treating physician with a copy of this letter.”

On August 14, 2003 appellant replied that she was still waiting on a medical narrative. She believed she developed her cervical disc herniation from all the repetitive twisting and turning involved in sorting letters in a case for eight hours a day. “Prior to that,” she added, “I worked on the letter sorting machine, the small parcel bundle sorter and had many manual distribution positions.” She noted prior right shoulder impingement surgery in 1996. Appellant also noted that she had an MRI scan in June 2000, “so any and all of the employment activities could have caused this.” Appellant stated that she also worked some detail positions doing office work “and I would always get worse when I would work my permanent rehab[ilitation] assignment sorting letters into the letter case.”

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<sup>1</sup> The record indicates that appellant is pursuing a lumbar injury in a separate case file.

In a decision dated August 21, 2003, the Office denied appellant's claim for compensation on the grounds that the evidence did not establish that the claimed condition resulted from "the accepted event(s)." The Office noted that appellant did not submit the requested medical narrative.

Appellant requested reconsideration and submitted a disability note, dated September 5, 2003, stating that she was permanently unable to work.

In a decision dated November 3, 2003, the Office denied appellant's request for reconsideration on the grounds that the evidence did not satisfy the need for a reasoned medical opinion on how her modified duties influenced the claimed medical condition.

Appellant again requested reconsideration and submitted, among other things, a September 9, 2003 report from Dr. Philip W. Pryor, her orthopedic surgeon. He addressed appellant's chief complaint, as follows:

"Her pain relates to her workplace. She had an original injury in 1996 and she had another injury to her neck June 15, 2000 with aggravation of her lower back and neck on April 22, 2002 when she returned to work. She has seen [Dr.] R. Kravitz, MD at the pain center and medicines will come from him. He has suggested an injection.

"When the patient was working in April 2003, it included throwing letters into a case. This aggravated her neck, shoulder and elbow pain. She will continue with treatment as outlined by [Dr.] R. Kravitz, MD."<sup>2</sup>

On September 10, 2003 Dr. Pryor diagnosed radiculopathy with nerve root compression in both the cervical and lumbar spine from disc disruption in each area. He related the following:

"The patient had complaints in her neck, arm, low back and leg and it appeared she began having a cervical dis[c] problem caused by her employment. She had a problem while doing overhead lifting and was treated with shoulder problems, shoulder pain, which may all actually relate to her dis[c] problem. The patient relates to me that she had pain radiating from her neck into her shoulders, even at the time her shoulder surgery was done in 1996 and 1997 and it is possible that these symptoms have all related to her cervical dis[c] herniation. Her symptoms have been aggravated by working over her head, by working her rehab[ilitation] assignment, repetitive movements, casing letters continuously and these repetitive motions have caused her to continue to have pain. Her degenerative dis[c] disease (both cervical and lumbar) directly relate to her employment in that the repetitive jobs she did precipitated the degenerative dis[c] disease, both cervical and lumbar. Her problems were aggravated by the work she has done at the postal service."

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<sup>2</sup> Appellant is pursuing her low back condition under a separate case file.

“We allowed her to return to work sorting letters. By April 13, 2003 she was unable to perform these duties and her return to work had aggravated the cervical and lower back pain. She has been incapacitated since April 13, 2003. Repetitive movement and sitting at the letter case eight hours daily has caused this.”

Appellant submitted a November 11, 2002 MRI scan report, finding some congenital narrowing of the spinal canal with a disc bulge at C4-5. At C4-5 there was a disc osteophyte complex causing moderate central canal stenosis with some cord flattening. There was moderate left and mild right foraminal stenosis at that level. At C5-6 there was mild central stenosis. Appellant also submitted a November 21, 2002 operative report, showing a postoperative<sup>3</sup> diagnosis of cervical spinal stenosis, cervical spondylosis and herniated cervical disc with large osteophytes posteriorly.

In a decision dated January 27, 2004, the Office denied modification of the prior decision. The Office found that there was insufficient evidence to support that appellant's degenerative cervical condition was caused or aggravated by her employment duties. The Office noted no diagnostic studies confirming changes in her condition and no detailed medical discussion attributing the changes or worsening to her employment. The Office stated that Dr. Pryor failed to provide a definite diagnosis of what was related to appellant's employment. It found:

“There was no clear, concise discussion outlining what aspects of your medical conditions resulted from your employment or a sound medical opinion with reasoning as to how he feels your employment precipitated the degenerative disc disease. There were no objective findings submitted to support his statements and he did not indicate that he reviewed all the duties you were required to perform as opposed to what was reported to him by you.”

Appellant again requested reconsideration. She submitted a July 2, 2004 report from Dr. Pryor, who stated:

“[Appellant] has repeatedly stated that her duties at the Post Office have caused her cervical disc pain. It has exaggerated her cervical disc herniation and accelerated her degenerative disc disease as well as her lumbar disc disease. MRI [scan]s and x-rays in May and October of 2002 indicated that her cervical condition had worsened and surgery was necessary. She was experiencing pain and limited movement in both cervical and lumbar areas and numbness in her left leg.

“I also stated that in the future she would need surgery for her lumbar condition, which was accelerated by the bending, twisting and repetitive movements that she has done over the last 24 years.

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<sup>3</sup> Appellant underwent a cervical fusion involving discectomies, osteophyctomy and decompression of the spinal cord.

“It is my opinion that both her cervical and lumbar disc disease relates to her duties at the Post Office.”

In a follow-up report dated August 18, 2004, Dr. Pryor noted that he first examined appellant on October 8, 2001. He stated: “Throughout the course of your treatment in my office as well as surgery at the hospital I determined that your degenerative disc disease, both cervical and lumbar, were aggravated by the work you had done at the postal service.”

In a decision dated October 29, 2004, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. The Office found that there were little or no objective findings to support Dr. Pryor’s position on causal relationship, “making it difficult to see how an aggravation of a preexisting condition has progressed.” The Office also noted that Dr. Pryor addressed the job duties in such generalities as bending, twisting and repetitive movements: “He does not discuss what specific employment factors are contributing to the claimant’s condition.”

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>4</sup> has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.<sup>5</sup>

Causal relationship is a medical issue,<sup>6</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>7</sup> must be one of reasonable medical certainty,<sup>8</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>9</sup>

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> See generally *John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); see also 5 U.S.C. § 8101(5) (“injury” defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) (“traumatic injury” and “occupational disease or illness” defined).

<sup>6</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>7</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>8</sup> See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>9</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

## ANALYSIS

The Office denied appellant's claim on August 21, 2003, finding that the medical evidence did not establish that the claimed medical condition resulted from the accepted event(s). Although the Office did not specify what "the accepted event(s)" were, it does not dispute that appellant repetitively sorted letters by hand into a letter case, as she described on her claim form. A rehabilitation job offer shows that she was permanently reassigned to a modified distribution clerk position, effective March 18, 1995, which required sitting in a chair or stool and sorting letters into a letter case with restrictions on lifting.

A supervisor reported, however, that appellant had not worked a case "since April 2000," which appears to be at odds with appellant's statement that she first became aware of her condition while sorting letters on June 15, 2000. It is at odds with appellant's statement that, after recovering from surgery, she returned to her permanent rehabilitation position in March 2003, where, by the third week, the repetitive motion of continually casing letters, twisting and turning to throw letters into the case aggravated her neck and lower back to the point that she became physically ill from the pain. The Board notes appellant's orthopedic surgeon, Dr. Pryor, reported on March 17, 2003 that she was released to return to work with her previous permanent restrictions on March 24, 2003. He noted on September 5, 2003 that she was throwing letters into a case in April 2003. These reports are consistent with appellant's account of events. Further, appellant stated that she stopped work on April 13, 2003, which leads the Board to conclude that the supervisor simply misidentified the year that appellant stop working the letter case. As there is no substantial evidence to the contrary, the Board finds that appellant's account of events is sufficient to establish that she experienced the implicated work activities in the manner alleged.

The question is whether appellant's duties as a modified distribution clerk caused or aggravated her cervical disc condition.

On September 10, 2003 Dr. Pryor reported that appellant's symptoms were aggravated by working her rehabilitation assignment, by repetitive movements and casing letters continuously. He stated that these repetitive motions had caused her to continue to have pain. He noted that repetitive movement and sitting at the letter case for eight hours a day had aggravated her cervical pain and had incapacitated her beginning April 13, 2003. Based on his description of appellant's duties, including his acknowledgment of the permanent restrictions, the Board finds that Dr. Pryor reasonably understood the specific duties and physical requirements of appellant's rehabilitation assignment. His opinion in this regard is not deficient for want of an accurate factual background.

The record contains MRI scan reports from 2000 and 2002 and an operative report also from 2002. Degenerative disc disease, spondylotic changes, large osteophytes, bulging discs, stenosis and cord flattening are firmly established cervical conditions in this case. On a comparative basis, Dr. Pryor reported that the MRI scans and x-rays in May and October 2002 indicated that appellant's cervical condition had worsened and that surgery was necessary.

What is critically missing from Dr. Pryor's reports, however, is a well-reasoned medical explanation of the issue of casual relationship. Dr. Pryor did not explain how sitting on a chair

or stool and sorting letters into a letter case precipitated appellant's cervical disc condition. He did not explain how he was able to determine that appellant's cervical disc condition was not preexisting. He also did not explain how the repetitive motion of sorting letters aggravated appellant's cervical disc condition. Rather, he noted that appellant had repeatedly stated her opinion that her work duties caused cervical disc pain.

Here, Dr. Pryor put forward no physiologic mechanism or pathologic process to explain the purported connection between sorting letters and appellant's cervical disc condition. He did not demonstrate how diagnostic tests and clinical findings supported his theory of the case. It is not enough for the physician to express an opinion on the matter; he must support that opinion with medical rationale.

Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning. Medical opinions unsupported by rationale are of little probative value.<sup>10</sup> Although Dr. Pryor's reports are generally supportive of her claim that she sustained an injury in the performance of duty, his opinion is of diminished probative or evidentiary value because he did not well explain his medical basis for concluding that sitting on a chair or stool and sorting letters into a letter case precipitated or at least aggravated, appellant's cervical disc condition. Such rationale is particularly important where, as in this case, the injury is alleged to be produced by the work environment over some period of time, making the disease process and the causal connection less than obvious.

### CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her established duties as a modified distribution clerk caused or aggravated her cervical disc condition. The medical opinion evidence is not supported by sound medical reasoning.

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<sup>10</sup> *E.g., Lillian M. Jones*, 34 ECAB 379 (1982) (a physician's checkmark "yes" on a form report, unsupported by medical rationale, is insufficient to establish causal relationship). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 29, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 10, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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