

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

L.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Forest Park, IL, Employer**

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**Docket No. 07-1332
Issued: November 7, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 18, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' hearing representative's March 22, 2007 merit decision. Under 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 has met her burden of proof in establishing that her claimed cervical condition was sustained in the performance of duty.

FACTUAL HISTORY

On March 15, 2004 appellant, a 36-year-old modified custodial laborer, filed a Form CA-2 claim for benefits, alleging that she developed a cervical condition caused by factors of her employment. She alleged several injuries to her spine during her 10 years of employment, for which she had not received proper medical treatment. The employing establishment controverted the claim, noting that appellant had previously filed traumatic and occupational disease claims on

January 10, 2004, which were denied on March 3, 2004. Appellant's supervisor also noted that she had stopped work on January 10, 2004 and had not returned.

In order to determine appellant's current condition, the Office had referred her to Dr. Richard H. Sidell, Board-certified in orthopedic surgery, for a second opinion examination. In a report dated February 11, 2004, Dr. Sidell noted that appellant underwent a work capacity evaluation, which noted deficits in lifting, walking, carrying, stair climbing, positional activities and handgrip measurements. He stated, however, that the evaluation also indicated that appellant's subjective complaints were inconsistent with the objective findings. Dr. Sidell advised that the examiners were unable to determine appellant's actual physical capabilities as she did not put forth maximum effort on all test items. He stated:

“[Appellant shows] no evidence of obvious discomfort. By inspection her neck, back and upper extremities appear normal. There is full range of motion of the cervical spine in all direction with a negative Spurling test and a negative distraction test.

“This essentially is a normal orthopedic evaluation of a [patient] with multiple subjective complaints, the majority of which began well after she had ceased doing any type of work. Her subjective complaints are vague and generalized in nature and not specifically related to any identifiable injury.”

Dr. Sidell found that appellant had no objective abnormalities in the neck, upper back or shoulder areas. He advised that she could return to work at her usual modified custodial job. Dr. Sidell concluded:

“[Appellant's] objective findings do not in any way correlate with her subjective complaints. Specifically, I do not feel that the activities performed since returning to work on January 10, 2004 resulted in her right shoulder condition or her cervical spine condition. I do not feel that any work activities performed by [appellant] in her date[-]of[-]injury position as a mail handler resulted in a right shoulder or cervical spine condition [which] began many months after she discontinued working.”

A February 18, 2004 magnetic resonance imaging (MRI) scan revealed moderate central stenosis at the C5-6 level due to the presence of a small central and right paramedian disc protrusion, superimposed upon a congenitally slender spinal canal. The report indicated that uncovertebral joint osteophytes and bilateral foraminal narrowing were seen at this level. Appellant also had a diminished signal intensity in the cervical spinal narrow requiring clinical correlation.

By letter dated March 23, 2004, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked her to submit a comprehensive medical report from a treating physician describing her symptoms and the medical reasons for her condition and an opinion as to whether her claimed condition was causally related to her federal employment. The Office requested that appellant submit the additional evidence within 30 days.

In a report dated March 29, 2004, Dr. Samuel Chmell, Board-certified in orthopedic surgery and appellant's treating physician, stated:

“[Appellant] has sustained injuries to her upper back, her neck and her shoulders at work. In [her] work with [the employment establishment] over a period of 10 years her job required her repetitively and repeatedly to be pulling sacks of mail with her left upper extremity and to be keying with the right upper extremity. This caused repetitive motion trauma to her upper extremities, but most notably the left shoulder. [Appellant] sustained injuries to her right shoulder, her upper back and neck on September 16, 1997 when a defective [cart] fell and hit her. She sustained contusions/sprains of her right scapula and shoulder, her cervical spine and her thoracic spine. [Appellant] sustained an injury to her neck and right shoulder at work on January 10, 2004 when she was assigned repetitive motion activities and being able to only use her right upper extremity for these. Her physical examination has repeatedly demonstrated muscle spasm and tenderness in the upper back as well as her cervical spine with reduced range of motions. She demonstrates positive Spurling's test in her cervical area. Both shoulders demonstrate crepitus, impingement, diminished motion and weakness. She has had an MRI scan of the cervical spine on December 11, 2003. This study demonstrated C5-6 disc herniation centrally and to the left side. She underwent another MRI scan on February 18, 2004 and this MRI scan demonstrated that the C5-6 disc had further herniated and now included the right side. There was also another herniation present at the C6-7 level. An MRI scan of the right shoulder demonstrated rotator cuff tend[i]titis with a partial tear of the supraspinatous tendon. My diagnoses for [appellant] are as follows: (1) Bilateral shoulder rotator cuff tend[i]titis with partial tear right shoulder supraspinatous; (2) Cervical disc derangement with disc herniation C5-6 and C6-7 with cervical radiculopathy; and (3) Thoracic/scapular sprain and contusion.

“My opinion, based upon a reasonable degree of medical and orthopedic surgical certainty, is that the above diagnoses are causally related to the work injuries that [appellant] has sustained as well as the repetitive motion trauma she has offered. She requires further medical and orthopedic care and treatment.”

In an amendment to the statement of accepted facts dated April 27, 2004, the Office noted that appellant had claimed that her work as a mail handler for 10 years resulted in several injuries to her back as well as pulled muscles. She also claimed that her work as a keyer and repetitive pulling, keying and truck loading activity resulted in cervical spine problems, upper extremity problems and shoulder problems.

The Office found a conflict in medical opinion between Dr. Chmell and Dr. Sidell as to whether appellant's cervical condition was causally related to her employment duties. In order to resolve the conflict, the Office scheduled an impartial medical examination with Dr. Paul Belich, Board-certified in orthopedic surgery. In a report dated August 10, 2004, Dr. Belich stated:

“[Appellant] has been on restricted duty with weight restrictions that have been noted above. These were placed on her based on a functional capacity evaluation done in December 2002.... A second functional capacity evaluation done in January 2004 showed a great deal of inconsistent performance on the test, making the results not valid. She has also had MRI's [scan] of her right shoulder and cervical spine, which do not in my opinion show any significant problems. I disagree with Dr. Chmell's assertion that [appellant] has a rotator cuff tear either by MRI [scan] or clinically. I also do not believe that she has a herniated disc in her neck, since this definitely has not shown on the MRI [scan] of the cervical spine. It is somewhat dubious to me how this [appellant] could have injured her right shoulder using a feather duster. I do not think that any of the repetitive motions or work that she was doing in January [2004] would have caused any significant problem with her neck or right shoulder and I question how significant, if any, type of injury could have occurred during this job.

“It is my opinion that [appellant] can go back to custodial work and I see no reason at all why she could not do this on a daily basis. I do not believe [that] [appellant] has really any significant problem involving her right shoulder and I think her neck shows some minor soft-tissue tightness that can easily be treated with a home exercise program consisting of postural exercises, stretching and strengthening exercises to the neck and shoulder girdle. It appear that [appellant] has had multiple, additional types of complaints to various parts of the upper extremities and neck even after she had been off work for a while ... I definitely do not think that there is any work related to any of these symptoms at all....”

By decision dated November 30, 2004, the Office denied appellant's claim, finding that she failed to submit medical evidence sufficient to establish that she sustained the claimed cervical condition in the performance of duty.

On December 20, 2004 appellant requested an oral hearing, which was held on August 23, 2005. In a report dated August 8, 2005, Dr. Chmell stated:

“[Appellant] remains under my care and treatment. She sustained injuries to her cervical, thoracic and lumbosacral areas of her spine due to repetitive strain injury in her work at [the employing establishment] between the years of 1993 and 2003. Her job required her to perform repetitive lifting, pushing and pulling. Due to the strenuous repetitive movements required of her at her spine she sustained in injuries to her cervical, thoracic and lumbosacral areas. These injuries did result in some impairment to her but she was able to continue working. [Appellant] then had to miss a period of work due to injuries involving her upper extremities. She was compelled to return to work against medical advice and sustained further

injury/aggravation of her spinal injuries involving cervical, thoracic and lumbosacral disc derangements.

“[Appellant] requires further evaluation, care and treatment for cervical, thoracic and lumbosacral disc derangements.”

By decision dated November 8, 2005, an Office hearing representative set aside the November 30, 2004 decision. The hearing representative noted that the Office had already denied appellant’s prior claim for a January 10, 2004 right shoulder and neck injury because it found that the claimed conditions were not causally related to the employment duties of January 10, 2004. He stated that the issue at hand was whether appellant’s work duties prior to her return to work in January 2004 caused her cervical condition. The hearing representative noted that Dr. Belich’s report did not address whether appellant’s work duties as a mail handler prior to January 2004 may have caused her cervical condition. He found that Dr. Belich’s report required further clarification. The hearing representative directed the Office to obtain a supplemental medical report which would clarify his findings. He specifically instructed the Office to ask Dr. Belich to address the significance of the prior MRI scan and EMG/NCV results in determining the presence of any cervical injury and to provide a reasoned opinion as to whether appellant’s prior work duties as a mail handler may have caused or contributed to any current cervical condition.

In a report dated November 28, 2005, Dr. Belich reviewed the medical record reports and stated that it did not reveal that appellant had cervical radiculopathy. He stated:

“The referencing of the cervical radiculopathy is not supported by any of the EMG/NCV study reports that I reviewed nor any diagnostic reason for cervical radiculopathy given in the MRI [scan] reports or the MRI [scan] that I reviewed personally. I reviewed three reports of EMG/NCV studies of the upper extremities. The first one on August 5, 2004, which showed a mild swelling of the sensory velocities of both median nerves. The second one ... showed a mild early right carpal tunnel syndrome and no evidence of cervical radiculopathy.... There was another EMG/NCV study on January 5, 2005, which showed mild compression of the median nerve at the wrist, greater on the right than on the left....”

* * *

“I reviewed an MRI [scan] of the cervical spine which goes back as far as December 11, 2003, which showed small left-sided posterolateral osteophytes at C5-6 leading to some bony stenosis of the left neural foramen. Another MRI [scan] of the cervical spine on February 18, 2004 showing as small central left paramedical disc protrusion at C5-6 superimposed on a slender spinal canal. Neither of these reports of the cervical spine indicated disc herniation or compromised with the nerve root at the C5-6 level.”

* * *

“I do not believe that the duties of [appellant] as a mail handler from 1993 to 2003 contributed to any cervical condition. She has osteophytes of her cervical spine.

These are degenerative in nature and they were not caused by any specific injury or any repetitive type of work that she did as a mail handler. These types of osteophytes can be found in the general population of individuals regardless of their type of employment. Also I would like to state that I did not diagnose a moderate central stenosis at C5-6. This is in fact, the impression given on the MRI [scan] report but this is not a diagnosis of mine. If my original report is read, you will see that I might diagnose this with a mild soft tissue and mild cervical strain. I have stated before that central stenosis is developmental or even a congenital problem. It is not attributable to her employment as a mail handler and this condition is not medically connected with her mail handling duties from 1993 to 2003.

“Also, I reviewed the report of an EMG/NCV testing she had done on February 27, 2004. It does not mention any evidence of a cervical radiculopathy. Therefore, to continue to state this as a diagnosis based on that report is inaccurate. There was no evidence of radiculopathy or neuropathy evident on that examination; therefore, this diagnosis should not be entertained and the use of this diagnosis should be stopped. It has no basis.

“[B]ased on the records that I reviewed and the numerous diagnostic tests reports that are reviewed ... this individual’s work duties as a mail handler prior to January 2004 have not caused a cervical condition. This patient quite frankly has no cervical condition that can be demonstrated clinically. Her MRI [scans] do not support any disc herniation, nerve root entrapment or impingement and therefore these were all soft tissue type problems. The diagnostic studies as numerous as they are have simply never failed to show any sort of significant problem in this patient’s cervical spine. The moderate central stenosis at C5-6 due to the presence of a small central and right paramedian disc protrusion is something that can be found on the large percentage of the population. A slight small central and either right or left-sided paramedian disc protrusions are very common. These are ordinary findings on MRI [scan] and they are not related and not associated with radicular type symptoms because they do not encroach into the neural foramen or impinge on the nerve root. There was no indication from the wording of these reports of nerve root encroachment, impingement, or displacement being present. Therefore, this condition is not medically connected to her duties as a mail handler from 1993 to January 2003.

“I reviewed the EMG/NCV report of February 27, 2005 and there is absolutely no wording in that report to suggest that this patient has a cervical radiculopathy.”

* * *

“[N]one of these diagnostic tests have [indicated] a condition that would justify this patient to be fully incapacitated and unemployable. I believe this patient should be returned to work as a modified custodian. I do not see anything in her exam[ination] and in her diagnostic tests that would preclude her from being able to perform these duties.”

By decision dated December 19, 2005, the Office denied appellant's claim for an employment-related cervical condition. It found that Dr. Belich's referee opinion represented the weight of the medical evidence.

On January 5, 2006 appellant requested an oral hearing.¹

In a report dated January 31, 2006, Dr. Chmell stated that the Office erred in finding that the February 18, 2004 cervical MRI scan report provided no indication of disc herniation or compromised nerve root at the C5-6 level. He enclosed a copy of the February 18, 2004 report. Dr. Chmell opined that this deformity of the spinal cord meant that the disc herniation led to a significant protrusion pressing on the spinal cord, with bilateral foraminal narrowing. He stated that the Office's December 19, 2005 decision was wrong. Dr. Chmell also submitted an April 16, 2006 MRI scan report, performed by Dr. Avi Mazumdar, a Board-certified radiologist, who diagnosed a left paracentral disc herniation at C5-6, causing moderate central canal stenosis, left lateral recess and left neural foramen narrowing.

By decision dated March 22, 2007, an Office hearing representative affirmed the December 19, 2005 decision. The hearing representative found that the medical evidence appellant submitted was not sufficient to overcome the report of Dr. Belich.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.³ 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.⁴

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

¹ The hearing was scheduled for December 20, 2006. Appellant, however, did not appear at the hearing. The hearing representative considered the issue in this case based on a review of the written record.

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

The medical evidence required to establish causal relationship is usually rationalized medical 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. 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.⁵

The claimant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed bilateral carpal tunnel condition and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

ANALYSIS

The Office found that there was a conflict in the medical evidence between the opinions of Drs. Chmell and Sidell regarding whether appellant had developed a cervical condition causally related to her federal employment. The case was referred to Dr. Belich, selected as the impartial medical examiner. In a November 28, 2005 report, he found that, based on the records and numerous diagnostic tests reports of record, appellant's cervical condition was not caused or aggravated by her work duties as a mail handler prior to January 2004. Dr. Belich advised that she had no significant cervical condition demonstrated clinically or diagnostically by MRI scan or EMG/NVC tests. He stated that none of the many diagnostic tests appellant underwent indicated any significant problems such as disc herniation, nerve root entrapment, impingement or displacement; therefore, appellant's cervical symptoms resulted from soft tissue type problems. Dr. Belich stated that appellant had moderate central stenosis at C5-6 due to the presence of a small central and right paramedian disc protrusion which was revealed by the diagnostic tests. However, he noted that this finding was ordinary and very common among a large percentage of the population. He did not associate these symptoms with radicular-type symptoms because they did not encroach into the neural foramen or impinge on the nerve root. Dr. Belich advised that cervical radiculopathy was not supported by any of the EMG/NCV or MRI scan reports he reviewed. Although appellant had osteophytes of her cervical spine, these were degenerative in nature and not caused by any specific injury or any repetitive type of work she performed as a mail handler. Such degenerative changes could be found in the general population regardless of the type of employment. Dr. Belich felt that appellant had no condition that would justify her being totally incapacitated and unemployable. He did not see anything on examination or in her diagnostic tests that precluded her from being able to perform the duties of a mail modified custodian.

⁵ *Id.*

⁶ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

The Board finds that Dr. Belich's referee opinion, negating the causal relationship between her cervical condition and factors of her employment, was thorough, sufficiently probative, well rationalized and based upon a proper factual background. Therefore, his opinion is entitled to the special weight of an impartial medical examiner.⁷ Accordingly, the Board finds that Dr. Belich's opinion constituted sufficient medical rationale to support the Office's December 19, 2005 decision finding that appellant did not sustain a cervical condition in the performance of duty.

Following the December 19, 2005 decision, appellant requested an oral hearing and submitted an additional report from Dr. Chmell. This report, however, merely restated one side of the conflict resolved by Dr. Belich's impartial medical opinion. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of a physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁸ Dr. Chmell's report did not contain countervailing, probative medical evidence that appellant's claimed cervical condition was caused or aggravated by her work duties. It is therefore of limited probative value as it did not contain any medical rationale explaining how or why appellant's claimed cervical condition was currently affected by or related to factors of employment.⁹ Dr. Chmell also submitted an April 16, 2006 MRI scan report which showed a left paracentral disc herniation at C5-6, causing moderate central canal stenosis, left lateral recess and left neural foramen narrowing. However, although he provided a diagnosis of appellant's current condition based upon objective medical evidence, Dr. Chmell did not relate this diagnosis to factors of appellant's employment. Without a rationalized opinion regarding causal relationship, his opinion regarding appellant's condition is of limited probative value. Thus, Dr. Chmell's report did not satisfy appellant's burden of proof to submit medical evidence sufficient to warrant modification of the Office's December 19, 2005 decision, which properly found that Dr. Belich's referee opinion constituted the weight of the medical evidence. Accordingly, the Board affirms the hearing representative's March 22, 2007 decision, affirming the December 19, 2005 decision.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establish that her claimed cervical condition was sustained in the performance of duty.

⁷ Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight. *Gary R. Seiber*, 46 ECAB 215 (1994); *Aubrey Belnavis*, 37 ECAB 206 (1985).

⁸ See *Anna C. Leanza*, 48 ECAB 115 (1996).

⁹ *William C. Thomas*, 45 ECAB 591 (1994).

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 7, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board