

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

R.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Milledgeville, GA, Employer**

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**Docket No. 07-1298
Issued: October 12, 2007**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 16, 2007 appellant filed a timely appeal from the February 27, 2007 merit decision of the Office of Workers' Compensation Programs which denied his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of his claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on October 4, 2005.

FACTUAL HISTORY

On February 7, 2006 appellant, then a 42-year-old modified city carrier, filed a claim alleging that the pain and numbness in his neck, right shoulder, arm and hand was a result of an injury he sustained at work: "On October 4, 2005 I [was] told to clean up a mail route which was casing mail and writing up mail. My current condition is related to this injury because of the

twisting, turning, reaching above shoulders, turning my head.”¹ The Office asked appellant to submit additional evidence, including a physician’s opinion, supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury and diagnosed condition.

On March 10, 2006 Dr. George S. Stefanis, appellant’s neurosurgeon, offered the following opinion:

“I have seen [appellant] for a number of years beginning on March 10, 1999. He has had surgery from C3-5. [Appellant] has also had surgery from C5-7, so his spine is fused from C3-7. He was last seen in the office on January 24, 2006. The last surgery was done in January 2005.

“In regards to the history of the October 4, 2005 work injury, appellant was seen on October 18, 2005. He told me the week before he was greeting at the [employing establishment] one day and the following day they had him casing mail and his neck and shoulders got much worse. As far as how this could have aggravated [appellant’s] problem, I feel he does have a solid fusion but this type of injury can aggravate a preexisting problem or scar tissue around the operative site.”

In a decision dated April 5, 2006, the Office denied appellant’s claim for compensation. It accepted that the October 4, 2005 incident occurred as alleged but found that Dr. Stefanis’ opinion was insufficient to establish a causal relationship between this incident and appellant’s condition. The Office noted that Dr. Stefanis did not provide a secure diagnosis that could be connected to the incident.

On April 15, 2006 Dr. Stefanis reported as follows:

“[Appellant] has four fusions in his neck from C3-7. He has an underlying problem in that he does not have normal flexibility in his neck and is more prone at times to injure the neck when he does certain activities. This was what was meant when I stated, ‘he does have a solid fusion but this type of injury can aggravate a preexisting problem or scar tissue around the operative site.’ All of this reaggravation is based on what [appellant] tells me. Again, the fusion has solidified, but because he does not have the flexibility a normal person would have he would be more prone to muscular and ligamentous aggravation of the surgery that he had that was related to a work-related injury.”

On September 12, 2006 Dr. Stefanis noted that a computed tomography scan showed a nonunion or delayed union at C6-7. An October 19, 2006 magnetic resonance imaging scan showed no rotator cuff tear and some changes of supraspinatus and infraspinatus tendinopathy. On January 19, 2007 Dr. Stefanis reported that a myelogram on January 10, 2007 showed a

¹ Appellant sustained a neck injury on September 24, 2003 when he was involved in a motor vehicle accident while delivering mail. The Office accepted his claim for aggravation of herniated discs at C5-7. Appellant underwent two surgeries. OWCP File No. 062097215.

questionable pseudoarthrosis or nonunion at C6-7, which “could be the source of [appellant’s] symptoms.”

On January 30, 2007 Dr. Stefanis advised the Office as follows:

“I have looked at the medical review and you stated that on October 28, 2005 my letter did not specify that [appellant] was examined that day for neck complaints. However, he was seen on October 18, 2005 and was examined on that day. [Appellant] had spasm across the top of the trapezius muscles and limited range of motion of the spine but no muscle weakness was noted. In regards to the examination on November 30, 2005, he was not specifically examined because there were no significant changes. Before this injury, we had talked about trying to get [appellant] a more uniform job.

“I would have to say that the new onset of problems [appellant] is having was most likely due to that specific onset, since his symptoms have gotten much worse since then and he does now have a pseudoarthrosis. There is no way of being able to tell by x-ray when the pseudoarthrosis occurred but by history [appellant] seems to have gotten much worse since that specific incident in October 2005.”

In a decision dated February 27, 2007, the Office reviewed the merits of appellant’s claim and modified its prior decision: “It is determined that you have provided evidence to meet the requirement of fact of injury medical; however, the evidence is insufficient to support that a diagnosis is related to the work factors claimed on October 4, 2005.” The Office explained that the medical evidence was lacking both a history and a rationalization of a relationship between the work factors on October 4, 2005 and the medical diagnosis.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.³

Causal relationship is a medical issue,⁴ 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

² 5 U.S.C. §§ 8101-8193.

³ See generally *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

factual and medical background of the claimant,⁵ must be one of reasonable medical certainty,⁶ 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.⁷

ANALYSIS

The Office accepts that the incident on October 4, 2005 occurred as alleged. Appellant was instructed to clean up a mail route that day which involved casing and writing up mail and which required twisting, turning, reaching above shoulder level and turning his head. The question is whether these physical demands caused or aggravated any diagnosed medical condition.

Dr. Stefanis, appellant's neurosurgeon, has generally supported appellant's claim that he sustained an injury in the performance of duty on October 4, 2005. But his opinion is insufficient. Although he acknowledged that appellant cased mail on October 4, 2005 he did not explain what this entailed. Dr. Stefanis' opinion did not address the physical demands of this activity, thereby, demonstrating his understanding of the implicated work factors. Dr. Stefanis noted that appellant has a preexisting cervical condition resulting in a fusion of C3 and C7. Medical conclusions based on inaccurate or incomplete histories are of little probative or evidentiary value.⁸

Dr. Stefanis did not clearly identify the nature of the supposed injury. It is not clear from his reports whether he believes that appellant's activities on October 4, 2005 caused a pseudoarthrosis at C6-7 or merely some muscular or ligamentous strain or scar tissue aggravation.⁹ The reports do not clearly explain how appellant's work activities on October 4, 2005 would cause or contribute to a pseudoarthrosis or cervical muscle strain. The Board finds that the medical evidence of record is insufficient to establish appellant's claim of injury on October 4, 2005.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on October 4, 2005. The current medical opinion evidence does not establish the element of causal relationship.

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ *See James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

⁹ If Dr. Stefanis believes the October 4, 2005 work activities caused a nonunion at C6-7, he should explain why he believes the nonunion was not preexisting.

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 12, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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