

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

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D.C., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Camden, NJ, Employer )

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**Docket No. 08-809  
Issued: August 8, 2008**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge

COLLEEN DUFFY KIKO, Judge

JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 23, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 20, 2007, denying her claim for compensation. Pursuant to 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 established a neck or low back injury causally related to her federal employment.

**FACTUAL HISTORY**

On December 7, 2006 appellant, then a 56-year-old sales and service associate, filed an occupational disease claim (Form CA-2) alleging that she sustained neck and low back injuries as a result of her federal employment. She described the nature of the injury as junctional degeneration. The reverse of the claim form indicated that appellant was off work from April 20 to July 10, 2006.

In a narrative statement, appellant reported that she had worked over 19 years at the employing establishment, and her job required her to stand for seven and a half hours per day. She also stated that her job involved retrieving parcels, pushing and pulling hampers and lifting up to 70 pounds on occasion. According to appellant, she had two back surgeries in 2000 and another back surgery in 2006, knee surgery in 1983 and carpal tunnel surgery in 1985. She indicated that she had neck pain commencing in January 2006, stated that her shoulders were also affected by her job and she needed another surgery on her left hand.

By decision dated February 21, 2007, the Office denied appellant's claim for compensation. It found that the medical evidence was insufficient to establish the claim. On February 27, 2007 appellant requested an oral hearing before an Office hearing representative. She submitted additional medical evidence.

In a report dated March 13, 2007, Dr. Alexander Vaccaro, an orthopedic surgeon, indicated that appellant was initially treated in December 1999 for low back pain. He noted a November 29, 1999 magnetic resonance imaging (MRI) scan revealed advanced degenerative changes at L4-5 with moderate stenosis. Dr. Vaccaro indicated that appellant's back pain worsened after a July 4, 2000 incident when she pulled someone out of water. He indicated that appellant underwent L4-5 surgery on October 12, 2000, then she underwent T1-2 fusion surgery on December 5, 2000. In February 2006 appellant complained of worsening neck pain and she underwent surgery on April 20, 2006 to remove her anterior instrumentation. Dr. Vaccaro noted appellant's general job duties and further stated, "the need for these surgeries appear, within a reasonable degree of medical certainty, to be a result of cumulative trauma to her spinal axis due to her responsibilities as a postal clerk." He noted that he had recommended appellant consider stopping work at her current job, as her job duties such as standing and lifting up to 70 pounds had significantly exacerbated her neck and back pain. Dr. Vaccaro opined that "[appellant's] condition is a direct result of the work that she has performed at [the employing establishment] over the last several years."

Appellant also submitted medical evidence regarding the October 12 and December 5, 2000 and April 20, 2006 surgeries. Dr. Vaccaro noted in a February 14, 2006 report that appellant had neck pain for the last year and he was worried that the edges of the metallic implant inserted in the December 5, 2000 surgery had broken. The record also contains medical evidence regarding treatment in 2000. In a report dated March 16, 2000, Dr. Mitchell Freedman, an osteopath, diagnosed lumbar disc degeneration and spinal stenosis. He noted in the 1980's that appellant lifted a crate at work and had intermittent back pain. Dr. Freedman indicated that appellant was working full time and avoided much of the lifting.

A hearing before an Office hearing representative was held on June 5, 2007. Appellant's representative stated that there was a prior claim accepted for a disc herniation at L4-5 and the Office approved back surgery for October 2000. The representative stated that appellant was claiming an aggravation of her back condition and a new neck condition.

In a June 20, 2007 statement, an employing establishment supervisor stated that appellant would rarely have to lift up to 70 pounds, perhaps only once a month. He indicated trays would commonly weight 10 to 15 pounds.

By decision dated August 20, 2007, the hearing representative affirmed the February 21, 2007 Office decision. He found the medical evidence was insufficient to establish the claim.

### **LEGAL PRECEDENT**

A claimant seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>2</sup>

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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 diagnosed condition is causally related to the employment factors identified by the claimant.<sup>3</sup>

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>4</sup> A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.<sup>5</sup> Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.<sup>6</sup>

### **ANALYSIS**

Appellant filed an occupational disease claim on December 7, 2006 and referred to her neck and lower back. Her representative acknowledged that there was a prior claim for a back injury on June 2, 1995, which was apparently accepted for an L4-5 disc herniation and October 12, 2000 surgery. It is not entirely clear what appellant is claiming with respect to the low back in this claim. To the extent she is claiming that employment factors have aggravated a back condition, she must provide a rationalized medical opinion on causal relationship between a diagnosed low back condition and the identified employment factors. Dr. Vaccaro refers to the "surgeries" in his March 13, 2007 report but the Office apparently has already accepted that the October 12, 2000 L4-5 surgery was employment related. He does not provide a diagnosis of a

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>3</sup> *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>4</sup> See *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>6</sup> *Id.*

new low back condition or a rationalized medical opinion on causal relationship with the identified employment factors. Appellant did not meet her burden of proof with respect to a low back injury in this claim.

With respect to a cervical or thoracic spine injury, Dr. Vaccaro indicated that appellant underwent surgery on April 20, 2006. The evidence indicated, however, this surgery was to remove the instrumentation inserted in the December 5, 2000 T1-2 fusion surgery. As to the December 5, 2000 surgery, again Dr. Vaccaro referred to the “surgeries” being related to cumulative trauma at work, without specifically discussing the T1-2 surgery. He does not provide a clear diagnosis of a cervical or thoracic spine condition or a rationalized medical opinion on causal relationship with employment. Dr. Vaccaro referred to an exacerbation of symptoms by work, and then stated appellant’s “condition” was the “direct result” of her work. It is not clear what condition he is referring to, or whether he felt a neck condition was caused or aggravated by employment, with a clear explanation of the medical basis for his opinion. Dr. Vaccaro does not explain how standing, occasional lifting, or any specific job duty contributed to a diagnosed cervical, thoracic or other condition.

The Board accordingly finds the evidence is not sufficient to meet appellant’s burden of proof in this claim. The medical evidence does not contain a rationalized medical opinion, based on a complete and accurate background, on causal relationship between a diagnosed condition and factors of appellant’s federal employment.

#### **CONCLUSION**

Appellant did not submit sufficient medical evidence to establish a neck condition or aggravation of a low back condition causally related to her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 20 and February 21, 2007 are affirmed.

Issued: August 8, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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