

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

P.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Armada, MI, Employer**

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**Docket No. 09-1003
Issued: December 2, 2009**

Appearances:

Alan J. Shapiro, 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

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 3, 2009 appellant, through counsel, filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs dated August 6, 2008 denying her claim for compensation and from the February 3, 2009 decision affirming that decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained an occupational disease causally related to factors of her federal employment.

On appeal appellant, through her attorney, argues that the Office's decision is contrary to fact and law.

FACTUAL HISTORY

On May 13, 2008 appellant, then a 51-year-old rural carrier, filed an occupational disease claim alleging that the "discs in back of my neck are messed up." When asked to describe the

relationship of the occupational disease to her employment, she indicated that she had a magnetic resonance imaging (MRI) scan which indicated that her discs were causing the headaches and back spasms. Appellant alleged that she first became aware of her disease or illness on June 7, 2003, and first became aware that it was caused or aggravated by her employment on January 21, 2008.

In a January 21, 2008 report, Dr. Steven Beall, a Board-certified neurologist, noted that appellant had daily headaches. He noted that appellant indicated the headaches occur every day and there are no specific triggers.

A February 11, 2008 MRI scan was interpreted as evincing severe bilateral cerebral white matter lesions, nonspecific in nature, which would be compatible with a demyelinating process such as multiple sclerosis if supported by appropriate clinical settings.

In a March 25, 2008 report, Dr. Beall noted myelopathic quadriparesis as well as chronic daily headaches most likely migraine headaches. In an April 1, 2008 report, he noted that appellant had documented myelopathic quadriparesis lasting greater than 24 hours. Dr. Beall noted that the evolution of the quadriparesis has been to virtually an upper motor neuron lower extremity monoparesis with distal upper motor neuron quadriaresis. He noted that this was more in favor of some inflammatory process. Dr. Beall also noted that appellant had some lesions in the brain.

In an April 17, 2008 report, Dr. J. Matthew Voci, a Board-certified neurologist, noted that appellant was having constant headaches that have a strong cervicogenic origin. He also noted that appellant's neck had significant degenerative changes from C3 through C6, but more so at C4 and C5, where there is significant stenosis. Dr. Voci believed that clinical measures had failed appellant. He noted that appellant delivered mail and that most of this activity involved significant amounts of driving and leaning over the window and into a box. Therefore, Dr. Voci noted that there is stretching and significant bending of the neck. He stated, "I strongly suspect that 12 years of doing this has now played a toll on her neck, and has led to degradation of changes in the neck, including arthritic changes and disc damage." Dr. Voci noted that an MRI scan supported an acute upon chronic presentation. He noted abnormal white matter spots on her brain, which he suspected may be microvascular changes.

By decision dated August 8, 2008, the Office denied appellant's claim as she did not submit sufficient factual evidence to establish that specific events occurred during her federal employment that she believed caused or contributed to her neck/headache condition. It also noted that there was insufficient medical evidence as the evidence lacked a definitive rationalized medical opinion from a physician to establish that a condition was causally related to appellant's employment injury/exposure.

On August 29, 2008 appellant, through counsel, requested an oral hearing. In a subsequent letter, appellant's counsel requested a telephonic conference.

In an undated statement by appellant received by the Office on October 20, 2008, she stated that she believed her neck problem was related to her job due to repetitive movement, driving down dirt roads with big holes in them, and the stress of the job. She noted that, before

her husband built her a special stand, casing mail was difficult because she is 5'2" and she would have to reach, which was hard on her neck and shoulders. Appellant also noted that she started getting headaches.

At a telephonic hearing held on December 8, 2008, appellant testified that she started working for the employing establishment as a rural carrier in 1995 and that her headaches started in 2003. She discussed her medical treatment. Appellant noted that while delivering mail she would sit on a board between the passenger and driver seat, drive with left foot and steer with her left arm and deliver mail with her right arm and right leg. She noted that when she hit a bump in the road sometimes she would hit the roof. Appellant also testified that the stress of the job would make her neck tense. She indicated that she delivered mail six days a week. Appellant delivered mail for three and three-quarter hours and would case mail for about three hours during which time she was constantly moving her neck. She noted that she had previous issues with a tear in her rotator cuff in her right arm and right tennis elbow, but that these issues were eliminated after surgery and exercises. Appellant testified that she has remained off work since May or June 2008.

After the hearing, appellant submitted notes from a hospital stay at Mount Clemens Regional Medical Center from August 9 through 13, 2008 signed by Dr. Bradley Hall, an osteopath. On June 9, 2008 Dr. Hall performed an anterior cervical discectomy C3 to C7; anterior arthrodesis C3-4, C4-5, C5-6, C6-7; reconstruction of spinal deformities C3-6; and anterior segmental instrumentation C3 to C7. In a discharge summary dated August 13, 2008, Dr. Hall indicated that appellant was admitted for an anterior cervical decompression with arthrodesis C3-7. He discharged appellant with diagnoses of cervical spine kyphosis with instability, herniated disc with cervical myelopathy at C3-7 and tobacco abuse. Appellant also submitted a consultation report from Dr. Cynthia Housel, an osteopath, also with Mount Clemens Regional Medical Center, listing impressions of posterior anterior cervical fusions C3-7; cervical stenosis, migraine history and chronic tobacco abuse.

In a December 8, 2008 report, Dr. Hall diagnosed appellant with cervical myelopathy for which she had undergone a cervical decompression with fusion. He then stated, "It is my opinion a significant portion of her myelopathy is due to her employment with the [employing establishment]." Dr. Hall did not anticipate a return to work until a final assessment had been made.

By decision dated February 3, 2008, the hearing representative affirmed the August 6, 2008 decision of the Office denying her claim.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,² including that she is an "employee" within the meaning of

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ____ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

the Act³ and that she filed her claim within the applicable time limitation.⁴ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

Causal relationship is a medical issue⁸ 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,⁹ must be one of reasonable medical certainty,¹⁰ 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.¹¹

ANALYSIS

The Office accepted that appellant was exposed to the work conditions that she alleged caused her injury. However, it properly denied appellant's claim as she failed to submit rationalized medical evidence in support of her claim. Dr. Voci opined on April 17, 2008 that he "strongly suspected" that appellant's 12 years of delivering mail and leaning over the window into a box led to degradation of changes in her neck, including arthritic changes and disc

³ See *M.H.*, 59 ECAB ____ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); see 5 U.S.C. § 8101(1).

⁴ *R.C.*, 59 ECAB ____ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); see 5 U.S.C. § 8122.

⁵ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁸ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹⁰ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹¹ See *William E. Enright*, 31 ECAB 426, 430 (1980).

damage. However, he did not provide medical rationale explaining the nature of the relationship between the diagnosed condition and the employment factors.

Dr. Hall reported on December 8, 2008 that a significant portion of appellant's myelopathy was due to her employment. However, his opinion was simply a declarative statement and not a rationalized opinion on causation. Dr. Hall did not discuss what employment factors caused appellant's myelopathy or provide a complete factual and medical history that related these factors to appellant's diagnosis of myelopathy.

None of the other medical evidence in the record addresses any causal relationship between appellant's employment and any diagnosed condition. Drs. Beall and Housel discussed various diagnoses for appellant but never mentioned her employment.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that the condition was caused by his employment is sufficient to establish causal relationship.¹² The Board has held that the fact that a condition manifests itself or worsens during a period of employment¹³ or that the work activities produce symptoms revelatory of an underlying condition¹⁴ does not raise an inference of causal relationship between the two. As appellant failed to provide medical evidence establishing the causal relationship between her factors of employment and a medical condition, the Office properly denied her claim for compensation.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an occupational disease causally related to factors of her federal employment, as alleged.

¹² *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

¹³ *E.A.*, 58 ECAB ____ (Docket No. 07-1145, issued September 7, 2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

¹⁴ *D.E.*, 58 ECAB ____ (Docket No. 07-27, issued April 6, 2007); *Fabian Nelson*, 12 ECAB 155,157 (1960).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 3, 2009 and August 6, 2008 are affirmed.

Issued: December 2, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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