

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

M.Z., Appellant	)	
	)	
and	)	<b>Docket No. 09-454</b>
	)	<b>Issued: October 8, 2009</b>
U.S. POSTAL SERVICE, RIVERFRONT	)	
CARRIER ANNEX, San Diego, CA, Employer	)	
	)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On December 4, 2008 appellant, through her representative, filed a timely appeal from the October 2, 2008 merit decision of an Office of Workers' Compensation Programs' hearing representative who affirmed the denial of her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

**ISSUE**

The issue is whether appellant's spinal condition is causally related to her duties as a modified letter carrier.

**FACTUAL HISTORY**

On January 29, 2008 appellant, then a 48-year-old modified city carrier, filed an occupational disease claim alleging that she sustained a back injury in the performance of duty: "I was at work when I noticed that I was experiencing pain, numbness and a radiation sensation throughout my spine along with weakness in both my arms and legs. I was working within the limitations the doctor had set, but it was apparent that the work I was doing triggered the symptoms I was feeling." Appellant first became aware of her condition in August 2007. She stopped work on September 19, 2007 and did not return.

Appellant previously injured her back in the performance of duty on October 27, 1995.<sup>1</sup> On August 2, 1999 she accepted a rehabilitation assignment as a modified city carrier with restrictions against lifting over 20 pounds, climbing and repetitive bending and stooping. All assigned duties would be in strict compliance with appellant's medical evaluation/work restrictions.

Appellant submitted a description of the duties she performed in 2007. On April 22, 2008 the employing establishment offered its own description. The employing establishment stated that her description of her activities was correct in most instances, but she did not pull mail all day long. Appellant did so only when there was no mail available at the carrier case to work on. The employing establishment added that she used a cart to move mail from one point to another. Appellant never actually lifted the cart off the ground; she rolled the cart around. She was also supposed to allow the other carriers to move mail from one vehicle to another. The employing establishment noted that the Office occupational nurses had evaluated appellant's duties and agreed that they were within her medical limitations. The employing establishment added that she was a very good employee with a serious medical problem: "[Appellant] always made an effort to give us 100 percent effort in lieu of the fact that she has medical limitations."

On January 21, 2008 Dr. Neil A. Tayyab, an orthopedic surgeon, diagnosed degenerative disc disease at the L4-5 level. On April 14, 2008 Dr. Kristi A. Dove, a Board-certified neurologist, wrote a prescription note: "[Appellant] is temporarily medically totally disabled due to a work[-]related injury."

In a decision dated April 18, 2008, the Office denied appellant's claim for compensation. It found that the medical evidence did not establish that the claimed medical condition was related to the established work-related activities: "Your physician must explain how the event(s) caused or affected your condition, based upon an accurate factual and medical history, citing objective findings in support of the physician's opinion."

Appellant submitted progress reports from Dr. Dove and a June 15, 2008 magnetic resonance imaging scan report, which described cervical disc protrusions and degenerative disc changes at multiple levels.

On July 21, 2008 Dr. Dove reported that the abnormalities evident on appellant's imaging studies were consistent with her clinical history of cumulative exposure to heavy repetitive lifting at work while employed as a letter carrier. She stated that appellant initially injured her back in 1995 and returned to work without modifications. Dr. Dove noted that appellant's duties included lifting heavy packs of mail from the mail truck to mailboxes and repetitively lifting and placing bundles of mail into slots. She also noted that appellant was required to drive throughout the day.

Dr. Dove stated that, in August 2007, appellant's duties as a mail carrier exacerbated her pain. "The pain was gradually progressive such that she was no longer able to work." Appellant stated that, in mid-August, she noted the development of cervicothoracic pain, which was new for her. After reviewing imaging studies of her lumbar and cervical spine, Dr. Dove diagnosed cervical radiculopathy, lumbar stenosis and radiculopathy, rule out thoracic radiculopathy or

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<sup>1</sup> OWCP File No. xxxxxx195.

stenosis and major depressive episode with some features of somatization. She noted that appellant's history of cumulative heavy lifting was compatible with cervico-thoraco-lumbar pathology. Dr. Dove concluded that appellant suffered significant cumulative trauma to the spinal cord while employed as a postal employee: "The spinal and psychological pathology occurred out of and in the course of her employment with the [employing establishment]."

In a decision dated October 2, 2008, the Office hearing representative found that appellant had failed to establish that her medical conditions in August 2007 were causally related to her employment. He found that neither Dr. Tayyab nor Dr. Dove had presented a medical explanation, such as the pathophysiological process involved, of how or why appellant's employment caused or contributed to her back or spine condition.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>2</sup> An employee seeking benefits under the Act has the burden of proof to establish the essential elements of her claim. When she 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. The employing establishment must also establish that such event, incident or exposure caused an injury.<sup>3</sup>

Causal relationship is a medical issue<sup>4</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>5</sup> must be one of reasonable medical certainty<sup>6</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>7</sup>

Medical conclusions based on inaccurate or incomplete histories are of little probative value.<sup>8</sup> Medical conclusions unsupported by rationale are also of little probative value.<sup>9</sup>

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>4</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>5</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>6</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>7</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>8</sup> *James A. Wyrick*, 31 ECAB 1805 (1980) (the 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).

<sup>9</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

The mere fact that a condition manifests itself or worsens during a period of federal employment raises no inference of causal relationship between the two.<sup>10</sup>

### ANALYSIS

The Office does not dispute the modified duties appellant performed in 2007. The record contains the accepted job offer for the position of modified city carrier, which describes the position's duties and responsibilities. Appellant described her duties in some detail and the employing establishment offered some clarifications. Her modified duties are well established in the factual evidence. Appellant has established that she performed the duties at the time, place and in the manner alleged. The issue is whether her modified duties caused or aggravated her diagnosed spinal condition.

Causal relationship is a medical question and the only medical report that attempts to address the issue is Dr. Dove's July 21, 2008 narrative. Dr. Dove, a Board-certified neurologist, was unequivocal in her opinion: "Appellant suffered significant cumulative trauma to the spinal cord while employed as a postal employee and in August 2007 her duties as a mail carrier exacerbated her pain." However, Dr. Dove did not demonstrate an accurate understanding of appellant's duties in 2007. She stated that appellant initially injured her back in 1995 and returned to work without modifications. However, appellant did return to work with modifications, as the record makes clear. It appears that Dr. Dove based her opinion, in part, on a belief that appellant continued to perform all the regular duties of a city carrier. She relied on an inaccurate history.

Further, Dr. Dove did not describe the various duties to which she attributed appellant's spinal condition. She noted that appellant lifted heavy packs of mail from the mail truck to mailboxes, but appellant did not mention in her description of the modified job that she still delivered mail. Appellant did repetitively lift and place mail into slots, but much of it was loose mail, only some of it bundled. It does not appear, as Dr. Dove reported, that appellant was required to drive throughout the day. One of appellant's duties was to take sorted mail out to the carriers as directed by her supervisor, perhaps up to three or four times. However, when she did not take mail to the street, she usually cased another route or routed mail. Dr. Dove did not report such details.

Dr. Dove's opinion also lack adequate medical rationale. She did not explain how from a neurological perspective any of the specific modified duties caused or aggravated a diagnosed condition. Dr. Dove diagnosed stenosis and radiculopathy, but she offered no description of what she believed to be the mechanism of injury, how any specific physical demands affected appellant's spine or the conditions diagnosed. Causal relationship requires a sound medical explanation. It is not enough simply to state an opinion, however, unequivocal it may be. Dr. Dove did not explain how any of the abnormalities evident on appellant's imaging studies were consistent with her clinical history of cumulative exposure to repetitive lifting at work while employed as a letter carrier. Again, she did not report an accurate history of the lifting required by appellant's modified duty.

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<sup>10</sup> *Steven R. Piper*, 39 ECAB 312 (1987).

Dr. Dove's July 21, 2008 opinion on causal relationship is of diminished probative value because it lacks an accurate history of appellant's modified duties in 2007 and because it lacks a well-reasoned medical explanation of how those duties caused or contributed to physical injury to her spine. The Board finds that appellant has not met her burden of proof to establish causal relationship. The Board will affirm the Office hearing representative's October 2, 2008 decision.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that her spinal condition is causally related to her modified duties in 2007.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 2, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 8, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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