

FACTUAL HISTORY

On June 14, 2006 appellant, then a 53-year-old mail flow controller, filed an occupational disease claim alleging that, as a result of her federal duties, she suffered from degenerative disc disease and chronic neck and shoulder pain. She noted that her job required her to sit at a counter and review four to eight large computer monitors which were stacked one on top of the other while simultaneously operating a mouse and answering telephones. Appellant alleged that consistently looking upward while sitting at her desk exacerbated her neck and shoulder condition.

In a report dated June 2, 2006, Dr. Hilary A. Stroud, a Board-certified family practitioner, stated that appellant had been under her care and diagnosed moderate-to-advanced degenerative disc disease. She advised that a cervical magnetic resonance imaging (MRI) scan showed narrowing most pronounced at the C4-5 level. The problem seen on the MRI scan was the cause of appellant's symptoms which had been persistent in her right upper back and ongoing since at least 2003. Dr. Stroud opined that the problem was caused by appellant's job which required that she watch two rows of computer monitors while operating a mouse and answering telephones. This necessitated constant tilting of her neck upwards or then staring ahead while using her mouse. Dr. Stroud noted that appellant had to constantly use her neck and upper back muscles at a working station which was not designed for a 63 inch tall person.

By decision dated September 18, 2006, the Office denied appellant's claim, finding that the evidence did not establish that her cervical condition was related to the accepted workplace activities. In a June 13, 2007 decision, however, an Office hearing representative remanded the case, noting that Dr. Stroud's affirmative opinion of a causal relationship was sufficient to require further development.

In a June 23, 2006 report, Dr. Stroud noted that she first saw appellant with regard to neck and shoulder pain on November 8, 2002. Appellant was treated repeatedly for this condition. The diagnosis was cervical disc disease with pain in the right upper back and arm which was caused and aggravated by appellant's position at work. She worked in her position for 10 years, 8 hours a day tilting her head upward to look at a row of monitors. Dr. Stroud stated: "It is the constant use of her neck and at the same time her right hand and arm to use the mouse which has caused the degeneration of the discs. Appellant has cervical disc disease from overuse at her job." On July 27, 2007 Dr. Stroud concluded to a reasonable degree of medical certainty that appellant had cervical spondylosis as a result of her work. She reiterated that appellant was required to hold her head in a position tilted backwards to view monitors mounted in two rows and this awkward position produced repeated minor trauma and exceptional demands on her neck.

By letter dated July 11, 2007, the Office referred appellant to Dr. Daniel T. Altman, a Board-certified orthopedic surgeon, for a second opinion. In his report dated August 7, 2007, Dr. Altman found that there was no reasonable basis to conclude that appellant's job as a computer operator caused her to have a severe spondylitic condition at C4-5 and C5-6, or evidence to support any work-related disability to her cervical spine. He noted that appellant has returned to work with restrictions that were based on her surgery and chronic cervical spondylosis and not on a work disability.

By decision dated October 12, 2007, the Office denied appellant's claim for compensation. It found that she failed to provide sufficient medical evidence to support that her cervical condition was caused or aggravated by factors of her federal employment.

By letter dated October 22, 2007, appellant requested an oral hearing before an Office hearing representative. In a November 7, 2007 report, Dr. Gerard J. Werries, a Board-certified orthopedic surgeon, noted that he initially saw appellant on January 10, 2007 for complaint of neck and right radicular symptoms. A May 9, 2006 MRI scan was reviewed which showed moderate-to-severe degenerative disc disease at C4-5, C5-6 and C6-7 with moderate foraminal stenosis. He recommended at that time that appellant undergo a C4 through C6 laminectomy and fusion. Appellant subsequently underwent surgery on February 20, 2007. Dr. Werries last saw appellant on November 7, 2007 and she was doing well. Based on her history, he believed that appellant's cervical pain and right radicular symptoms were an aggravation of her preexisting condition. Dr. Werries did not believe that appellant's work activities caused her arthritis, but they aggravated the symptoms that she presented on January 10, 2007. He noted that the arthritis of her cervical spine caused irritation of the nerve going down her right arm, thus causing the right-sided neck and arm complaints. Dr. Werries offered his opinion to a reasonable degree of medical certainty.

In a July 5, 2007 report, Dr. Atac Turkey, a Board-certified rheumatologist, stated that he saw appellant for a follow-up on her cervicgia. He noted that she underwent surgery and was feeling better. Dr. Turkey stated that appellant asked whether her job could have contributed to her condition. He noted that she sat at a job where she had to monitor screens that were mounted high up. Dr. Turkey stated that it was possible her posture might contribute to her degenerative disc disease. He recommended that she obtain an opinion from a physiatrist.

By decision dated March 4, 2008, an Office hearing representative remanded the case for the Office to obtain certain missing medical evidence and forward it to Dr. Altman for review and a supplemental report.

In a July 8, 2008 report, Dr. Altman reiterated that appellant's surgery was related to a severe spondylitic condition at C4-5 and C5-6. Appellant's surgery was based on her chronic degenerative condition of the cervical spine which was not related to her work. He disagreed with Dr. Stroud with regard to appellant's cervical spondylosis being caused by her employment. Dr. Altman stated, "It is unreasonable to believe that the amount of cervical spondylosis noted at the time of appellant's surgery and her imaging studies was the result of looking at different monitors."

By decision dated August 7, 2008, the Office denied appellant's claim based on the opinion of Dr. Altman.

Appellant requested reconsideration.

In a March 1, 2009 report, Dr. Stroud again reviewed her treatment of appellant and opined that appellant's job contributed substantially to her medical condition of spondylosis. She noted that appellant's occupation put stress on the neck as appellant had to tilt her head upwards very frequently and at an extreme angle during her eight-hour shift in addition to

operating a mouse resting on her desk. This posture at work was prolonged and awkward. Dr. Stroud stated, “I find that the 10 years of doing her job was the cause of repeated minor trauma to her neck and the cause of the osteoarthritis of her cervical spine which was clearly seen on x-ray and MRI scan and the cause of her symptoms.” She noted that appellant’s diagnosis was cervical spondylosis and that her prognosis was poor. Dr. Stroud disagreed with the opinion of Dr. Altman, contending that he failed to provide an alternative explanation for appellant’s cervical arthritis, failed to consider the conditions of her workstation or consider her small stature and the awkward angle at which the monitors were mounted. She cited a recent medical text which stated that in the initial stages of osteoarthritis, there were enzymes degrading the collagen of joints which overwhelmed the natural defenses and resulted in collagen breakdown. Therefore, signs of inflammation were present even in osteoarthritis.

In a March 25, 2009 report, Dr. Werries stated that he did not believe that appellant’s work activities caused her cervical spondylosis, but that her neck and arm symptoms were aggravated by her work activities. He stated “that repetitive motion of the neck associated with her work led to exacerbation of her underlying neck condition.” Dr. Werries found that appellant incurred an aggravation of a preexisting condition.

By decision dated December 4, 2009, the Office denied modification of the August 7, 2008 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of proof to establish the essential elements of her claim by the weight of the evidence,² including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.³ As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁴ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician’s opinion.⁵

Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁶ When the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *G.T.*, *supra* note 3; *Nancy G. O’Meara*, 12 ECAB 67, 71 (1960).

⁵ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁶ 5 U.S.C. § 8123(a); *see Geraldine Foster*, 54 ECAB 435 (2003).

specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁷

ANALYSIS

The Board finds that the case is not in posture for decision due to a conflict in medical opinion.

Appellant claimed that as a result of her federal duties, specifically looking upward to watch eight computer monitors while simultaneously operating a mouse and answering telephones, she sustained degenerative disc disease and chronic neck and shoulder pain. Appellant was treated by Dr. Stroud, who found that her cervical spondylosis was the result of these work conditions. Dr. Stroud noted that appellant's employment required her to hold her head in an awkward position tilted backwards to view monitors mounted in two rows. This produced minor traumas and placed exceptional demands on appellant's neck.

Dr. Altman opined that appellant's chronic cervical condition was not related to her work, referencing the extensive amount of cervical spondylosis found at the time of appellant's surgery. He stated that there was no reasonable evidence that appellant's job caused her severe spondylitic condition at C4-5 and C5-6 and noted that there was no evidence of any work-related disability due to her cervical spine. Dr. Stroud and Dr. Altman reviewed one another's reports and disagreed with their respective opinions.

The Board finds that as there is a conflict in medical opinion between Dr. Stroud, an attending physician, and Dr. Altman, the physician making the examination for the Office, as to whether appellant sustained a cervical condition due to her federal employment.⁸ The case will be remanded to the Office for referral to an impartial medical specialist. After such further development as deemed necessary, it shall issue a *de novo* decision on appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for decision due to an unresolved conflict in medical opinion.

⁷ *Manuel Gill*, 52 ECAB 282 (2001).

⁸ *Y.A.*, 59 ECAB 701 (2008); *Bryan O. Crane*, 56 ECAB 713 (2005).

ORDER

IT IS HEREBY ORDERED THAT the December 4, 2009 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this decision.

Issued: January 11, 2011
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