

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

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**LIZETTE PEREZ, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Newark, NJ, Employer**

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**Docket No. 03-36**

**Issued: February 5, 2004**

*Appearances:*

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

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman

DAVID S. GERSON, Alternate Member

A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On October 1, 2002 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 11, 2001. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant has met her burden of proof in establishing that she developed a left shoulder and wrist condition in the performance of duty.

**FACTUAL HISTORY**

On September 29, 1999 appellant, then a 33-year-old letter carrier filed a claim alleging that she developed a left shoulder and wrist condition as a result of carrying mail. She became aware of her condition on September 24, 1999. Appellant did not stop work.<sup>1</sup> In a letter dated

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<sup>1</sup> The record reveals that appellant filed a separate claim for traumatic injury alleging that on September 15, 1995 while holding mail and flats she sprained her left hand. It is unclear from the record whether this claim was accepted by the Office.

November 4, 1999, the Office advised her of the type of factual evidence needed to establish her claim and requested that she submit such evidence.

Appellant submitted reports of various diagnostic tests including an October 1, 1999 x-ray of the cervical spine which was essentially normal, an electromyogram (EMG) dated October 4, 1999 which revealed no abnormalities, and a magnetic resonance imaging (MRI) scan dated October 8, 1999 which revealed a prominent mid posterior bulging of the annulus fibrosis at C5-6, mild bulging of the annulus fibrosis at C6-7 and straightening of the cervical lordosis. Also submitted were reports from Dr. Edward Vecchione, a specialist in orthopedics, dated October 19 to November 4, 1999 which advised that appellant was being treated for cervical sprain, radiculopathy, sprain neck and neuralgia and would be off work from September 29 to November 2, 1999. In his report dated October 22, 1999, Dr. Donald Frank, a specialist in orthopedics, noted that appellant's pain began for no apparent reason in August 1999 and on September 29, 1999 she was carrying mail and experienced pain in the occipital region. Dr. Mariano F. Lombardy, a Board-certified orthopedist, submitted a report dated November 15, 1999 which advised that appellant presented with painful and limited range of motion of the cervical spine with bilateral paravertebral muscle spasm and pain radiating into the left shoulder and arm. In a disability certificate dated December 13, 1999, Dr. Stephen A. Ducey, a Board-certified orthopedist, diagnosed a cervical strain and noted that appellant was totally disabled from November 15 to December 14, 1999 and could return to light duty with only one hour of carrying mail.

In a decision dated December 29, 1999, the Office denied appellant's claim as the evidence was not sufficient to establish that she developed a condition in the performance of duty.

In a letter dated February 9, 2000, appellant requested reconsideration and submitted detailed information regarding her job duties as well as a report from Dr. Lombardy dated January 24, 2000 and an attending physician's report dated February 22, 2000. He noted appellant's continued complaints of pain in the cervical spine area, left radicular shoulder and arm and advised that appellant had not responded to conservative treatment. In his attending physician's report of February 22, 2000, Dr. Lombardy noted that appellant sustained a cervical strain while delivering mail. He noted with a checkmark "yes" that the condition was employment related, stating it was caused or aggravated by "carrying heavy mail."

In a letter dated March 16, 2000, the employing establishment noted that appellant had a platform installed in her case to accommodate her physical limitations. The employer noted that 60 percent of the mail was sorted by a machine and that appellant's route entailed approximately 95 pounds of mail. Additionally, the employer advised that her route was 22 stops, self-paced with frequent breaks and was neither difficult nor lengthy.

By decision dated April 7, 2000, the Office denied modification of its previous decision. Appellant again requested reconsideration of the Office decision. By decision dated May 1, 2000, the Office denied her request for reconsideration on the grounds that the evidence submitted in support of the request for review was found to be cumulative in nature and not sufficient to warrant review of its prior decision.

In a letter dated October 20, 2000, appellant requested reconsideration and submitted additional medical evidence. In a March 23, 2000 work restrictions form, Dr. Lombardy diagnosed a cervical strain and herniated disc and advised appellant was totally disabled from November 14 to December 14, 1999. Dr. Mathew DeLuca, a Board-certified psychiatrist and neurologist, noted, in a report dated April 3, 2000, that appellant began complaining of pain in the left shoulder and left arm due to carrying mail and opined that appellant's current complaints were work related. In a report dated April 7, 2000, Dr. Ducey indicated that appellant had been under his care since September 1999 and advised that her neck, left shoulder and left wrist pain were related to her position as a letter carrier and the heavy lifting involved. Also submitted was a report from Dr. Frank P. Femino, a Board-certified orthopedist, dated December 27, 2000, who diagnosed a chronic cervical strain, left shoulder subacromial impingement, bursitis and left carpal tunnel syndrome. He opined that appellant's conditions were related to the repetitive activity she performed at the employing establishment.

By decision dated January 17, 2001, the Office denied modification of its previous decision.

In a letter dated September 26, 2001, appellant requested reconsideration and submitted a report from Dr. Femino dated June 11, 2001 in which he diagnosed a chronic cervical strain, left shoulder subacromial impingement, bursitis and left carpal tunnel syndrome. He advised that appellant's job description included lifting flats of mail into tiers, carrying mail continuously in the left hand and with a mailbag on her back, continually pushing and pulling gates, jeep doors, storm doors, mailboxes and mail slots, stooping low for mail slots while carrying the weight of mail on her back and handling mail in batches or in tubs which necessitated tugging, lifting, pushing and pulling. Dr. Femino concluded that appellant's current medical condition was related to the repetitive activity at work. Also submitted was a report from Dr. DeLuca dated September 10, 2001 which diagnosed cervical strain, left shoulder subacromial impingement, bursitis and left carpal tunnel syndrome. He advised that appellant's employment duties included carrying mail in the left hand while delivering mail, pushing and pulling hampers, mail tubs and bundles and also carrying a mail satchel over her left shoulder while delivering mail. Dr. DeLuca opined appellant's complaints were employment related.

By decision dated December 11, 2001, the Office again denied modification of its previous decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or his claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>4</sup>

### ANALYSIS

In the instant case, it is not disputed that appellant was a federal employee. However, he has not submitted sufficient medical evidence to support that his diagnosed condition was caused by the employment factors or conditions.

In support of her claim, appellant submitted various medical records noting appellant's treatment for cervical sprain, shoulder pain, however, these most contemporaneous records do not address a history of injury or indicate that it is work related.<sup>5</sup> Specifically, Dr. Vecchione's reports from October 19 to November 4, 1999 and Dr. Lombardy's report of November 15, 1999 advised that appellant was being treated for cervical sprain, radiculopathy, sprain neck and neuralgia and would be off work from September 29 to November 2, 1999, but failed to mention that her condition was work related.<sup>6</sup> Similarly, the report from Dr. Frank dated October 22, 1999 noted that appellant's pain began for "no apparent reason" in August 1999 and on September 29, 1999, while she was carrying mail, she experienced pain in the occipital region and cervical spine. This report is speculative with regard to the cause of appellant's condition<sup>7</sup>

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<sup>3</sup> Gary J. Watling, 52 ECAB 278 (2001); Victor J. Woodhams, 41 ECAB 345 (1989).

<sup>4</sup> Solomon Polen, 51 ECAB 341 (2000).

<sup>5</sup> The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence; see Katherine A. Williamson, 33 ECAB 1696 (1982); Arthur N. Meyers, 23 ECAB 111 (1971).

<sup>6</sup> Frank Luis Rembisz, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

<sup>7</sup> *Id.*

and did not contain a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.<sup>8</sup>

Also submitted was an attending physicians report from Dr. Lombardy dated February 22, 2000, which noted that appellant sustained a cervical strain while delivering mail and indicated with a checkmark "yes" that the condition was employment related, stating that it was caused or aggravated by "carrying heavy mail." However, the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>9</sup>

Other reports from Dr. DeLuca dated April 3, 2000 and September 10, 2001 and Dr. Ducey dated April 7, 2000, noted appellant's complaints of pain in the left shoulder and left arm and diagnosed various conditions including cervical strain, left shoulder subacromial impingement, bursitis and left carpal tunnel syndrome and opined that appellant's current complaints were due to her carrying mail. However, these physicians did not address how specific employment factors may have caused or aggravated appellant's condition, they merely noted the specific tasks appellant performed. Additionally, they did not include a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.<sup>10</sup> Dr. Femino's reports dated December 27, 2000 and June 11, 2001 diagnosed various conditions including chronic cervical strain, left shoulder subacromial impingement, bursitis and left carpal tunnel syndrome and opined that appellant's conditions were related to the repetitive activity she performed at the employing establishment. Although Dr. Femino's opinion somewhat supports causal relationship in a conclusory statement, he provided no medical reasoning or rationale to support such statement. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.<sup>11</sup>

The remainder of the medical evidence fails to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.<sup>12</sup> Causal relationships must be established by

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<sup>8</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>9</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

<sup>10</sup> See *Jimmie H. Duckett*, *supra* note 8.

<sup>11</sup> *Id.*

<sup>12</sup> See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof in establishing that she developed a left shoulder and wrist condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 11, 2001 is affirmed.

Issued: February 5, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member