

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of COLEEN L. FYOCK and U.S. POSTAL SERVICE,  
POST OFFICE, Wilmington, Del.

*Docket No. 96-976; Submitted on the Record;  
Issued January 20, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty.

The Board has duly reviewed the record on appeal and finds this case is not in posture for a determination of whether appellant sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of proof to establish the essential elements of her claim. When an employee 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. She must also establish that such event, incident or exposure caused an injury.<sup>2</sup>

There is no dispute in this case concerning the duties appellant was required to perform as a letter carrier. On her claim form appellant attributed her lupus and arthritis to carrying a mail bag that weighs 35 pounds, climbing steps, walking on uneven ground, stooping to put mail in letter slots and generally walking 5 to 6 hours a day. It may therefore be accepted that appellant experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. To establish that she sustained an injury in the performance of duty, the evidence must establish that her duties caused an injury.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See generally *John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); see also 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15)(16) ("traumatic injury" and "occupational disease or illness" defined).

Causal relationship is a medical issue,<sup>3</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 factors of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>4</sup> must be one of reasonable medical certainty,<sup>5</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established factors of employment.<sup>6</sup>

Appellant's attending physician, Dr. Nancy G. Murphy, a Board-certified internist specializing in rheumatology, reported a detailed history on February 27, 1994. After describing her findings on examination, Dr. Murphy's assessment was that appellant may be developing some left hip arthritis. She ordered laboratory tests to rule out other possibilities and stated that appellant needed to have a desk position. "She currently is in too much pain to be standing on her feet all day long," Dr. Murphy reported. "She might also benefit from the use of a cane to help unload that painful right hip area and from a course of physical therapy to increase the range of motion in that hip."

On October 6, 1994 Dr. Murphy reported that appellant had arthritis and bursitis. She stated:

"I do not feel [appellant's] job caused the diffuse joint pain but it is certainly aggravating the condition. Because of her lower extremity pain she cannot walk and should not be delivering mail by foot or even by truck, as apparently she needs to get out of the truck frequently to make deliveries. She should not be lifting anything greater than [five] pounds."

On November 14, 1994 Dr. Murphy reported that appellant continued to have pain in her knees and hips and ankles, although it was certainly improved from several months earlier. Laboratory tests suggested that the inflammation in her joints was improving; however, Dr. Murphy still recommended that appellant not walk or drive a delivery route until April 1995:

"Currently she is doing a desk job which has helped greatly with her lower extremity pain. She does feel she could do the router duties if necessary but the desk job is currently ideal for her. She also continues with much pain and limited range of motion in the right shoulder and will be seeing an orthopedic surgeon for evaluation and possible surgery. Obviously overusing a damaged or inflamed joint worsens the inflammation and I would recommend the work restrictions until the situation improves.

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<sup>3</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>4</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>5</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>6</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

“She is being treated with Plaquenil, Fish Oil, Voltaren and Tylenol. [Appellant] has a collagen vascular disease which is not caused by her work; however doing stressful repetitive activities will worsen the joint inflammation.”

On December 22, 1994 Dr. Murphy reported as follows:

“I have a clear understanding of [appellant’s] work positions (see my notes, the notes to me from [appellant] and the detailed work description that was sent to me and which I read – copies enclosed).

“The work aggravation began February, 1994 and continued until she began her current desk position on October 29, 1994. Her lower extremity arthritis was aggravated by the standing, bending and walking of her previous job as a caser and mail deliverer. The reaching up and chronic overuse of her right arm and shoulder from both the casing and mail delivering jobs aggravated her right shoulder bursitis and tendinitis.”

Dr. David A. Allan, a Board-certified internist specializing in rheumatology and a fitness-for-duty physician, related appellant’s history and complaints and related his findings on examination. He found that appellant’s findings did not support a diagnosis of lupus, rheumatoid arthritis or other autoimmune diseases; her history and current findings were instead consistent with a right subacromial bursitis, which had improved with treatment and currently caused only mild to moderate symptoms or limitations of daily living. Dr. Allan reported:

“[Appellant’s] right shoulder bursitis may have been exacerbated by the activities that she performed while delivering mail on [September 27, 1994.] [Dr. Allan noted that this was her last delivery date] but I believe that this exacerbation has resolved at this time.”

On May 10, 1995 Dr. Norman H. Eckbold, a Board-certified orthopedic surgeon to whom the Office of Workers’ Compensation Programs referred appellant, related appellant’s employment and past medical history as well as a medical record review and review of systems. Responding to questions posed by the Office, Dr. Eckbold stated that Dr. Murphy’s reports had no objective findings to support a diagnosis of arthritis. He stated that appellant’s work at the employing establishment would not have caused lupus nor aggravated lupus. Dr. Eckbold reported, “I do not feel that [appellant’s] degenerative joint disease can be defined as having been caused or aggravated by work with the [employing establishment].” He added, “I do not find her degenerative joint disease, which impressions were made on the basis of subjective complaints, can be defined as having been caused or aggravated by work with the [employing establishment]. Degenerative joint disease is progressive with age especially in a patient 210 pounds, 5’3”.

Finally, on July 10, 1995 an Office medical adviser reported that the diagnosis of lupus was not established, that appellant had migratory polyarthralgia, but not definite arthritis. The Office medical adviser noted that Dr. Allan “considered her right shoulder bursitis would be aggravated by delivering mail it would have resolved by [February 14, 1995].” Because

appellant's complaints had not been fully diagnosed, the Office medical adviser agreed with light duty "which minimizes the complaints."

In a decision dated July 14, 1995, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that the claimed conditions of lupus and arthritis were causally related to her federal employment. In a merit decision dated November 1, 1995, the Office denied modification of its prior decision.

The Board finds that a conflict in medical opinion exists between appellant's attending physician and the Office referral physician on the diagnosis of appellant's condition and on the relationship between her condition and the duties of her federal employment. Dr. Murphy, a Board-certified internist specializing in rheumatology, reported that appellant had arthritis and bursitis and reported that her job aggravated the diffuse joint pain. She explained that overusing a damaged or inflamed joint or doing stressful repetitive activities will worsen the inflammation. Dr. Eckbold, a Board-certified orthopedic surgeon, reported that the diagnosis of arthritis was not established (he did not address the bursitis found by Dr. Murphy and Dr. Allan) and that appellant's degenerative joint disease could not be defined as having been caused or aggravated by work.

Section 8123(a) of the Federal Employees' Compensation Act provides in part:

"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."<sup>7</sup>

To resolve the conflict in opinion between Dr. Murphy and Dr. Eckbold, the Office shall refer appellant, together with the medical record and a statement of accepted facts, to an appropriate impartial specialist for a firm diagnosis of appellant's condition, both currently and contemporaneous to appellant's claim in 1994, and for a well-reasoned opinion on whether the duties that appellant performed in her federal employment contributed in any way to her diagnosed condition. After such further development as may be necessary, the Office shall issue an appropriate final decision on whether appellant sustained an injury in the performance of duty.

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<sup>7</sup> 5 U.S.C. § 8123(a).

The November 1 and July 14, 1995 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.  
January 20, 1998

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member