

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

DAVID A. HUGHES, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Kingston, PA, Employer**

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**Docket No. 04-521
Issued: April 12, 2004**

Appearances:

*John G. Swatkoski, 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
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 17, 2003 appellant, through his attorney, filed a timely appeal from the November 24, 2003 decision of the Office of Workers' Compensation Programs denying modification of its previous decisions finding that he failed to establish that he sustained an injury in the performance of duty. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an injury in the performance of duty.

FACTUAL HISTORY

On June 30, 2001 appellant, then a 42-year-old letter carrier, filed an occupational disease claim alleging that on January 19, 2000 he first became aware of his severe disc, neck and back pain. He alleged that on March 27, 2000 he first realized that his pain was caused or aggravated by factors of his federal employment. Appellant stated that after an operation on February 28,

2000 he did not have any pain until he returned to work. He related that constant use of his right arm aggravated the pain. Appellant stopped work on January 20, 2000 and returned to work on April 27, 2000.

Appellant submitted a June 30, 2001 statement noting that on January 19, 2000 he experienced severe back pain which became progressively worse until an operation on February 28, 2000 to remove a herniated disc. He stated that following surgery, the pain seemed less frequent until he returned to work. Appellant indicated that the constant motion of his right side at work seemed to aggravate his back and neck. He noted that as a letter carrier, he carried his mailbag on his right shoulder, which seemed to aggravate his condition. Appellant noted that he experienced numbness in his right hand and constant pain shooting from his neck all the way down to his lower back.

In a July 9, 2001 letter, Barbara A. McFall, an employing establishment human resources specialist, controverted appellant's claim on the grounds that there were no medical reports from the date of injury, January 19, 2000 through appellant's return to work on March 27, 2000 to substantiate his allegation that his severe herniated disc was causally related to factors of his employment. She stated that appellant did not report his condition as work related and that his treating physician eventually released him to full-duty work.

By letter dated July 12, 2001, the Office notified appellant that the evidence submitted was insufficient to establish his claim. The Office advised him about the factual and medical evidence he needed to submit to his claim. By letter of the same date, the Office requested that the employing establishment comment on the accuracy of appellant's statements and submit information regarding his job duties and precautions it took to minimize the effects of the activities.

The Office received a June 30, 2001 job offer the employing establishment made to appellant for the limited-duty position of letter carrier, which he accepted on that date. The Office also received appellant's leave records information regarding the filing of an occupational disease claim and the designation of Dr. David J. Yatsonsky, a Board-certified internist, as appellant's treating physician.

The employing establishment submitted a description of appellant's letter carrier position. An undated statement from Richard J. Howeychurch indicated that he had not received any documentation from a doctor stating that appellant's condition was work related.

In a July 18, 2001 statement, appellant contended that his condition was caused by carrying a mailbag on his right shoulder for almost 20 years and by closing the back door on his postal vehicle. He explained that his condition developed in the beginning of January 2000 and progressively became worse until his surgery. Appellant stated that he had no hobbies or activities that caused his condition and reiterated that his symptoms included numbness in his right hand and pain shooting from his head to his lower back. He related that his family physician believed work aggravated his condition. Appellant concluded that the nature of his job aggravated his condition based on the restrictions set forth in his physician's February 6, 2001 orders and that further restrictions were imposed on April 3, 2001 due to an aggravation of his condition.

Dr. Yatsonsky's July 18, 2001 attending physician's report noted that appellant sustained an injury on January 19, 2000 and suffered from cervical disc disease. He stated that appellant's condition was caused by the employment activity by placing a checkmark in the box marked "yes." He stated that the nature of appellant's job aggravated his condition. On February 6, 2001 Dr. Yatsonsky reported that appellant could work six hours a day, three days a week until he was examined. He found that appellant could not lift, strain or bend. On March 30, 2001 Dr. Yatsonsky stated that appellant should perform light-duty work until cleared by a physician. Appellant was restricted from using his right shoulder, arm and neck. He could use his left arm as tolerated. On April 3, 2001 Dr. Yatsonsky restricted appellant from delivering any mail and stated that he could case mail with his left hand as his condition allowed. A May 2, 2000 note from Dr. John H. Presper, a Board-certified neurosurgeon, addressed appellant's physical restrictions.

A September 20, 2001 note from Dr. Yatsonsky indicated that appellant should continue to perform light-duty work for six to eight hours a day, within certain physical restrictions.

By decision dated October 4, 2001, the Office denied appellant's claim finding that the evidence of record was insufficient to establish that he sustained an injury in the performance of duty. The Office found the record devoid of any rationalized medical evidence establishing that appellant sustained a condition caused by factors of his employment.

In an undated letter to the Office, appellant contended that his neck condition was caused by factors of his employment. He submitted Dr. Yatsonsky's January 24, 2000 x-ray findings of his cervical spine, which revealed congenital fusion at C2-3, hypertrophic degenerative changes at C6-7 and no evidence of a fracture. A February 8, 2000 report of a magnetic resonance imaging (MRI) scan from Dr. Presper revealed a right-sided disc extrusion at C6-7 causing marked narrowing of the medial aspect of the right neural foramen. Dr. Yatsonsky's October 22, 2001 letter indicated that appellant had significant disc disease. He stated that although this condition could occur with the aging process, he believed appellant's employment as a letter carrier had some, if not all involvement, in the etiology of his condition.

By letter dated January 8, 2002, appellant submitted additional medical evidence. A January 8, 2002 letter from Dr. David A. Andreychik, a Board-certified orthopedic surgeon, noted that appellant had a significant disc problem from being a mail carrier for 20 years. He stated that appellant's condition created severe pain on his cervical spine which was caused by carrying his mailbag on his right shoulder for that period of time. Dr. Andreychik concluded that appellant's condition was caused by his employment and that he had no similar condition prior to starting work at the employing establishment.

By letter dated April 16, 2002, appellant, through his attorney, submitted an undated letter from Dr. Andreychik indicating that appellant underwent surgery on December 12, 2001 due to a cervical disc herniation at C5-6. He attributed appellant's severe pain on his cervical spine to his employment. Dr. Andreychik stated that carrying his satchel on the right shoulder for 15 years before the surgery caused appellant's major cervical problems. He diagnosed herniated nucleus pulposus at C5-6 and noted his treatment of this condition.

Appellant, through his attorney, requested reconsideration by letter dated May 9, 2002.

By decision dated July 1, 2002, the Office denied modification of the October 4, 2001 decision. The Office found the medical evidence of record insufficient to establish that appellant sustained a condition caused by factors of his employment.

Appellant, through his attorney, requested reconsideration in a September 17, 2002 letter and submitted Dr. Andreychik's August 27, 2002 letter, providing that his job either directly or indirectly caused or contributed to his cervical disc disease at C6-7. He noted that as he stated, it would be very unusual for a patient of appellant's age to have that degree of degenerative change. Dr. Andreychik believed that the disease at C5-6 was probably something that was already present prior to appellant's problem at C6-7 or developed secondary to the surgical procedure that he had at C6-7. He noted that, oftentimes progressive disease was seen after having a fusion at that level. Dr. Andreychik stated that appellant's disease at C5-6 was either directly or indirectly related to his disease at C6-7, which would make this related to his employment. He concluded that with a reasonable degree of medical certainty, appellant's trouble with his neck and surgeries were either caused by his work or his work contributed to these symptoms.

Appellant's attorney submitted letters dated August 4 and September 15, 2003, inquiring about the status of his request for reconsideration. In an October 28, 2003 letter, the Office advised him that it had received Dr. Andreychik's report in support of his request for reconsideration and found the evidence was sufficient to warrant further development of appellant's claim. The Office advised appellant that it would arrange an examination by a medical specialist who would review his case record. Prior to the scheduling of this examination, the Office requested that appellant submit all prior test results including x-rays, computerized tomography and MRI scans *etc.*, dating back to the beginning of his cervical problems. The Office also requested that appellant submit hospital records regarding his February 2000 and December 2001 surgeries and the two additional medical procedures he stated that he underwent. The Office requested that appellant submit a statement explaining whether he returned to work following the December 12, 2001 surgery including, the date he returned to duty and a description of his duties. The Office advised appellant to submit a report from his physician if he was still totally disabled. He did not respond.

By decision dated November 24, 2003, the Office denied modification of the July 1, 2002 decision. The Office found that as appellant did not submit the medical information requested in its October 28, 2003 letter, the record was incomplete and it could not provide a referral with a complete medical history. The Office also found that appellant did not submit the requested factual information, thus, additional development of the file was not its responsibility. The Office found that appellant failed to establish that his cervical and low back conditions were causally related to factors of his employment.¹

¹ The Board notes that subsequent to the Office's November 24, 2003 decision, the Office received additional evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952); 20 C.F.R. § 501.2(c).

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of 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 an 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.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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) a 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 a causal relationship is 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.⁵

ANALYSIS

Appellant has not submitted rationalized medical evidence to establish that his neck and back conditions were caused or aggravated by factors of his federal employment. The relevant medical evidence of record includes Dr. Yatsonsky's July 18, 2001 attending physician's report finding that appellant's cervical disc disease was caused by his employment activities by placing a checkmark in the box marked "yes." Dr. Yatsonsky stated that the nature of appellant's job aggravated his condition. 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 disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

relationship.⁶ Dr. Yatsonsky did not provide any medical rationale explaining how or why appellant's employment aggravated his cervical condition. Thus, his report is insufficient to establish appellant's claim.

Dr. Andreychik's opinion that appellant's cervical disc condition was caused by carrying his mailbag on his right shoulder for 20 years and that he had no similar condition prior to starting work at the employing establishment does not provide adequate medical rationale explaining how or why appellant's employment activities caused or contributed to the diagnosed conditions. The fact that appellant did not have cervical problems prior to obtaining employment as a letter carrier is not probative evidence that his job caused or contributed to his cervical condition.⁷

In an October 22, 2001 letter, Dr. Yatsonsky stated that although appellant's disc disease could occur with the aging process, he believed appellant's employment as a letter carrier had some, if not all involvement in the etiology of his condition. His opinion is insufficient because the physician did not fully explain the basis for his opinion on casual relationship.⁸ Similarly, Dr. Andreychik's August 27, 2002 opinion that appellant's job either directly or indirectly caused or contributed to his cervical disc disease at C6-7 and that the disease at C5-6 probably developed as a result of his surgery at C6-7, is not fully rationalized and of diminished probative value. Neither physicians presented a full medical history of appellant's cervical condition or addressed the background of the case which explained the relationship of the disc disease to the implicated employment factors.

As appellant has failed to submit rationalized medical evidence establishing that his cervical and back conditions were caused by factors of his federal employment, he has failed to satisfy his burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty.

⁶ *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

⁷ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (finding that the fact that appellant was asymptomatic before an injury, but symptomatic afterward is insufficient to establish, absent supporting rationale, a causal relationship).

⁸ *Patsy L. Rubio*, 37 ECAB 179 (1985); *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962).

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member