

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

A.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Amarillo, TX, Employer**

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**Docket No. 06-1364
Issued: October 4, 2006**

Appearances:

A.S., pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 30, 2006 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated May 15, 2006 finding that he had not established an injury causally related to his federal employment. Pursuant to 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 met his burden of proof in establishing that he sustained a cervical disc injury due to factors of his federal employment.

FACTUAL HISTORY

On November 10, 2004 appellant, then a 49-year-old mail processing clerk, filed an occupational disease claim alleging that he had developed a neck condition due to constant looking up and down in the performance of his duties. He first noticed his condition in July 2004. Appellant included a statement dated November 17, 2004 asserting that he had

developed neck pain radiating to his shoulders and that he felt that this condition was due to repetitive neck movements in the performance of duty.

Dr. Mark W. Scioli, a Board-certified orthopedic surgeon, completed a note on October 19, 2004 and reported that appellant was doing well following bilateral shoulder surgeries. He stated that appellant had a documented underlying sensory motor peripheral neuropathy. Appellant received a cervical epidural which decreased his symptoms for two weeks, but appellant had recurring pain in both the right and left shoulder areas with persistent ache over the acromion and deltoid area. Dr. Scioli noted that appellant had undergone diagnostic testing but that he had not reviewed the results. He opined that appellant had sustained a consequential injury to his neck and stated:

“I was able to obtain the documentation from the government [w]orkers’ [c]ompensation rules that define a consequential injury and it is my opinion that based on this patient’s previous pathology, *i.e.*, bilateral chronic subacromial bursitis and the fact that he is a mail sorter of short physical stature with requirements of constantly looking up and down, up and down, etc., while raising the arms and sorting mail, putting it in different slots, etc., that he would indeed be subject to a repetitive motion injury of the neck which in and of itself could now be contributing to his present pain.”

Dr. Scioli concluded that appellant had sustained an injury to the cervical spine at C5-6 and that the persistent discomfort in appellant’s shoulders was due to this injury which was likely due to repetitive motion as a mail sorter. He recommended further testing to determine if appellant had a disc injury at the C5-6 level.

Appellant submitted several unsigned treatment notes dated May 26 through October 25, 2004.¹

In a letter dated December 15, 2004, the Office informed appellant of the deficiencies in the evidence submitted in support of his claim and requested additional factual and medical evidence. Appellant responded on January 11, 2005 and stated that he believed his injury was a consequence of his bilateral shoulder injury.

On June 2, 2004 appellant underwent a magnetic resonance imaging (MRI) scan of the cervical spine which demonstrated a mild degenerative disc disease at C2-3, C3-4, C4-5, C5-6 and C6-7. He was also diagnosed with minimal symmetrical bulging of the annulus fibroses at C5-6 and C6-7 with no spinal stenosis or neural foraminal stenosis.

Dr. Dennis A. Ice, a physician Board-certified in physical medicine and rehabilitation, performed an electromyogram (EMG) and nerve conduction study on June 23, 2004. He found that appellant demonstrated a mild subacute bilateral C8 radiculopathy.

¹ It is well established that, to constitute competent medical opinion evidence, the medical evidence submitted must be signed by a qualified physician. *See Vickey C. Randall*, 51 ECAB 357, 361 (2000).

Dr. John B. Williamson, a Board-certified anesthesiologist, examined appellant on July 6 and 23 and September 21, 2004 and diagnosed cervical radiculopathy and cervical degenerative disc disease multilevel. He provided appellant with cervical epidurography. Dr. Williamson did not provide any history of work duties.

Dr. Michael O. La Grone, a Board-certified orthopedic surgeon, examined appellant on October 7, 2004 and reported that appellant was experiencing bilateral shoulder and arm pain. He noted that appellant felt that his symptoms were aggravated by work due to his short stature² and need to lift up. Dr. La Grone stated, "He does not report any specific work-related injury." He diagnosed degenerative disc disease of the cervical spine and possible herniated disc at C6 and C7.

By decision dated January 18, 2005, the Office denied appellant's claim finding that, although appellant had established the implicated work duties, he had not submitted the necessary medical evidence to establish a diagnosis as a result of his duties due to a lack of medical history and rationalized medical opinion evidence.

Appellant submitted an incomplete form request for reconsideration postmarked January 13, 2006. He also submitted a note from Dr. Williamson indicating that he examined appellant on November 1, 2004 and diagnosed herniated cervical disc and cervical radiculopathy. Dr. Williamson did not discuss appellant's employment.

On February 5, 2006 appellant stated that Dr. Scioli had informed him that it was possible that his accepted shoulder condition had caused him to have an excess amount of stress to the neck. He completed a form request for reconsideration on March 29, 2006.

By decision dated May 15, 2006, the Office reviewed appellant's claim on the merits and again found that he had failed to submit the necessary rationalized medical opinion evidence to meet his burden of proof.

LEGAL PRECEDENT

An occupational disease or illness is defined as a condition produced by the work environment over a period longer than a single workday or shift.³ 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 a disease or condition for which compensation is claimed; (2) a factual statement identifying the 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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature

² Appellant is 62 inches tall.

³ 20 C.F.R. § 10.5(q).

of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.⁵ This basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁶

ANALYSIS

The record indicates that appellant developed bilateral chronic shoulder subacromial bursitis due to factors of his federal employment and underwent surgical releases. Appellant is currently alleging that he developed neck pain radiating to his shoulders due to his employment duties of looking up and down. He has submitted the results of an MRI scan which demonstrated mild degenerative disc disease in the cervical spine and the results of an EMG which demonstrated mild bilateral C8 radiculopathy.

In support of his claim, appellant submitted a report dated October 19, 2004 from Dr. Scioli, a Board-certified orthopedic surgeon, who diagnosed "an injury to the cervical spine at C5-6." Dr. Scioli noted appellant's previous shoulder condition and opined that appellant had developed a "consequential injury" based on his understanding of the definition.⁷ As noted above, once an employment-related injury has developed every natural consequence that flows from the injury is deemed to arise out of the employment.⁸ Furthermore, a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁹ While Dr. Scioli opined that appellant's current neck condition was a consequence of his accepted shoulder injuries, in explaining how appellant's current neck condition arose, he attributed this condition to appellant's repetitive employment duties of looking up and down. He noted that the repetitive motion injury in and of itself could be contributing to appellant's pain. Dr. Scioli did not offer an explanation of how appellant's cervical spine injury was a direct and natural result of the primary shoulder condition. Therefore, the Board finds that the Office properly developed appellant's claim as an occupational disease, a condition produced by the work environment over

⁴ *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

⁵ *Albert F. Ranieri*, 55 ECAB ____ (Docket No. 04-22, issued July 6, 2004); A. Larson, *The Law of Workers' Compensation* § 10.01(2000).

⁶ *Charles W. Downey*, 54 ECAB 421, 422-23 (2003).

⁷ Legal standards are outside the realm of expertise of a physician. *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁸ A. Larson, *The Law of Workers' Compensation* § 10.01(2000).

⁹ *Charles W. Downey*, *supra* note 6.

a period longer than a single workday or shift,¹⁰ rather than a direct consequential injury as appellant's repetitive employment duties allegedly caused or contributed to his condition.

In reviewing Dr. Scioli's report, the Board finds that it does not contain the necessary rationalized medical opinion evidence to establish a causal relationship between appellant's diagnosed condition and his employment. Dr. Scioli noted that he had not reviewed diagnostic testing in reaching his diagnosis of C5-6 injury and recommended further testing to determine if a disc injury at this level was causing appellant's pain symptoms. While Dr. Scioli opined that appellant's employment had contributed to his cervical condition, he did not provide medical reasoning in support of his diagnosis, his conclusions were not based on the available test results and he did not offer any medical reasoning explaining how appellant's repetitive employment duties would have caused or aggravated his cervical condition. For these reasons, Dr. Scioli's report is not sufficient to meet appellant's burden of proof.

Dr. La Grone, a Board-certified orthopedic surgeon, examined appellant on October 7, 2004 and diagnosed degenerative disc disease of the cervical spine and possible herniated disc at C6-7. Dr. La Grone noted that appellant attributed his condition to his repetitive employment duties, but he did not offer an opinion as to whether he believe that appellant's work had caused or contributed to his diagnosed conditions. As Dr. La Grone did not offer an opinion on the causal relationship between appellant's employment and his condition along with medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant, his report is not sufficient to meet appellant's burden of proof.

The reports from Drs. Ice and Williamson did not discuss appellant's history of injury and, therefore, did not offer an opinion on the causal relationship between appellant's diagnosed condition and his employment duties. As such, these reports are not sufficient to meet appellant's burden of proof. Appellant has failed to submit the necessary rationalized medical opinion evidence to establish a causal relationship between his alleged employment duties and his diagnosed cervical condition. Therefore, he has failed to meet his burden of proof in establishing that he developed an occupational disease.

CONCLUSION

The Board finds that appellant did not submit the necessary medical evidence to establish that his diagnosed cervical conditions were due to his employment and the Office properly denied his claim.

¹⁰ 20 C.F.R. § 10.5(q).

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2006 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: October 4, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board