

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

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**H.N., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Fayetteville, GA, Employer**

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**Docket No. 06-1325  
Issued: September 22, 2006**

*Appearances:*  
*H.N., 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

**JURISDICTION**

On May 24, 2006 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated August 12 and December 1, 2005 and March 30, 2006 denying her occupational disease claim. 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 met her burden of proof in establishing that she sustained injuries to her neck, shoulder and arm in the performance of duty.

**FACTUAL HISTORY**

On June 7, 2005 appellant, a 58-year-old clerk, filed an occupational disease claim for benefits alleging that she developed severe pain in her neck, shoulder and arm due to factors of her federal employment. She stated that her condition resulted from keyboarding and sorting large volumes of mail over a long period of time.

Appellant submitted work excuses bearing illegible signatures from Health South Sports Medicine and Rehabilitation Center, dated June 1, 2, 3 and 8, 2005, and reflecting that appellant

presented for therapy on those dates. Appellant submitted a note dated May 10, 2005 from Dr. Unnisa Faiyaz, a treating physician, who stated that appellant had been under his care from May 10 through 13, 2005 and could return to work on May 16, 2005. In a note dated June 7, 2005, Dr. Faiyaz described the nature of appellant's illness as "chronic neck, right shoulder and right arm pain." He recommended that appellant return to light duty for four hours per day.

By letter dated July 12, 2005, the Office advised appellant that the information submitted was insufficient to establish that she was injured in the performance of duty. The Office asked appellant to submit details of employment events that allegedly caused an injury, as well as a comprehensive medical report from her treating physician containing a history of injury, diagnosis, and an opinion as to whether her claimed condition was causally related to her federal employment.

In a July 20, 2005 statement, appellant outlined the duties that allegedly caused her claimed condition. She stated that, from 1988 through 1993, she worked six days per week, 10 to 12 hours per day, and was required to keyboard 45 items per minute with 95 percent accuracy, using her right arm, while feeding mail into a flat sorter machine with her left arm. From 1993 through 1995, she was required to sort a minimum of 100 pieces of mail manually every eight minutes. She claimed that she developed low back pain by standing on a concrete floor and reaching above her shoulder. Appellant alleged that as of 1996, her job duties involved constant keyboarding with both hands, which has exacerbated her condition and caused her severe pain.

Appellant submitted a July 21, 2005 attending physician's report from Dr. Faiyaz, who provided diagnoses of chronic, persistent pain in the neck, arms and hands and indicated that nerve conduction in the left arm showed weakness. In response to the question as to whether or not the physician believed appellant's condition was caused or aggravated by employment, Dr. Faiyaz placed a checkmark in the "yes" box and noted "constant movement, reaching overhead, repetitive movement causing spasm of muscles."

In an undated statement appellant indicated that in December 1990, she became aware of pain that started from her neck down through her shoulders to her arms, wrists and hands. She stated that she delayed seeking medical treatment because the pain was not persistent. On May 9, 2005, appellant reported to her supervisor that her "illness came back severely."

Appellant submitted work slips from Dr. Faiyaz dated May 10 and 16, June 6 and 23, and July 21, 2005, noting that appellant had severe pain in neck and right arm.

By decision dated August 12, 2005, the Office denied appellant's claim, finding that she had failed to submit sufficient evidence to establish that she had sustained an injury under the Act. Finding that the evidence supported that the claimed events occurred, the Office stated that appellant had provided no medical evidence with a firm diagnosis which could be connected to the work-related events.

On November 8, 2005 appellant requested reconsideration. In support of her request, appellant submitted an October 19, 2005 duty status report from Dr. Faiyaz. In response to the question regarding how the injury occurred, Dr. Faiyaz noted "neck, shoulders, arms severe

pain.” Appellant submitted a September 12, 2005 duty status report from Dr. David Goodman, a Board-certified orthopedic surgeon, who provided a diagnosis of cervical spondylosis. In the section labeled “Diagnosis Due to Injury,” Dr. Goodman noted “none.” In an unsigned report dated September 12, 2005, Dr. Goodman provided an assessment of cervical spondylosis. He indicated that a magnetic resonance imaging (MRI) scan showed evidence of C4-5, C5-6 and C6-7 spondylosis. He stated that appellant had full range of motion of the cervical spine with no provocative maneuver, and a negative Spurling test. He also noted that she had occasional numbness of her hands. Dr. Goodman recommended that appellant be restricted to working six hours per day. In a letter dated November 9, 2005, appellant stated her belief that her injury was caused by her job duties.

In a merit decision dated December 1, 2005, the Office affirmed the denial of appellant’s claim. The Office found that appellant had established the fact of injury, but had failed to establish that the injury was causally related to factors of employment.

In a January 10, 2006 duty status report, Dr. Faiyaz stated, “This is a job-related injury causing chronic, persistent discomfort and pain.” He described clinical findings of chronic neck, right shoulder and left elbow pain. When asked to describe how the injury occurred, Dr. Faiyaz noted “neck, shoulders, arms, elbow severe pain.”

On January 18, 2006 appellant filed a claim for recurrence of disability. She alleged that after she returned to work on January 9, 2006, she developed a severe headache and chronic neck, shoulder, arm and right elbow pain, and claimed that she was required to work in excess of her doctor’s restrictions. In a letter dated February 17, 2006, the Office informed appellant that no action would be taken on her recurrence claim, as a denied claim cannot recur.

On February 23, 2006 appellant submitted a second request for reconsideration, claiming that she had been required to work “persistently from 12:16 p.m. to 15:57 p.m.” on January 9, 2006. Appellant alleged that she served 112 customers in a four-hour period. Appellant submitted numerous post office receipts dated January 9, 2006, reflecting sales conducted by clerk 13. Appellant stated her belief that her work duties were the cause of her right elbow injury.

In support of her request for reconsideration, appellant submitted unsigned notes dated January 23, 2006 from Fayette Resurgens Orthopaedics, reflecting appellant’s complaints of pain in the medial aspect of her elbow and her belief that her condition was related to her repetitive job duties. Appellant submitted copies of Dr. Faiyaz’ January 10, 2006 duty status report and a copy of the January 18, 2006 CA-2A. He also submitted a March 20, 2006 attending physician’s report from Dr. Goodman, who provided findings of a tender elbow and a diagnosis of medial epicondylitis. In response to the question as to whether Dr. Goodman believed appellant’s condition was caused by or aggravated by employment activity, he placed a checkmark in the “yes” box.

By decision dated March 30, 2006, the Office denied modification of its December 1, 2005 decision, finding that appellant had failed to establish that her diagnosed condition was causally related to her employment.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged,<sup>2</sup> and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<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) 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.<sup>4</sup>

Causal relationship is a medical issue, 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 incident or factor of employment. The opinion 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 established incident or factor of employment.<sup>5</sup>

Medical conclusions unsupported by rationale are of little probative value.<sup>6</sup> An award of compensation cannot be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.<sup>7</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joseph W. Kripp*, 55 ECAB \_\_\_\_ (Docket No. 03-1814, issued October 3, 2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

<sup>3</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

<sup>4</sup> *Michael R. Shaffer*, 55 ECAB \_\_\_\_ (Docket No. 04-233, issued March 12, 2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

<sup>5</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>6</sup> *Willa M. Frazier*, 55 ECAB \_\_\_\_ (Docket No. 04-120, issued March 11, 2004).

<sup>7</sup> *John D. Jackson*, 55 ECAB \_\_\_\_ (Docket No. 03-2281, issued April 8, 2004); *see also Michael E. Smith*, 50 ECAB 313, 317 (1999).

## ANALYSIS

The Board finds that appellant has failed to submit any medical report containing a rationalized, probative opinion which relates her claimed neck, and right shoulder and arm conditions to factors of her employment. For this reason, she has not discharged her burden of proof to establish her claim that her condition was sustained in the performance of duty.

In notes dated May 10, 2005, Dr. Faiyaz stated that appellant had been under his care from May 10 through 13, 2005 and could return to work on May 16, 2005. On June 7, 2005 Dr. Faiyaz described the nature of appellant's illness as "chronic neck, right shoulder and right arm pain," and recommended that appellant return to light duty for four hours per day. Numerous work slips signed by Dr. Faiyaz covering the period May 10 through July 21, 2005 reflect appellant's complaints of severe pain in her neck and right arm. In an October 19, 2005 duty status report, Dr. Faiyaz noted "neck, shoulders, arms, severe pain." None of the aforementioned reports contains an opinion on the cause of appellant's condition. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>8</sup> In his July 21, 2005 attending physician's report, Dr. Faiyaz provided a diagnosis of chronic, persistent pain in the neck, arms and hands and indicated that nerve conduction in the left arm showed weakness. In response to the question as to whether or not he believed appellant's condition was caused or aggravated by employment, Dr. Faiyaz placed a checkmark in the "yes" box and noted "constant movement, reaching overhead, repetitive movement causing spasm of muscles." This report lacks probative value for several reasons. First, a report that addresses causal relationship with a checkmark, without a medical rationale explaining how the work conditions caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.<sup>9</sup> Additionally, his report of pain is a symptom, not a diagnosis, and does not constitute a basis for payment of compensation.<sup>10</sup> Furthermore, Dr. Faiyaz did not describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed condition. In a January 10, 2006 duty status report, Dr. Faiyaz opined that appellant's condition was job related, causing "chronic, persistent discomfort and pain." When asked to describe how the injury occurred, Dr. Faiyaz noted "neck, shoulders, arms, elbow severe pain." Again, Dr. Faiyaz did not provide a definite diagnosis or an explanation as to the cause of the claimed condition. Medical conclusions unsupported by rationale are of little probative value.<sup>11</sup>

Dr. Goodman's reports also fail to establish that appellant's claimed condition was causally related to her employment. In a September 12, 2005 duty status report, Dr. Goodman provided a diagnosis of cervical spondylosis. However, in the section labeled "Diagnosis Due to Injury," he noted "none." In his unsigned narrative report of the same date, Dr. Goodman

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<sup>8</sup> *Dennis M. Mascarenas, supra* note 3.

<sup>9</sup> *See Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

<sup>10</sup> *See Robert Broome*, 55 ECAB \_\_\_\_ (Docket No. 04-93, issued February 23, 2004).

<sup>11</sup> *Willa M. Frazier, supra* note 6.

reiterated his diagnosis and recommended that appellant be limited to working six hours per day. Although he noted appellant's belief that her injury was caused by her job duties, Dr. Goodman did not offer his own opinion on causal relationship, thereby limiting the probative value of his report. Finally, in his January 18, 2006 duty status report, Dr. Goodman provided a diagnosis of medial epicondylitis and placed a checkmark in the "yes" box, indicating his belief that the diagnosed condition was caused or aggravated by employment activity. For reasons stated above, Dr. Goodman's opinion in the form of a checkmark is insufficient to establish a causal relationship between appellant's condition and factors of her federal employment.

The remaining medical evidence of record included work excuses bearing illegible signatures and unsigned notes from Fayette Resurgens Orthopaedics. These reports do not constitute relevant probative medical evidence, in that physicians' reports that cannot be verified, either because the signature on the document is missing or illegible, cannot be considered as probative evidence.<sup>12</sup>

Appellant attributed her condition to her repetitive job duties. However, standing alone, the belief that her condition was caused, precipitated or aggravated by her employment is not sufficient to establish causal relationship.<sup>13</sup> Causal relationship must be established by rationalized medical opinion evidence, and appellant failed to submit such evidence.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and doctor's opinion, with medical reasons, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how appellant's claimed condition was caused or aggravated by her employment, appellant has not met her burden of proof in establishing that she sustained an occupational disease in the performance of duty causally related to factors of employment. The Board, therefore, affirms the Office's August 12 and December 1, 2005 and March 30, 2006 decisions denying benefits for appellant's claimed neck, shoulder and arm conditions.

### **CONCLUSION**

The Board finds that appellant has failed to meet her burden of proof to establish that her claimed neck, shoulder and arm conditions were sustained in the performance of duty.

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<sup>12</sup> *Merton J. Sills*, 39 ECAB 572 (1988).

<sup>13</sup> *See John D. Jackson*, *supra* note 7.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated March 30, 2006 and December 1 and August 12, 2005 are affirmed.

Issued: September 22, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board