

informed his supervisor of his condition on November 11, 2004. Appellant explained that he had nerve damage in his right arm from a prior injury. He stated: "To compensate for this, I use my left arm to sort and deliver mail. This causes an increase in the rotation of my neck."

The employing establishment controverted appellant's claim. The employing establishment maintained that he sustained a nonemployment-related injury on November 11, 2004 and noted that he also worked as a private farmer.

In a chart note dated November 4, 2004, Dr. Tim Penner, Board-certified in family practice, discussed appellant's history of left shoulder and neck pain for the prior two weeks. He stated: "[Appellant] notices that his job at work, reaching back to take mail out of his 'mule' with the left arm is extremely painful at times. Even just sorting mail lately has caused him to experience pain in his left shoulder. The pain is now radiating up into his neck." Dr. Penner diagnosed a possible cervical disc problem.

On November 17, 2004 Dr. Allan D. Holiday, Jr., a Board-certified orthopedic surgeon, diagnosed left arm pain and cervical disc disease at C6-7. He opined that appellant's condition was most likely aggravated by his employment "due to neck rotation." On December 17, 2004 Dr. Holiday asserted that his "current neck problems are work related."

By letter dated January 28, 2005, the Office requested additional factual and medical information from appellant, including a comprehensive medical report from his attending physician addressing the causal relationship between any diagnosed condition and work factors. The Office also requested that appellant describe his November 2004 nonemployment-related injury. In a February 9, 2005 response, appellant explained that on November 6, 2004 he was hooking a trailer to his truck. He experienced crush injury to his finger "when it was pinched between the hitch and a concrete block used to support the hitch." Appellant also described his farm duties.

On February 18, 2005 the employing establishment again controverted the claim, noting that appellant performed work on a farm. The employing establishment indicated that a coworker witnessed him driving a truck loaded with two cows on February 17, 2005.

In a report dated March 7, 2005, Dr. Holiday discussed appellant's problems at work "reaching back to take mail out of his 'mule' with the left arm" and his left shoulder pain when sorting mail. He interpreted an magnetic resonance imaging (MRI) scan of the cervical spine obtained on November 7, 2004 as showed disc bulging and degeneration at C5-6, C6-7 and C7-T1. A second cervical MRI scan study was unchanged. Dr. Holiday stated:

"[Appellant] reports that, when he turns his head far to the left to reach, his neck is at an extreme range of motion and this can definitely aggravate or cause the current symptom complex that he has in the upper extremity as well as in the cervical spine. By rotating the neck from anterior to the extreme posterior left, the openings in which the cervical roots exit the vertebral column are narrowed and opened on a repetitive basis. It is my thought process that this repetitive opening and closing of the neuroforamen related to his neck rotation aggravated and caused the symptoms he has of his upper extremity."

Dr. Holiday released appellant to resume limited-duty work on February 14, 2005 and to his usual employment on April 4, 2005.

By letter dated May 25, 2005, the Office requested that Dr. Holiday review the statement of accepted facts and clarify the etiology of appellant's condition and the nature of any underlying disease. The Office further requested that Dr. Holiday discuss whether he had knowledge of appellant's activities outside employment. On June 2, 2005 Dr. Holiday diagnosed degeneration and narrowing of the cervical discs but no herniation. He opined that appellant's left shoulder and arm pain resulted from an aggravation of preexisting cervical degenerative changes. Repetitive neck motions caused the aggravation but not the degeneration of the cervical spine. Dr. Holiday noted that cervical degenerative changes were "common in middle-aged adults." He asserted that appellant's "work in which he turns the neck side-to-side to look over his shoulder and load the mail has aggravated this underlying condition." Dr. Holiday stated:

"The location of the pain correlates well with looking over the left shoulder. This would open and close the neural foramen irritating the nerves primarily in the left arm. The activities that [appellant] partakes in are within reasonable and normal range for an adult male to pursue during his middle ages. The type of process he has occurs gradually over time with repetitive turning of the neck and I cannot provide evidence that this happened directly at work."

Dr. Holiday opined that appellant could resume his usual employment avoiding similar repetitive neck motions.

On June 24, 2005 the Office requested that Dr. Holiday specify exactly which cervical discs had been aggravated and provide copies of the MRI scan studies.¹

By decision dated August 5, 2005, the Office denied appellant's claim on the grounds that the evidence failed to establish that he sustained a condition due to factors of his federal employment. On November 10, 2005 appellant requested reconsideration. In a decision dated November 23, 2005, the Office denied his request on the grounds that the evidence was insufficient to warrant merit review of the claim under 5 U.S.C. § 8128.

In a report dated October 6, 2005, received by the Office on November 30, 2005 Dr. Penner asserted that appellant's neck, shoulder and upper back problems were "related directly to his job." On January 20, 2006 Dr. Holiday informed the Office that it was not possible to determine precisely which cervical discs were aggravated.

On February 8, 2006 appellant, through his attorney, requested reconsideration. The attorney argued that Dr. Holiday's March 7 and June 2, 2005 reports established that work duties aggravated the preexisting degenerative changes in appellant's cervical spine. On March 24, 2006 the employing establishment maintained that his farming duties were more strenuous than

¹ A cervical MRI scan study dated November 7, 2004 revealed mild disc bulges at C4-5, C5-6 and C6-7 flattening the anterior thecal sac but not contracting the cord. An MRI scan of the cervical spine dated May 27, 2004 showed minimal degenerative cervical changes.

his work duties. By decision dated April 14, 2006, the Office denied modification of its August 5, 2005 decision. The Office determined that the newly submitted medical evidence was insufficiently rationalized to show that he sustained a condition aggravated by his employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitation; that an injury was sustained while 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 and every compensation claim regardless of whether the claim is predicated on 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;⁵ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁶ and (3) medical evidence establishing 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.⁷

The medical evidence required to establish causal relationship generally 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.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant,⁹ must be one of reasonable medical certainty¹⁰ explaining the nature of the relationship

² 5 U.S.C. §§ 8101-8193.

³ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁶ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁷ *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁸ *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁰ *John W. Montoya*, 54 ECAB 306 (2003).

between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility to see that justice is done.¹² Once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in a proper manner.¹³

ANALYSIS

Appellant attributed his cervical spine condition to repetitive neck motions while performing his employment duties. He noted that due to a right upper extremity injury he used his left arm to deliver mail. The employing establishment did not controvert that appellant performed these duties. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed cervical condition and the identified employment factors.

On November 17, 2004 Dr. Holiday diagnosed left arm pain and cervical disc disease at C6-7 most likely aggravated by employment. On December 17, 2004 he attributed appellant's neck problems to his employment. In a report dated March 7, 2005, Dr. Holiday noted that appellant experienced pain reaching with his left arm when turning to take mail out of his mule. He interpreted an MRI scan study as revealing disc bulging and degeneration at C5-6, C6-7 and C7-T1. Dr. Holiday opined that the repetitive neck rotation appellant performed could aggravation his upper extremity and cervical spine symptoms. He stated: "By rotating the neck from anterior to the extreme posterior left, the openings in which the cervical roots exit the vertebral column are narrowed and opened on a repetitive basis."

On June 2, 2005 Dr. Holiday found that appellant's pain in his left shoulder and arm resulted from an aggravation of preexisting cervical degenerative discs. He opined that appellant's repetitive neck movements aggravated but did not cause the degeneration, which was common for a person his age. Dr. Holiday found that his "work in which he turns the neck side-to-side to look over his shoulder and load the mail has aggravated this underlying condition." He explained that the location of the pain correlated to "looking over the left shoulder. This would open and close the neural foramen irritating the nerves primarily in the left arm."¹⁴

¹¹ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹² *Jimmy A. Hammons*, 51 ECAB 219 (1999).

¹³ *Melvin James*, 55 ECAB 406 (2004).

¹⁴ While Dr. Holiday indicated that he could not provide direct evidence that the neck rotation that aggravated appellant's cervical disc disease occurred at work, the Board has held that the opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty. See generally *Ellen L. Noble*, 55 ECAB 530 (2004) (while the opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal).

It is well established that proceedings under the Act are not adversarial in nature and that while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁵ Although Dr. Holiday does not provide sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence his contention that he sustained an aggravation of degenerative disc disease of the cervical spine due to employment factors, his opinion raises an inference of causal relationship sufficient to require further development by the Office.¹⁶ Additionally, the record does not contain any contradictory medical evidence. The case will, therefore, be remanded to the Office for further development of the medical evidence to determine whether appellant sustained a cervical condition due to factors of his federal employment and, if so, the nature and extent of any disability or need for medical treatment. After such further development as the Office deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 14, 2006 and November 23 and August 5, 2005 are set aside and the case is remanded for further proceedings consistent with this decision by the Board.

Issued: December 28, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

¹⁵ *Allen C. Hundley*, 53 ECAB 551 (2002).

¹⁶ *Phillip L. Barnes*, 55 ECAB 426 (2004); *John J. Carlone*, 41 ECAB 354 (1989).