

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

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**N.R., Appellant**

**and**

**DEPARTMENT OF AGRICULTURE, FOOD  
SAFETY INSPECTION SERVICE, Norma, NJ,  
Employer**

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**Docket No. 07-497  
Issued: June 5, 2007**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 19, 2006 appellant filed a timely appeal from Office of Workers' Compensation Programs' February 6 and June 22, 2006 merit decisions. 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 met her burden of proof in establishing that her claimed herniated cervical disc and hepatitis C conditions are causally related to her federal employment.

**FACTUAL HISTORY**

Appellant, a 39-year-old poultry line inspector, filed a Form CA-2 claim for benefits on March 29, 2004, alleging that she developed a herniated cervical disc and hepatitis C due to factors of her employment. She submitted diagnostic test results and disability slips from Dr. Arthur J. McDermet, an osteopath.

By letter dated May 3, 2004, the Office advised appellant and Dr. McDermet that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office requested a comprehensive medical report describing appellant's symptoms and an opinion explaining how her claimed conditions were causally related to her federal employment.

By decision dated July 7, 2004, the Office denied appellant's claim that she sustained employment-related herniated disc or hepatitis C conditions. The Office indicated that appellant did not submit medical evidence sufficient to establish that she had sustained a medical condition causally related to employment factors.

By letter dated July 15, 2004, appellant's attorney requested an oral hearing which was held on April 6, 2005. Appellant submitted a June 18, 2004 report from Dr. McDermet, who stated:

"[Appellant] first presented to our office [on April 1, 2003] with complaints of neck pain, fatigue, neck and upper extremity edema. Within a week she then developed upper extremity radicular symptoms as well. Numerous exam[ination]s and tests were performed; these included cervical [x]-ray and magnetic resonance imaging [MRI] scans, upper extremity venogram, echocardiogram and blood work. [Appellant] was found to have a C5-6 and C6-7 disc herniation with mild canal stenosis, C6-7 mild right lateral recess stenosis and C3-4 and C4-5 central protrusions without canal stenosis.

"[Appellant] was out of work from April 28 to October 26, 2003. She returned to work on October 27, 2003. With [appellant's] return to work her neck, shoulder and back pain returned and became progressively worse with each week of work. Despite anti-inflammatory and analgesic medication and physical therapy, her symptoms progressed. It is felt that the nature of [appellant's] job, (long hours of sitting or standing with bending forward to perform the inspections) as well as the cool environment directly contributed to the worsening of her neck and back pain. Also, her hepatitis C was in an active state and needed treatment. Consequently, [appellant] was advised to take a medical disability leave from her job so that her two medical conditions could be treated.

"At the present time [appellant] is receiving pain management for her cervical pain. She is also receiving medical treatment for her hepatitis C. [Appellant] is unable to return to her current position due to the direct cause and effect relationship of her job activity and the resultant increase of her symptoms. It also seems unadvisable for someone with active [h]epatitis C to function as a food inspector; [appellant] informs me that she periodically can be lacerated by a chicken bone with bleeding thru her protective gloves as a result of the laceration. It seems highly unlikely that [appellant] will be able to return to her position as [an employing establishment] poultry inspector despite treatment for her two conditions, as her job will probably always aggravate her cervical spine condition."

At the hearing, appellant alleged that she developed her neck and hepatitis conditions due to her work as a poultry inspector beginning in 1998. She was required to work on a stainless steel stand inspecting chickens as they moved down an assembly line. Appellant related that she would inspect 62 chickens per minute as they moved down the line, leaning over with her arms raised and her neck in a forward position. With each passing chicken, she would palpate the viscera, turn it around with both hands and look for diseases, in a continuous process. Appellant worked from 7:00 a.m. to 3:30 p.m., with a 30-minute break for lunch and 15-minute breaks in the morning and afternoon. She stated that she first began experiencing problems with her neck and back in April 2003. When asked if she had ever hurt her neck or back before, appellant replied, "No."

By decision dated June 23, 2005, an Office hearing representative affirmed the July 7, 2004 decision.

By letter dated November 4, 2005, appellant's attorney requested reconsideration. In a November 14, 2005 report, Dr. McDermet stated:

"I understand that [appellant] had been denied her compensation claim because it has been determined that her job as poultry inspector did not have physical requirements that aggravated her medical condition. This assumption is contrary to my medical opinion. [Appellant] has suffering from severe neck pain and cervical radiculopathy as well as lumbar radiculopathy. She also has right upper extremity weakness. The strain of prolonged sitting, particularly in a cold, damp environment of the poultry inspection plant can do nothing but increase and aggravate her musculoskeletal symptoms. [Appellant's] symptoms are aggravated even by sitting or standing more than 15 [to] 20 minutes in one position in a warm, nonhumid environment."

By decision dated February 6, 2006, the Office denied modification of the June 23, 2005 decision. The Office noted that Dr. McDermet's report indicated that appellant had an underlying medical condition which was aggravated by her employment. It stated, however, that Dr. McDermet failed to relate this condition to work factors or indicate the periods of disability related to the aggravation.

By letter dated April 3, 2006, appellant's attorney requested reconsideration. In a report dated May 5, 2006, Dr. McDermet indicated that appellant had underlying neck and back conditions stemming from a motor vehicle accident which occurred on October 21, 2001. He advised that these conditions were aggravated by her employment. Dr. McDermet stated, however, that, while appellant had aggravated symptoms related to the motor vehicle accident it was not work related.

By decision dated June 22, 2006, the Office denied modification. The Office noted that Dr. McDermet failed to submit a medical opinion indicating that he was aware of appellant's job duties and the process by which these job duties resulted in a work-related condition.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing that 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 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.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<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 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 causal relationship is usually rationalized medical 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.<sup>4</sup>

### **ANALYSIS**

The Board finds that appellant has failed to submit sufficient medical evidence to establish that her herniated cervical disc or hepatitis C conditions are causally related to her employment. For this reason, appellant has not discharged her burden of proof to establish her claim that this condition was sustained in the performance of duty.

Appellant submitted a June 18, 2004 report from Dr. McDermet which indicated that she had complaints of neck pain, fatigue, upper extremity radicular symptoms and a hepatitis C condition. Diagnostic tests indicated C5-6 and C6-7 disc herniation with mild canal stenosis, C6-7 mild right lateral recess stenosis and C3-4 and C4-5 central protrusions without canal stenosis. Dr. McDermet noted that appellant was out of work from April 28 through

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Id.*

October 2003, when she returned to work and experienced a resumption of her neck, shoulder and back pain; he related that her symptoms progressively worsened with each week of work. Dr. McDermet opined that the nature of appellant's job, which entailed long hours of sitting or standing while bending forward to perform the inspections, as well as the cool environment, directly contributed to the worsening of her neck and back pain. He concluded that appellant was unable to return to her current position due to the direct cause and effect relationship of her job activity and the resultant increase of her symptoms. Dr. McDermet also advised that she was receiving medical treatment for her hepatitis C, which made it unlikely that appellant could resume working as a poultry inspector. He recommended that appellant take a medical disability leave from her job so that her two medical conditions could be treated.

Appellant stated at the hearing that her cervical and hepatitis conditions were causally related to her work duties as a poultry inspector. She indicated that these conditions developed because her job required leaning forward with her arms raised and her neck bent, while repetitively inspecting and handling chickens on an assembly line for hours at a time. However, Dr. McDermet did not sufficiently explain in his report how appellant's duties as a poultry inspector caused or contributed to her herniated cervical disc or hepatitis C conditions. The mere fact that the conditions manifested themselves during a period of employment does not raise an inference of causal relation.<sup>5</sup> Dr. McDermet's opinion is of reduced probative value as he did not provide adequate rationale explaining how or why appellant's cervical condition was aggravated by factors of employment.<sup>6</sup> The Office properly found that appellant did not sustain herniated cervical disc or hepatitis C conditions in the performance of duty in its July 7, 2004 and June 23, 2005 decisions.

Following the June 23, 2005 Office decision, appellant submitted Dr. McDermet's November 2005 report. Dr. McDermet asserted that appellant's job as poultry inspector had physical requirements which aggravated her medical condition. He noted that appellant was experiencing severe neck pain, cervical and lumbar radiculopathy and right upper extremity weakness. Dr. McDermet opined that the strain of prolonged sitting, particularly in a cold, damp environment of the poultry inspection plant increased and aggravated her musculoskeletal symptoms; these symptoms were aggravated by sitting or standing more than 15 to 20 minutes in one position in a warm, nonhumid environment. The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>7</sup> Dr. McDermet's report did not address how appellant's diagnosed cervical herniated disc condition was causally related to employment factors. The Office noted that he had indicated that factors of appellant's employment had aggravated her cervical condition, but found that these were underlying pathologies unrelated to her employment. It stated that, although appellant had adduced medical evidence alleging that she had experienced aggravation of an underlying condition, Dr. McDermet failed to state the periods of disability related to the alleged

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<sup>5</sup> See *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>6</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>7</sup> See *Ann C. Leanza*, 48 ECAB 115 (1996).

aggravation and explain why the aggravation continued during those periods. The Office properly concluded that Dr. McDermet did not relate any of appellant's work factors to any periods of disability. The Board, therefore, affirms the Office's February 6, 2006 decision.

Following the February 6, 2006 decision, appellant submitted a May 5, 2006 report from Dr. McDermet, who advised that appellant's underlying neck and back conditions stemmed from a motor vehicle accident which occurred on October 21, 2001 and were aggravated by her employment. Dr. McDermet stated, however, that the motor vehicle accident was not work related. This report is not sufficient to meet appellant's burden of proof to submit probative, rationalized medical evidence to establish that her claimed cervical condition was causally related to her employment. Appellant noted before the hearing representative that she did not recall any prior injury. Dr. McDermet did not fully discuss how her work activities would have been competent to cause the claimed condition. Moreover, the Board has held that a report which is not based on a complete and accurate factual and medical history is of limited probative value. Dr. McDermet indicated that appellant's neck and back symptoms originated from a 2001 automobile accident. This is in contrast to appellant's assertion at the April 2005 hearing that she recalled no prior injury. Dr. McDermet's opinion is of diminished probative value for the further reason that it is generalized in nature and equivocal in that he was not able to state conclusively that appellant's herniated cervical disc condition was causally related to her employment. The Board, therefore, affirms the Office's June 22, 2006 decision.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof in establishing that her claimed herniated cervical disc and hepatitis C conditions were causally related to her employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 22 and February 6, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 5, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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