

On January 11, 2006 appellant, then a 41-year-old mail handler, filed an occupational disease claim alleging that her limited-duty work, which required repetitive activities, caused an aggravation of her preexisting neck and shoulder problems resulting in bilateral carpal tunnel syndrome and brachial plexus of the right ulnar and radial nerves. She became aware that her illness was caused by her employment as of September 28, 2005.

Appellant submitted a September 28, 2005 report from Dr. Scott M. Fried, an osteopath, who examined appellant, reviewed her medical records and listed his impression as repetitive strain injury with cumulative traumas in her bilateral upper extremities with median and radial neuropathy; bilateral brachial plexitis status post traction injury left thoracic outlet and herniated disc October 30, 1997; status post bilateral shoulder capsular injuries postoperative decompression right March 2001, left March 2003; and sympathetically mediated pain syndrome with long thoracic neuritis bilaterally. Dr. Fried discussed appellant's prior injuries to her left and right shoulders that occurred during her federal employment. He noted that appellant returned to work in the spring of 2004 repairing mail and had difficulty. Dr. Fried opined:

"There is no doubt a direct correlation between the work activities and initial injury and [appellant's] ongoing complaints. The repair mail position she continues to return to is repetitive activity and requires prolonged head and neck posturing. This continues to cause new and repeat injury. I am requesting a job description that allows strict sedentary work with no repetitive activity and no head and neck posturing. Headset for [tele]phone and minimal keying or writing. I have also recommended a new pain management opinion to hopefully get a handle on her significant pain syndrome."

By letter dated January 31, 2006, the Office requested that appellant submit further information. The Office noted that appellant had two prior workers' compensation claims under which she lost significant time from work and that she was working in a light-duty capacity at the time of her recent claim.¹

Appellant submitted an electroneuromyographic evaluation dated October 28, 2005 from Dr. Richard Read, a Board-certified electrophysiologic clinical specialist, who indicated that the test results were abnormal. Dr. Read noted that there "is evidence proximally of bilateral and moderate brachial plexus compromise that involves the lateral cord of the right upper plexus and the upper trunk of the left upper plexus. There is also evidence of a post ganglionic compromise of the left lower trunk." Dr. Read stated that there was evidence of a focal compartment neuropathy and that the right radial nerve at the radial tunnel, although technically calculating a normal conduction velocity, was borderline, which suggested a low level or a developing radial tunnel compartment neuropathy on the right.

In a decision dated March 3, 2006, the Office denied appellant's claim for compensation as the medical evidence did not establish that her claimed injury resulted from her accepted job duties.

By letter dated March 14, 2006, appellant, through her attorney, requested an oral hearing.

¹ The Office assigned File Nos. 030230781 and 032006410. Under File No. 030230781, the Office accepted left shoulder strain, cervical strain, unspecified back strain and displacement of the 6th cervical vertebrae as resulting from an October 30, 1997 employment injury. Under File No. 032006410, the Office accepted right shoulder impingement sustained on February 4, 2002. The Office noted that its records revealed that appellant was out of work for the following periods: March 24 to July 24, 2002; January 11 to May 15; May 31 to August 22; August 19 to September 11, 2003; October 29, 2003 to March 9, 2004; December 1, 2004 to January 8, 2005 and September 28, 2005 to January 6, 2006.

In a letter dated February 27, 2006, appellant noted that, after her visit to Dr. Fried on September 28, 2005, she was placed on total disability due to her work-related injuries. She had been working for the employing establishment since 1998, she was assigned a limited-duty position repairing damaged mail and, as of 2002, she was assigned to working “rips and torn for flats only.” Appellant noted that repairing mail involved a lot of lifting, reaching, bending over, standing and moving rolling equipment such as hampers. She took pain medication for the discomfort from her back and sides of her neck into her shoulders. Appellant acknowledged that she lost a significant amount of time for work with regard to her two prior claims.

In a December 29, 2005 medical report, Dr. Fried noted that appellant was “tender over the bilateral supraclavicular plexus fossa, down the bilateral long thoracic nerve distribution, and across the bilateral superior traps with notable spasm on exam[ination].” He indicated that appellant should remain out of work until she receives an “appropriate modified job description that fits within her capabilities.”

In a January 30, 2006 report, Dr. Fried interpreted x-rays as showing an unremarkable right shoulder and right acromioclavicular joint and no significant instability or arthrosis in the shoulder or acromioclavicular joint.

In an April 3, 2006 report, Dr. Fried diagnosed sympathetically-mediated pain syndrome in the bilateral upper extremities and neuropathy thoracic outlet syndrome left and right, ulnar neuropathy right, capsulitis of the left and right shoulders, and repetitive strain injury (carpal tunnel) secondary to work activities with brachial plexus involvement and bilateral upper extremities and with ulnar neuropathy. He recommended a pain management program.

At the hearing held on August 1, 2006, appellant testified that she was first employed at the employing establishment in March 1997 as a mail handler. During the course of her employment, she sustained an injury to her left shoulder on October 30, 1997 and to her right shoulder on March 15, 2003. Appellant returned to light-duty work but alleged that it made her condition worse. She noted that she saw Dr. Fried for the first time on September 28, 2005 and that he felt that appellant could not do her limited-duty work.

By decision dated November 8, 2006, the hearing representative affirmed the denial of appellant’s claim, finding insufficient rationalized medical evidence in support of appellant’s contention that her bilateral upper extremity condition was causally related to the factors of her federal employment.

LEGAL PRECEDENT

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 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 of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.²

ANALYSIS

The Board finds that this case is not in posture for decision regarding whether appellant sustained an injury causally related to factors of her federal employment.

Appellant alleged that, as a result of her repetitive duties at work in her limited-duty capacity as a mail handler, she sustained an aggravation of her preexisting neck and shoulder problems resulting in bilateral carpal tunnel syndrome and brachial plexus right ulnar and radial nerve. In support of her claim, she submitted a September 28, 2005 report by Dr. Fried wherein he discussed appellant's prior injuries and her federal employment. Dr. Fried diagnosed appellant with cumulative traumas in her bilateral upper extremities with median and radial neuropathy and bilateral brachial plexitis. He opined that there was a direct correlation between appellant's work activities and her ongoing complaints. Dr. Fried noted that her repair mail position continued to return to repetitive activity that requires prolonged head and neck posturing which continues to cause injury. He did not clearly indicate why appellant's current injuries were related to a new aggravation caused by appellant's limited-duty position and not directly related to the prior injuries. However, the Board does note that Dr. Fried did discuss appellant's job duties and concluded that there was a direct correlation between appellant's job duties and her new injury. The Board further notes that his reports are not contradicted by any medical or factual evidence in the records. It is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.³ While the report of Dr. Fried is not sufficient to meet appellant's burden of proof to establish his claim, it stands uncontroverted in the record and is, therefore, sufficient to require further development by the Office.⁴ The Board will remand the case to the Office for further development regarding the issue of causal relationship. Following this and any other development deemed necessary, the Office shall issue an appropriate decision in this case.

CONCLUSION

The Board finds that the case is not in posture for decision as the case must be remanded to the Office for further development regarding causal relationship.

² *Solomon Polen*, 51 ECAB 441 (2000); *see also Michael E. Smith*, 50 ECAB 313 (1999).

³ *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Virginia Richard*, 53 ECAB 430 (2002); *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 8 and March 3, 2006 are vacated and the case remanded for further consideration consistent with this opinion.

Issued: October 23, 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