

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

D.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Panorama City, CA, Employer**

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**Docket No. 08-2348
Issued: July 2, 2009**

Appearances:

*Alan J. Shapiro, 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 August 26, 2008 appellant filed a timely appeal of the August 1, 2008 merit decision of the Office of Workers' Compensation Programs, which denied his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant's cervical condition and bilateral carpal tunnel syndrome are causally related to the May 27, 2006 employment incident.

FACTUAL HISTORY

On May 27, 2006 appellant, then a 54-year-old clerk, filed a traumatic injury claim for pain in his right shoulder blade, right arm and neck which he experienced while throwing mail in the P.O. Box section. That afternoon, he was seen at the employing establishment's contract medical facility, Healthline Medical Group. A physician's assistant diagnosed overuse syndrome of the right upper extremity, with an injury date of May 27, 2006. Appellant was

prescribed Ibuprofen and advised to avoid lifting, pushing or pulling over 15 pounds. He was also instructed to alternate job tasks and to avoid lifting above the shoulder level on the right side. The injury was characterized as “nontraumatic” and appellant was told to follow-up with his personal physician.

In a July 7, 2006 statement, appellant described his employment activities on May 27, 2006. He explained that he was placing mail in P.O. boxes when he suddenly started having pain in the upper right side of his body, especially in the right shoulder, right arm and neck. He had been doing this particular type of work since November 2004 and he usually spent one to two hours per day, five days per week stuffing P.O. boxes. Appellant further explained that he would hold the mail with the left hand while placing each letter in the P.O. boxes. The repetitive motion caused him to start having pain in the upper right side of his body. The morning of May 27, 2006 was reportedly the first time appellant noticed the pain. Appellant also stated that his physician, Dr. Michael Gitter, who had treated him for a prior work-related injury, advised that the new injury was an aggravation of the previous work-related injury caused by repetitive motion.

In a decision dated July 14, 2006, the Office denied appellant’s May 27, 2006 traumatic injury claim, finding that he had not established fact of injury. It explained that the physician assistant’s May 27, 2006 report was of no probative value because he was not a physician.

In a letter dated July 18, 2006, the employing established confirmed that appellant’s duties included “throwing P.O. Box mail,” which he had been doing for over a year. The employing establishment also indicated that appellant had been working under medical restrictions associated with a July 20, 1985 employment injury.¹

On July 26, 2006 the Office received additional medical records regarding the treatment appellant received on May 27, 2006. Appellant reported that he was ““doing [his] regular work putting letters in the P.O. boxes when [he] began to feel pain in [his] right shoulder and the right side of [his] neck.”” He denied paresthesias or radiation of the pain into the lower arm. Appellant also denied any recent trauma to the neck, right shoulder or right arm. X-rays of the cervical spine showed normal alignment and no evidence of any prevertebral soft tissue swelling. There was no loss of lordotic curvature and no evidence of loss of height of the vertebral bodies, or evidence of disc space narrowing. There was no x-ray evidence of encroachment upon the neuroforaminal structures. However, mild degenerative changes were seen in several vertebra. X-rays of appellant’s right shoulder were normal.² The reported diagnosis and work restrictions were consistent with what had previously been noted by the physician’s assistant. This later report was co-signed by a Dr. Barry S. Rosenblum.

In an August 22, 2006 report, Dr. Gitter indicated that appellant injured his neck and back in 1985 and had been working under permanent restrictions as a result of that prior injury. He

¹ The referenced claim (xxxxxx988) had been accepted for lumbar sprain, lumbar disc displacement and aggravation of neck sprain.

² There was no evidence of fracture, subluxation or dislocation of the shoulder joint. Additionally, there were no degenerative changes noted or any evidence of soft tissue swelling.

also treated appellant over the past several months for an October 2005 stress-related exacerbation of the 1985 neck and low back injury. With respect to the latest injury, Dr. Gitter explained that on May 27, 2006 appellant was throwing mail when he noted immediate pain on the right side of his neck and right shoulder and arm, with some radiating pain to his hand. Appellant's current diagnoses included acute cervical sprain, cervical radiculopathy and preexisting cervical spondylosis spinal osteoarthritis. Dr. Gitter explained that there was a marked increase in the level of appellant's neck pain subsequent to the May 27, 2006 injury. Appellant's condition had worsened and he now had findings of cervical radiculopathy.

In a September 26, 2006 attending physician's report (Form CA-20), Dr. Gitter identified May 27, 2006 as the date of injury and the reported history of injury was "throwing mail, injured neck." He diagnosed cervical radiculopathy and preexisting cervical and lumbar spondylosis. Dr. Gitter also provided a September 26, 2006 narrative report. He noted that appellant continued to have a great deal of pain in his neck, radiating to his right arm, as well as ongoing back pain. Dr. Gitter explained that he was treating appellant for an acute injury to his neck and a chronic preexisting condition to his neck and low back as a result of the 1985 injury. He provided the same diagnoses as reported on a Form CA-20. Dr. Gitter was awaiting the results of a cervical magnetic resonance imaging (MRI) scan and electrodiagnostic studies.

On October 17, 2006 Dr. Gitter reported that appellant continued to have pain in his neck, with numbness and tingling in his right hand and ongoing pain in his low back. A recent cervical MRI scan showed degenerative changes at multiple levels, but worse at C5-6. The upper extremity electrodiagnostic studies were reportedly consistent with moderately severe bilateral carpal tunnel syndrome. Dr. Gitter diagnosed acute cervical sprain, multi-level preexisting cervical spondylosis, preexisting lumbar spondylosis with myofascial pain, and electrodiagnostic evidence of bilateral carpal tunnel syndrome. He explained that appellant was symptomatic and his main problem was his neck with pain radiating to his right hand. While the diagnostic studies showed bilateral carpal tunnel syndrome, Dr. Gitter stated that physical findings showed that this condition was only on the right side. He had reviewed appellant's job description, which revealed repetitive use of his upper extremities. Dr. Gitter indicated that appellant's carpal tunnel syndrome should be treated on an industrial basis. He recommended wrist braces for use at night and continued physical therapy. Dr. Gitter also advised that appellant could continue to work in his current capacity.³

On March 7, 2007 appellant requested reconsideration.⁴

³ Appellant worked through December 13, 2006, at which point Dr. Gitter found him totally disabled due to myofascial pain, anxiety and depression stemming from his 1985 neck and back injuries under claim number xxxxxx988.

⁴ Appellant had previously requested an oral hearing, which was denied as untimely on August 30, 2006.

By decision dated June 7, 2007, the Office found that appellant established the May 27, 2006 incident. However, it denied the claim because appellant had not established that his condition was causally related to his federal employment.⁵

On June 14, 2007 appellant's counsel requested an oral hearing. The Branch of Hearings and Review denied appellant's request on July 9, 2007. Because appellant had previously requested reconsideration, he was not entitled to a hearing as a matter of right.

Appellant continued to submit periodic reports from Dr. Gitter on Form CA-20. In a July 27, 2007 report, Dr. Gitter diagnosed acute cervical sprain, cervical radiculopathy, and cervical spondylosis. He identified May 27, 2006 as the date of injury and he attributed appellant's condition to continuous repetitive motion aggravated by throwing mail into P.O. boxes. He also noted that appellant had been totally disabled since December 13, 2006. In the remarks section of the form report, Dr. Gitter indicated that appellant "will have permanent cervical spondylosis as a direct result of this job[-]related injury."

On August 8, 2007 Dr. Gitter reiterated his prior diagnoses regarding appellant's cervical spine. He also included carpal tunnel syndrome. The date of injury, the cause of appellant's condition, and the onset of total disability were all consistent with his previous report of July 27, 2007. Dr. Gitter remarked that appellant had hypertension from work-related duties, which manifested into depression, anxiety and stress. He also indicated that appellant suffered from sleep apnea and had symptoms of Alzheimer's, as well as bilateral carpal tunnel syndrome.

After a six-month lapse in treatment, Dr. Gitter saw appellant on February 28, 2008. He reported that appellant injured himself on May 27, 2006 while placing mail in boxes. Dr. Gitter diagnosed acute cervical sprain, cervical radiculopathy and carpal tunnel syndrome. He noted that the "continued repetitive motion of the work being performed was the direct cause of the injury." Dr. Gitter advised that appellant would be able to perform limited-duty work as of April 1, 2008. His work restriction included lifting 5 to 10 pounds and no prolonged standing or sitting. Dr. Gitter further indicated that the carpal tunnel syndrome was from repetitive work caused by employment factors and the spondylosis was considered an aggravation related to a previous injury on July 20, 1985. He authored similar reports on March 20 and April 10, 2008. However, the latter report noted a May 27, 2006 history of pain developing in the "shoulders," whereas prior reports were limited to the right shoulder.

On May 18, 2008 appellant's counsel requested reconsideration. The Office subsequently received a May 22, 2008 Form CA-20 from Dr. Gitter. He again identified May 27, 2006 as the date of injury. However, he offered a slightly different history of injury, noting that appellant had been placing mail in P.O. boxes when he developed cervical pain, radiating down shoulders, arms and wrist. Dr. Gitter diagnosed acute cervical sprain/strain, cervical radiculopathy and bilateral carpal tunnel syndrome, which he attributed to "continued

⁵ The Office noted that, while appellant filed a traumatic injury claim (Form CA-1), it appeared that his condition had developed over a period of time based on the initial diagnosis of overuse syndrome of the right upper extremity. Because of the description of appellant's condition, it noted that he should have filed an occupational disease claim (Form CA-2).

repetitive motion, overuse syndrome.” He further advised that appellant could immediately return to work with the same restrictions that were in place prior to December 13, 2006.⁶

In a decision dated August 1, 2008, the Office reviewed the merits of the claim, but denied modification of the June 7, 2007 decision.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees’ Compensation Act⁷ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁸

ANALYSIS

Based on the numerous reports of Dr. Gitter, appellant claims that his carpal tunnel syndrome and ongoing cervical condition are causally related to the May 27, 2006 accepted employment exposure. The diagnosed cervical conditions include acute cervical sprain, cervical radiculopathy and cervical spondylosis. However, this latter condition preexisted the May 27, 2006 employment incident as indicated by the x-rays obtained that same day. Dr. Rosenblum’s May 27, 2006 report stated that appellant’s cervical x-rays revealed “[m]ild degenerative changes ... in several vertebra.” Dr. Gitter’s earliest reports, dated August 22, September 26 and October 17, 2006, clearly identified appellant’s cervical spondylosis as a “preexisting” condition, without any mention of this condition having been aggravated by the May 27, 2006 employment exposure.

On July 27, 2007 Dr. Gitter dropped “preexisting” from his diagnosis of cervical spondylosis, and attributed this condition, along with acute cervical sprain and cervical radiculopathy, to appellant’s May 27, 2006 employment exposure. Although he had diagnosed bilateral carpal tunnel syndrome as early as October 2006, this diagnosis was not included in Dr. Gitter’s July 27, 2007 CA-20. However, carpal tunnel syndrome reappeared in the August 8, 2007 CA-20, and all four conditions were consistently reported in Dr. Gitter’s February 28, March 20 and April 10, 2008 reports. But his latest report, dated May 22, 2008, did not include a diagnosis of cervical spondylosis. Dr. Gitter’s reports also include variations regarding the

⁶ Dr. Gitter also submitted an employing establishment work activity form releasing appellant to return to work effective May 23, 2008.

⁷ 5 U.S.C. §§ 8101-8193 (2006).

⁸ 20 C.F.R. § 10.115(e), (f) (2008); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician’s opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician’s opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant’s specific employment factors. *Id.*

May 27, 2006 history of injury and areas of the body affected. For example, the latest report noted involvement of both shoulders and arms, rather than what had originally been reported as only a right-sided injury. The occasional omitted diagnosis or misstatement of fact can arguably be dismissed as mere oversight or a typographical error. But what cannot be ignored is the routine absence of a salient explanation of how appellant's duties stuffing P.O. boxes on May 27, 2006 either caused or contributed to his diagnosed conditions.

Appellant's tour of duty began at 9:30 a.m. Saturday, May 27, 2006. His injury reportedly occurred at 11:30 a.m. In his July 7, 2006 statement, appellant explained that he was placing mail in P.O. boxes when he suddenly started having pain in the upper right side of his body, especially in the right shoulder, right arm and neck. He reportedly had been doing this type of work since November 2004, and usually spent one to two hours each day placing mail in P.O. boxes. He described the process as holding the mail with his left hand while placing each letter in the respective customer's P.O. Box. Appellant said the "repetitive motion" caused him to have pain in the upper right side of his body. He also indicated that the morning of May 27, 2006 was the first time he noticed the pain. The employing establishment confirmed that appellant's duties included "throwing P.O. Box mail."

The medical evidence does not adequately address how no more than two hours of stuffing P.O. boxes on May 27, 2006 either caused or contributed to appellant's carpal tunnel syndrome, acute cervical sprain, cervical radiculopathy and cervical spondylosis. In his October 17, 2006 report, Dr. Gitter stated that he reviewed appellant's job description, which revealed that he "use[d] his upper extremities repetitively...." Based on this information, Dr. Gitter advised that appellant's "carpal tunnel syndrome should be treated on an industrial basis." However, none of Dr. Gitter's reports describe the particular type of repetitive activities that contributed to appellant's carpal tunnel syndrome and cervical condition. The CA-20s do not include explanations, but merely statements such as "continued repetitive motion, overuse syndrome." These brief notations do not represent a rationalized opinion on causal relationship.⁹ Accordingly, the medical evidence of record is insufficient to establish that appellant's carpal tunnel syndrome and cervical condition are causally related to the May 27, 2006 incident.

CONCLUSION

The Board finds that appellant failed to establish that his cervical condition and carpal tunnel syndrome are causally related to the May 27, 2006 incident.

⁹ See Victor J. Woodhams, *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the August 1, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 2, 2009
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