

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

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M.W., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Secaucus, NJ, Employer

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**Docket No. 10-2265  
Issued: July 25, 2011**

*Appearances:*  
James Muirhead, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On September 8, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) July 20, 2010 merit decision denying her occupational injury claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 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 to establish that she sustained a right shoulder and neck injury in the performance of duty.

On appeal, appellant's representative contended that the medical evidence of record clearly established a causal relationship between appellant's work duties and her diagnosed condition.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On April 20, 2009 appellant, then a 46-year-old mail handler, filed an occupational disease claim alleging that she sustained injuries to her neck and right shoulder as a result of employment activities. She first became aware of her condition on January 1, 2007 and that her condition was employment related on December 22, 2008.<sup>2</sup>

In an April 20, 2009 report, Dr. Ronald A. Daly, an orthopedic surgeon, stated that he initially treated appellant in September 2006 for complaints of right shoulder pain for which an arthroscopic subacromial/subdeltoid bursectomy and acromionectomy was performed on January 3, 2007. Appellant returned to light duty in May 2007 with restrictions including no reaching overhead and no lifting, pushing or pulling greater than 10 pounds. On June 5, 2008 she returned with complaints of pain to the right side of her neck. Appellant attributed the pain to her work for the previous three months on a new hand-held scanning device, which weighed three to five pounds and required her to lift and repeatedly scan the equipment containing mail. These repetitious movements on a daily basis caused the slow but pronounced development of right-sided neck pain, spasmodic and severe in its intensity, beginning while at work and persisting well into the night, after arrival at home. Dr. Daly opined that appellant's initial complaints of right shoulder pain requiring arthroscopic surgery and ensuing right-sided neck pain were causally related to her occupation as a mail handler for the 11 years.

In an undated statement, appellant indicated that she developed muscle spasms in her neck in June 2008, allegedly caused by repetitive use of her arms and neck while lifting heavy loads of mail.

On June 17, 2008 the employing establishment challenged the claim, contending that appellant had failed to establish that she sustained a traumatic injury; that the scanner weighed only three pounds and that there was no medical evidence establishing that appellant was disabled.

By letter dated May 5, 2009, OWCP informed appellant that the information submitted was insufficient to establish her claim, noting that the evidence of record did not contain factual information that adequately described the work activities she believed were responsible for her condition and that there was no medical evidence, based upon a complete and accurate factual history, that established a disabling condition resulting from factors of her federal employment. It informed her that she had 30 days to submit additional evidence to support her claim.

Appellant submitted a May 18, 2009 narrative statement, noting that, until July 2006, she performed the heavy duties of a mail handler. She developed pain in her right shoulder due to the required repetitive pushing and pulling equipment and lifting up to 70 pounds. In January 2007, appellant underwent right shoulder surgery. Her right shoulder pain increased due to her repetitive work on a new scanning device beginning February 2008.

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<sup>2</sup> Appellant initially filed a traumatic injury claim, which was assigned File No. xxxxxx948. She subsequently refilled her claim as an occupational disease claim under File No. xxxxxx628.

On May 9, 2009 the employer controverted the claim, contending that appellant was not required to work outside her restrictions following the January 3, 2007 surgery on her right shoulder.

In a July 15, 2009 decision, OWCP denied appellant's claim on the grounds that the evidence failed to establish that she sustained a diagnosed condition causally related to factors of employment.

On June 7, 2010 appellant, through her representative, requested reconsideration. She submitted progress notes from Dr. Daly dated June 24 through October 13, 2008 reflecting his treatment of her for right-sided neck and right shoulder pain.

Appellant submitted a report of a magnetic resonance imaging scan of the cervical spine dated October 27, 2008. The report reflected impressions of reversed curve suggesting muscular spasm and guarding, as well as annular bulges at C3-C7, osteophyte with uncovertebral joint hypertrophy at C3-C6 with diffuse foraminal narrowing, worse on the right than on the left.

By decision dated July 20, 2010, OWCP denied modification of its July 15, 2009 decision, finding that the medical evidence of record failed to establish a causal relationship between appellant's diagnosed condition and factors of employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act<sup>3</sup> 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 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>4</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>5</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, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

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>6</sup>

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>7</sup>

### ANALYSIS

The medical evidence submitted by appellant is insufficient to establish that her neck or right shoulder were conditions caused or aggravated by factors of her federal employment. Therefore, appellant has failed to meet her burden of proof.

The medical evidence of record includes an April 20, 2009 report from Dr. Daly, who performed arthroscopic surgery on January 3, 2007 for appellant's right shoulder pain. On June 5, 2008 appellant complained of right-sided neck pain, which she attributed to using a new hand-held scanning device. Dr. Daly opined that her initial complaints of right shoulder pain requiring arthroscopic surgery and ensuing right-sided neck pain were causally related to her occupation as a mail handler over a period of 11 years. His report lacks probative value on several counts. Initially, it does not provide a specific diagnosis. The Board has held that pain is generally a symptom, rather than a compensable medical diagnosis.<sup>8</sup> Moreover, Dr. Daly did not sufficiently describe appellant's job duties or explain the medical process through which such duties would be competent to cause the claimed condition. Medical conclusions unsupported by rationale are of little probative value. Additionally, Dr. Daly did not provide findings on examination or indicate that his opinion was based on a review of a complete factual and medical background of the claimant. For all of these reasons, his report is of limited probative value.

The remaining medical evidence of record includes progress notes and reports of diagnostic testing, which do not contain an opinion on the cause of appellant's claimed condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on that issue.<sup>9</sup>

Appellant expressed her belief that her alleged condition resulted from her duties as a mail handler. However, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship

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<sup>6</sup> *Id.*

<sup>7</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>8</sup> *See Robert Broome*, 55 ECAB 339, 342 (2004).

<sup>9</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

between the two.<sup>10</sup> Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.<sup>11</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by the alleged work-related injury is not determinative.

OWCP advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and physician's opinion, with medical reasons, on the cause of her condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how her claimed conditions were caused or aggravated by her employment, she 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.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof in establishing that she sustained a right shoulder and neck injury in the performance of duty.

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<sup>10</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>11</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 20, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is affirmed.

Issued: July 25, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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