

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LEO COMPTON and U.S. POSTAL SERVICE,  
POST OFFICE, Honesdale, Pa.

*Docket No. 97-1728; Submitted on the Record;  
Issued April 16, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained an aggravation of his vertiginous condition, causally related to factors of his federal employment.

On October 27, 1995 appellant, then a 55-year-old rural letter carrier, filed a claim for occupational disease alleging that on November 8, 1994 and April 10, June 2 and September 19, 1995, he experienced extreme bouts of dizziness, loss of balance and the inability to stand as a result of the aggravation of his vertiginous illness. On his claim form and in an accompanying narrative statement, he stated that each episode began after he had been sorting and casing mail for one and a half to two hours, an activity appellant described as occurring in a semi-enclosed circular area and requiring constant rotating from left to right to center, as well as repeated bending and straightening. Appellant further stated that prior to the November 8, 1994 vertiginous episode, he had never experienced these symptoms before. Appellant stopped work on September 19, 1995.

In support of his claim, appellant submitted medical evidence including a narrative report from his treating physician, Dr. Marilyn T. Pardine, a general practitioner. In her report dated October 18, 1995, Dr. Pardine noted the history of appellant's symptomatic episodes as occurring after periods of sorting and casing mail and further noted that after each episode, appellant had been disabled from work for approximately one to two weeks. She stated that test results indicated a mild balance disturbance and that it was the opinion of the consulting neurologist that appellant had early Meniere's disease. In her narrative report and on an accompanying form report Dr. Pardine indicated that the continual rotary motion required for casing mail aggravated appellant's condition and triggered the extreme vertiginous episodes and, therefore, appellant was totally disabled and unable to fulfill his duties as a rural mail carrier.

In a report dated November 28, 1995, Dr. Frank I. Marlowe, a Board-certified otolaryngologist, examined appellant and reviewed the results of his testing and concluded that his primary diagnosis was that of Meniere's disease, but that there may be some element of

benign paroxysmal vertigo. He cautioned appellant against driving and concluded that it would be reasonable for appellant to be given some form of light duty such as answering the telephone.

The employing establishment controverted appellant's claim, noting that each of appellant's vertiginous episodes occurred after a period when he had been suffering from a cold or the flu and that during these periods any activities, not just employment-related activities, would aggravate his condition.

On February 2, 1996 the Office of Workers' Compensation Programs referred appellant's claim, together with a statement of accepted facts, to an Office medical adviser for review. The Office medical adviser stated that Meniere's disease is a condition of unknown cause which produces dizziness and a feeling of spinning and can occur any time. He explained that while the vertiginous episodes may have prevented appellant from working, they were not caused by his employment but rather were caused by the fact that appellant was ill with a cold at the time.

On April 5, 1996, the Office referred appellant's case file, together with a statement of accepted facts and list of issues to be addressed, to Dr. Edward F. Sickel, a Board-certified otolaryngologist, for a second opinion. In his report dated April 16, 1996, Dr. Sickel reviewed appellant's history as well as the results of his physical examination and testing. Dr. Sickel stated:

“[Appellant] certainly has vestibulopathy by history but the actual etiological cause of this is difficult to ascertain. This is certainly not a classical picture of Meniere's disease. By definition, Meniere's disease is episodic vertigo, aural pressure and tinnitus with fluctuating hearing loss usually in the low frequencies. [Appellant] has a bilateral high tone sensory loss compatible with his aging and that could also explain the ringing in his ears. There is no question that atypical Meniere's disease marked by vertigo without hearing loss has been described but is controversial in some circles. Benign paroxysmal positional vertigo is characterized by vertiginous attacks brought on usually by certain positions or motion but not accompanied by ear symptoms such as hearing loss or tinnitus.

“[Appellant] appears to be disabled at least from a driving standpoint and an occupational situation that would require motion. A more sedentary position might be feasible.”

By letter dated April 29, 1996, the Office asked Dr. Sickel to clarify his opinion with regard to the relationship, if any, either by direct cause or aggravation, of appellant's condition to his federal employment.

In a supplemental report dated May 7, 1996, Dr. Sickel stated:

“The cause of his dizziness is unknown, though there is a suspicion he may have a variant of Meniere's disease. I do not feel that his federal employment is the cause of his dizziness or for that matter of his Meniere's disease.

“However, stressful work condition certainly aggravate vertiginous problems from a stress standpoint.

“If the stress of work is aggravated by the underlying disease I would anticipate that there would be improvement in the symptoms within several weeks. However, since the cause of this condition is actually unknown there is no way of ascertaining whether it is work related, will resolve or improve with the cessation of work.

“Meniere’s symptoms are unpredictable and very capricious in there behavior.

“Benign paroxysmal positional vertigo is another possibility in this situation and that too frequently does not have an etiology though head trauma and infections have been incriminated.

“In summary, I do not feel that [appellant]’s vertiginous attacks were caused by his work. However, the stress or even every day working can aggravate vertiginous symptoms in certain individuals.”

In a decision dated June 4, 1996, the Office denied appellant’s claim on the grounds that the medical evidence of file does not support that the condition of Meniere’s disease or paroxysmal vertigo was caused or aggravated by his federal employment. The Office further concluded that as appellant did not mention any work-related duties as stressors, stress is not a factor in this case.

By letter dated October 11, 1996, appellant requested reconsideration of the Office’s decision and submitted additional medical evidence in support of his request.

In a report dated September 27, 1996, Dr. Marlowe attempted to better explain the relationship between appellant’s condition and his employment duties. Dr. Marlowe stated:

“The cardinal disabling symptom of Meniere’s or vertigo is a result of irritability of the equilibrium position of the ear due to changes in fluid dynamics. Any motion further aggravates his irritation and exaggerates the symptoms.

“I have discussed [appellant]’s symptoms with him on multiple occasions and it appears that he does quite well except when he stresses his already poorly functioning equilibrium apparatus and this occurs mainly on the job and is invariably associated with mail-sorting that entails repetitive head motions back and forth.

“In addition, I have had the opportunity to see the work station that [appellant] utilizes and can say with a reasonable degree of medical certainty that this would certainly aggravate his vertigo condition.”

In a report dated October 11, 1996, Dr. Pardine clarified her earlier conclusions, stating:

“[Appellant]’s condition is most definitely aggravated by his job with the [employing establishment]. The rotary motion which he must use in the sorting and casing of his mail sets off the episodes of extreme vertigo which causes him to be unable to perform his duties. I have stated this in my previous report ... and I stand by that statement.”

By decision dated January 16, 1997, the Office affirmed its prior decision on the grounds that the medical evidence was insufficient to establish that appellant’s condition was aggravated by factors of his employment and therefore insufficient to warrant modification of its prior decision.

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

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his claim, including that he sustained an injury in the performance of duty as alleged.<sup>2</sup> In cases of occupational disease or illness, an employee must establish fact of injury by submitting medical evidence establishing that conditions or factors of employment caused an “injury” as defined in the Act and its regulations.<sup>3</sup> In the present case, appellant alleged that his injury was an aggravation of his vertiginous condition as a result of sorting and casing mail.

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;<sup>4</sup> (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>5</sup> 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Cf. Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989) (The employee must submit, among other things, medical evidence establishing that the employment factors identified by the employee proximately caused the condition for which compensation is claimed). 5 U.S.C. § 8101(1)(5) defines “injury” in relevant part as follows: “‘injury’ includes, in addition to injury by accident, a disease proximately caused by employment.” 20 C.F.R. § 10.5(a)(16) defines “occupational disease or illness” as follows: “[A] condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection; continued or repeated stress or strain; or exposure to hazardous elements such as, but not limited to, toxins, poisons, fumes, noise, particulates, or radiation, or other continued or repeated conditions or factors of the work environment.”

<sup>4</sup> *See Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>5</sup> *See Walter D. Morehead*, 31 ECAB 188, 194 (1979).

diagnosed condition is causally related to the employment factors identified by the claimant.<sup>6</sup> 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. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>7</sup> must be one of reasonable medical certainty,<sup>8</sup> 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>9</sup>

In the present case, appellant submitted several supporting medical reports from Drs. Pardine and Marlowe diagnosing appellant's condition as a vertiginous disorder aggravated and triggered by the rotational movement required by appellant's mail sorting and casing duties. Neither physician explained, however, how appellant was able to perform his usual sorting and casing duties for several months between symptomatic episodes without apparently suffering from any ill effects.

Further, the Board notes that Dr. Sickel's April 16 and May 7, 1996 reports did not contradict the conclusions of Dr. Marlowe and Pardine, but stated that stressful working conditions, or even everyday working conditions, can aggravate vertiginous symptoms. Therefore, Dr. Sickel's report also lends some support to appellant's claim. There is no indication in the record, however, that Dr. Sickel was provided with a copy of appellant's job description and therefore, he was unable to give a fully rationalized opinion as to whether appellant's specific employment duties could have aggravated his vertiginous condition.

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While a claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>10</sup>

Although the medical reports of record are insufficient to completely discharge appellant's burden of establishing by the weight of the reliable, substantial and probative medical evidence that appellant's claimed aggravation of his vertiginous condition was causally related to his assigned employment duties and activities, they do constitute sufficient evidence in support of appellant's claim to require further development of the record by the Office.<sup>11</sup>

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<sup>6</sup> See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

<sup>7</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>8</sup> See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>9</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>10</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>11</sup> See *John J. Carlone*, 41 ECAB 354 (1989).

Therefore, the case must be remanded to the Office for referral of appellant, together with a statement of accepted facts, the complete case record, a copy of appellant's job description and questions to be answered, to an appropriate medical specialist for examination and clarification of the medical issues raised in the questions to be answered. Following such additional development as it may deem necessary, the Office should make a determination as to whether appellant's vertiginous condition was causally related, either directly or by aggravation, to factors of his federal employment.

Consequently, the decisions of the Office of Workers' Compensation Programs dated January 16, 1997 and June 4, 1996 are hereby set aside, and the case is remanded to the Office for further development in accordance with this decision.

Dated, Washington, D.C.  
April 16, 1999

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member