

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FORREST E. BUTLER and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, TN

*Docket No. 98-382; Submitted on the Record;
Issued November 8, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant met his burden of proof in establishing that he sustained an aggravation of his peripheral neuropathy due to factors of his federal employment.

The Board has given careful consideration to the issue involved, the contentions on appeal and the entire case record and finds that this case is not in posture for decision.

On November 24, 1996 appellant, then a 62-year-old distribution clerk, filed a claim alleging that he had developed neuropathy in his elbows and feet due to factors of his federal employment. Appellant explained that he had to sit on a stool for eight hours per day and that this put pressure on his tailbone which caused neuropathy. He stated that in mid October 1996, his stool was replaced with a chair which allowed his feet to be on the floor. He indicated that his symptoms immediately decreased. Appellant further stated that his elbow neuropathy was aggravated by the repetitive bending of the elbows while "casing" mail. Appellant submitted a statement which described how he thought the rest bar on the stool he used at work seemed to increase the numbing and burning in his feet. He also wrote that, as for his elbows, the pain came from bending and extending of the arm required to carry out his mail sorting duties. Medical evidence was also submitted.

By decision dated June 13, 1997, the Office of Workers' Compensation Programs denied appellant's claim finding that the evidence of record was insufficient to establish fact of injury. The Office indicated that the evidence of file was insufficient to establish the claimed employment factor because appellant's physicians failed to provide any medical rationale demonstrating how appellant's job aggravated his condition.

Appellant requested a review of the written record by an Office hearing representative. By decision dated September 18, 1997, the Office hearing representative affirmed the denial of appellant's claim, finding that the medical opinion evidence was insufficient to establish causal relationship between his federal employment and his medical condition.

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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.¹

In this case, appellant attributed the exacerbation of his peripheral neuropathy to factors of his federal employment; specifically, to sitting on a hard stool with no back or leg support and the bending and extending of his arm in casing mail.

In an undated report from Dr. Ronald Twilla, a Board-certified family practitioner, he provided a diagnoses of mild to moderate bilateral carpal tunnel syndrome and moderate bilateral ulna nerve neuropathy. Dr. Twilla stated that appellant had been treated by Dr. Glen Barnett for neuropathy involving the lower extremities. He stated that this has caused constant pain with appellant's work and has caused some adjustment in appellant's body positioning and body mechanics while doing his work. He further stated that the ulna neuropathy was causing problems with repetitive use of bending his elbows at his job at the post office. Dr. Twilla opined that appellant's peripheral neuropathy appears to be a permanent condition. He wrote "certainly factors in the workplace will aggravate the condition, such as prolonged sitting, unusual sitting apparatus or repetitive movements of the elbows."

In a report dated October 1, 1993, Dr. Karl E. Misulis, a Board-certified neurologist, stated appellant presented with peripheral neuropathy and complained of pain in his coccygeal region from sitting on a stool all day long. Dr. Misulis advised appellant that the pain in the tailbone region was secondary to the way he was sitting and that appellant is of increased risk for compression neuropathies because of his diabetes. In a report dated August 13, 1996, Dr. Misulis stated that the most common cause of neuropathy was diabetes. He stated an electromyogram study of appellant was consistent with peripheral neuropathy. In a November 14, 1996 note, Dr. Misulis stated that the exact cause of appellant's neuropathy was unknown, but appellant reported his neuropathy was aggravated by sitting on a particular kind of stool and by his work activities. In a May 2, 1997 report, Dr. Misulis wrote that appellant's neuropathy can cause pain and occasionally lack of sensation and even difficulty with motor function. He stated that he believed the repetitive activity appellant performed at work "may aggravate your symptoms but did not cause it."

In a July 8, 1997 medical report, Dr. Twilla indicated that appellant has had multiple tests performed regarding diabetes because of his peripheral neuropathy, but that he never had a

¹ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

definite diagnosis of diabetes. He indicated that the tests suggested that appellant's peripheral neuropathy was not due to diabetes. He also stated:

“This patient's sitting eight hours a day, in my opinion, clearly can aggravate [appellant's] neuropathy. He sits on a hard stool with no back support and his feet are hanging off the floor. His buttocks are also hanging off all the way around the stool. This is drastically different from the way he would sit normally at home in a normal chair. He, of course, has altered body mechanics from sitting for hours on end in this position and at the very least could be expected to have marked inflammation of both sciatic nerves, some pressure on the buttocks from the improper stool. At the very least, [appellant] should have a foot support, a back support and standard features of stools, which have been well documented for work of this type for employees expected to sit for long periods of time, in his type of occupation.”

In a July 14, 1997 report, Dr. Misulis wrote that appellant has neuropathic symptoms but no definite cause has been identified. He indicated that to his knowledge, appellant does not have diabetes and, although appellant makes a reference to the possibility of borderline diabetes, in his opinion, that would not be sufficient to result in neuropathy. Dr. Misulis indicated that appellant was an increased risk for compression neuropathy. In a conversation with appellant, Dr. Misulis stated that they spoke about leaning against the stool, which he clearly thought should not be done. Dr. Misulis stated that without having a cause of neuropathy identified, it was difficult to implicate employment specifically. He indicated that appellant should check with Dr. Barnett to see whether there may be an association between his back problems, leg symptoms and employment. Dr. Misulis further stated that in regards to appellant's last question about being home versus being on the stool for so many years, he agreed that no longer engaging in that type of activity would tend to make the possibility of further nerve damage from that cause less likely.

The Board notes that while both Dr. Twilla and Dr. Misulis's reports are insufficient to establish entitlement, the fact that they contain deficiencies preventing appellant from discharging his burden does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished. As both Dr. Twilla and Dr. Misulis indicated that appellant's work duties might have aggravated his condition of peripheral neuropathy, their opinions are sufficient to require further development of the record.² It is well established that proceedings under the Federal Employees' Compensation Act³ are not adversarial in nature,⁴ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁵ On remand

² See *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second opinion evaluation.

³ 5 U.S.C. § 8101 *et seq.*

⁴ See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

⁵ See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

the Office should refer appellant along with an updated statement of accepted facts to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant's condition of peripheral neuropathy was caused by conditions of his employment. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated September 18 and June 13, 1997 are hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, D.C.
November 8, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member