

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN STOCKDALE and U.S. POSTAL SERVICE,
POST OFFICE, Atlanta, GA

*Docket No. 99-705; Submitted on the Record;
Issued July 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly found that appellant was not entitled to compensation for temporary total disability from April 30 to June 24, 1997 causally related to his accepted employment injury.

On June 20, 1997 appellant, then a 44-year-old mailhandler, filed an occupational disease claim alleging that he sustained a cervical condition due to factors of his federal employment. Appellant stopped work on April 30, 1997 and returned to work on June 24, 1997.

Appellant filed a claim for wage-loss compensation from April 30 to June 24, 1997. He submitted a form report dated June 19, 1997 from Dr. Clifford Roberson, an orthopedic surgeon and his attending physician, who diagnosed cervical strain and cervical disc disease. Dr. Roberson checked "yes" that the condition was caused or aggravated by employment, providing as a rationale that heavy lifting and throwing mail aggravated the condition. He found appellant totally disabled from April 30 through June 24, 1997.

By decision dated September 25, 1997, the Office denied appellant's claim on the grounds that the evidence did not establish fact of injury. By letter dated October 23, 1997, appellant requested a review of the written record by an Office hearing representative. In a decision dated April 16, 1998, the hearing representative set aside the Office's September 25, 1997 decision after finding that the case was not in posture for decision on the issue of whether appellant had sustained a cervical condition causally related to factors of his federal employment. The hearing representative instructed the Office, on remand, to request a rationalized medical report from Dr. Roberson addressing whether appellant's employment duties caused or aggravated a cervical condition and, if so, to discuss the period of aggravation.

In a letter dated May 11, 1998, the Office requested that Dr. Roberson provide a detailed medical report discussing the diagnosis of appellant's cervical condition, the cause of his condition, whether he sustained aggravation of a preexisting condition and, if so, whether the

aggravation was temporary or permanent. The Office further requested that Dr. Roberson discuss the magnetic resonance imaging (MRI) study findings and explain why appellant had symptoms on the left side and findings on MRI on the right side.

In a report dated August 4, 1998, Dr. Roberson stated that he had treated appellant from May 1, 1997 for neck pain. He discussed appellant's complaints of severe pain in his cervical spine beginning March 3, 1997 with worsening symptoms and no specific history of injury. Dr. Roberson stated that he initially diagnosed cervical strain with radiculopathy and noted that "[s]ince his work activity was aggravating his symptoms, we also placed him on full disability at that point." Dr. Roberson indicated that an MRI showed "mild degenerative changes throughout the cervical spine and a small right-sided focal dis[c] protrusion at C5-6. There was a very mild indentation of the thecal sac on the right side at that point. He also had a small bulging dis[c] at C3-4." Dr. Roberson diagnosed chronic cervical strain with radiculopathy, a herniated disc at C5-6, a bulging disc at C3-4 and mild spondylosis of the cervical spine. He opined:

"It is my opinion that most of [appellant's] problems are related to chronic cervical spasms with radiculopathy into the left upper extremity. There is a possibility that the cervical dis[c] could also be related to his work activities, however, since the dis[c] is more on the right side and his symptoms are on the left side, this could be a coincidental finding or a preexisting condition. The mild degenerative arthritis of the cervical spine is also to be considered preexisting."

* * *

"Both the cervical spasm as well as the cervical dis[c] could have a causal association with his work activities such as heavy lifting, especially if any of this lifting entails overhead lifting, swinging or throwing of parcels. There is a definite association with the constant aggravation of his condition with the work activities which include primarily the heavy lifting, pushing, pulling, overhead lifting, throwing or swinging of parcels."

* * *

"[Appellant] did have evidence of preexisting mild arthritis changes in the cervical spine, however, one cannot proportion whether or not his symptoms are secondary to his preexisting condition or a completely independent injury. It is my opinion that his symptoms are primarily due to chronic cervical spasms with radiculopathy; one that is completely independent of the preexisting arthritic changes in the spine. Also, it is my opinion that his underlying work activities cause significant aggravation of his condition. The condition is not permanent, however, he is at risk for frequent recurrence of the symptoms as long as he remains in the same work environment."

By letter dated August 21, 1998, the Office informed appellant that his claim was accepted for cervical strain.

In a disability certificate dated June 19, 1997, received by the Office September 2, 1998,

Dr. Roberson found appellant disabled from employment as of April 30, 1997 and capable of regular employment on June 24, 1997.

In a decision dated November 25, 1998, the Office denied appellant's claim for compensation for temporary total disability from April 30 to June 24, 1997 on the grounds that the medical evidence was insufficient to show that his disability was causally related to his accepted employment injury.¹

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

It is well established that proceedings under the Federal Employees' Compensation Act² are not adversarial in nature and that, while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.³ The Office has an obligation to see that justice is done.⁴

In the present case, the hearing representative instructed the Office to obtain a detailed report from appellant's attending physician regarding his condition, its relationship to employment and the period of any employment-related aggravation. Once the Office undertook the development of appellant's claim, it had an obligation to fully discharge its duty of developing the evidence in regard to his claim for an occupational disease causing disability from employment by obtaining a report which fully addressed the relevant issues. In his report dated August 4, 1998, Dr. Roberson diagnosed cervical strain, preexisting degenerative arthritis of the cervical spine and a herniated disc. He found that appellant's employment duties temporarily aggravated his cervical condition. Dr. Roberson, however, did not provide a finding regarding whether appellant sustained any specific period of disability from work due to an employment-related aggravation of his cervical condition. In a form report dated June 19, 1997, he diagnosed cervical strain and disc disease and checked "yes" that the condition was caused or aggravated by employment. Dr. Roberson found appellant disabled from April 30, 1997 until June 24, 1997. However, Dr. Roberson's disability finding is not sufficiently explained to support appellant's claim for total disability causally related to his accepted employment injury. It does, however, raise an uncontroverted inference of disability sufficient to require further development by the Office.⁵ On remand, the Office should request that Dr. Roberson provide a rationalized opinion regarding whether appellant sustained temporary total disability from employment from April 30 to June 24, 1997 due to his accepted employment injury of cervical strain. After such development as the Office deems necessary, it shall issue a *de novo* decision.

¹ By letter dated December 17, 1998, appellant requested reconsideration, which the Office denied in a nonmerit decision dated January 27, 1999. The Board and the Office cannot have jurisdiction over the same issue in the same case at the same time. As the Board docketed appellant's appeal on December 29, 1998, the Office's January 27, 1999 decision is null and void. *Douglas E. Billings*, 41 ECAB 880 (1990).

² 5 U.S.C. §§ 8101-8193.

³ *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁴ *Rebel L. Cantrell*, 44 ECAB 660 (1993).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

The decision of the Office of Workers' Compensation Programs dated November 25, 1998 is hereby set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, D.C.
July 7, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member