

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDY J. SCOTT and U.S. POSTAL SERVICE,
POST OFFICE, Jacksonville, FL

*Docket No. 99-1225; Submitted on the Record;
Issued July 5, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained a cervical condition in the performance of duty.

On June 5, 1998 appellant, a 37-year-old distribution clerk, filed a claim for benefits, alleging that she experienced chronic neck pain caused by the repetitive lifting, pushing and bending activities of her employment and that she became aware that this condition was caused or aggravated by her employment in January 1998.

In support of her claim, appellant submitted a January 27, 1997 report from Dr. James J. Fulmer, Board-certified in internal medicine, a January 30, 1997 report from Dr. Jennifer Romero, an osteopath and an April 24, 1997 radiology report from Dr. Robert I. Miller, a Board-certified radiologist. Dr. Fulmer advised that appellant had been experiencing cervical strain due to a 1994 motor vehicle accident. He stated that appellant underwent a magnetic resonance imaging (MRI) scan and nerve conduction velocities and had been informed that she had some type of disc abnormality. Dr. Fulmer related complaints of posterior cervical discomfort and stiffness with pain down the left arm in certain positions and numbness and tingling in the same region. He advised that appellant stated that she had been feeling fine until the previous day, when she turned her neck and felt a "crick" in her neck, which did not resolve. Dr. Fulmer diagnosed a cervical strain with underlying disc abnormality of uncertain extent.

In her January 30, 1997 report, Dr. Romero related complaints of left-sided back and neck pain from appellant, which she stated began a few days previously. She stated that appellant experienced sharp, shooting pains in the sides of her back and neck, which progressively worsened, particularly with movement. Dr. Romero diagnosed cervical and thoracic strain.

Dr. Miller, in his April 24, 1997 report, stated that cervical x-rays revealed that appellant had reversal of the normal cervical lordosis, with no encroachment of the intervertebral foramina

and noted spurs of the vertebral bodies at the C4-5, C5-6 levels. He diagnosed mild degenerative changes and reversed cervical curve.

By letter dated July 14, 1998, the Office of Workers' Compensation Programs advised appellant that she needed to submit a detailed description of the specific employment-related conditions or incidents she believed contributed to her cervical condition. The Office also asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition and an opinion as to whether factors or incidents, *i.e.*, specific employment factors, at her employing establishment contributed to her condition.

Appellant submitted a July 23, 1998 report from Dr. Samir S. Najjar, Board-certified in internal medicine, an unsigned April 30, 1998 medical report, a January 17, 1994 Form CA-17 report and an operative report dated May 5, 1997, which diagnosed a C5-6 ruptured cervical disc with a free fragment eccentric to the left. In his report, Dr. Najjar stated that appellant was experiencing severe cervical pain, right elbow pain and left hand numbness. He stated that the left hand numbness and right hand pain was caused by her employment with the employing establishment. Dr. Najjar further stated:

“[Appellant] was previously involved in a motor vehicle accident in 1993. [Appellant] has had corrective surgery for her lower and upper back conditions, which were caused [by] the auto[mobile] accident. [Appellant's] employment has aggravated the cervical injury and has caused chronic pain in her upper extremities.”

The April 30, 1998 report noted that appellant was involved in a vehicular accident, which caused cervical and low back pain and indicated that on approximately October 12, 1996, she began having pain in her neck, which radiated to the back of her left arm, which was now worse than she had experienced previously. The report stated that appellant underwent an MRI on October 21, 1993, which showed degenerative changes in the L4-5 and L5-S1 lumbar disc without evidence of disc rupture. The report further noted that a cervical study showed multiple level cervical disc disease at C3-4, 4-5, 5-6, worse at C4-5 and C5-6. Finally, the report noted that an MRI of the cervical area taken April 28, 1997 showed a large ruptured disc at C5-6, eccentric to the left.

By decision dated September 21, 1998, the Office denied appellant's claim finding that she submitted insufficient evidence to establish that she had sustained the claimed event, incident or exposure occurred at the time, place and in the manner alleged. The Office further found that appellant failed to submit medical evidence sufficient to establish a causal relationship between her alleged cervical condition and factors of her employment.

By letter dated October 20, 1998, appellant requested reconsideration of the Office's September 21, 1998 decision. In support of her request, appellant submitted an October 9, 1998 report from Dr. Najjar, who reiterated appellant's history of injuring her cervical spine during a 1993 automobile accident and advised that, following this accident, appellant had mild, bearable pain and was able to return to work and perform her normal work load of lifting, bending, pushing, pulling, etc. He then reiterated that appellant underwent a cervical MRI in April 1997

because she had been experiencing severe pain and opined based on the medical evidence that her employment caused a mild bulging disc condition, which progressed to a ruptured disc and caused her to have extensive cervical spine surgery.

By decision dated December 23, 1998, the Office modified the September 21, 1998 decision to the extent that it found that appellant had established exposure to alleged work duties, but denied compensation on the grounds that she did not submit medical evidence sufficient to establish that the claimed cervical condition was causally related to factors or incidents of her employment.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a cervical condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that 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 is causally related to the employment injury.² 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.³

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 is usually rationalized medical 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, 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.⁴

¹ 5 U.S.C. §§ 8101-8193.

² *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Id.*

In the present case, appellant has not submitted a probative, rationalized medical opinion sufficient to establish that she sustained a cervical condition or disability caused by factors or incidents of her employment. In this regard, 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 between the two.⁵ 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 sufficient to establish causal relationship.⁶ Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit. The Office advised appellant of the type of evidence required to establish her claim; however, appellant failed to submit a rationalized medical opinion, which establishes that she sustained a cervical condition causally related to factors or incidents of her employment.

The reports from Dr. Najjar, who submitted the only medical reports containing an opinion regarding causal relationship, do not constitute sufficient medical evidence demonstrating a causal connection between appellant's alleged cervical condition and factors of her employment. Causal relationship must be established by rationalized medical opinion evidence. The reports from Dr. Najjar merely state his findings and conclusions that appellant had a chronic cervical condition aggravated by her employment. Dr. Najjar stated in his October 20, 1998 report that appellant had been experiencing severe pain and underwent a cervical MRI in April 1997, which indicated a ruptured cervical disc at C5-6. He further stated that her employment caused her to develop a mild bulging disc condition, which progressed to a ruptured disc and caused her to have extensive cervical spine surgery. Dr. Najjar's reports, however, do not contain a probative, rationalized medical opinion addressing how appellant's alleged cervical condition was caused or contributed to by factors of his federal employment. His opinion on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions. Moreover, his opinion is of limited probative value for the further reason that it is generalized in nature and equivocal in that he only noted summarily that appellant's cervical condition was causally related to her employment.

As there is insufficient, rationalized medical evidence addressing and explaining why appellant's alleged cervical condition and disability was caused by factors of her employment, she has not met her burden of proof in establishing that she sustained a cervical condition causally related to factors of her federal employment. The Board will affirm the Office's finding that appellant did not sustain a compensable condition or disability in the performance of duty.

⁵ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁶ *Id.*

The decision of the Office of Workers' Compensation Programs dated December 23, 1998 is hereby affirmed.

Dated, Washington, D.C.
July 5, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member