

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARIA L. BALLS and U.S. POSTAL SERVICE,  
POST OFFICE, Albany, NY

*Docket No. 99-944; Submitted on the Record;  
Issued June 9, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issues are: (1) whether appellant's cervical condition was sustained in the performance of duty; and (2) whether appellant met her burden to establish her entitlement to reimbursement for chiropractic services.

On November 13, 1994 appellant, a 21-year-old mail processor, injured her right shoulder while lifting trays of mail. She filed a claim for benefits on November 14, 1994, which the Office of Workers' Compensation Programs accepted for right shoulder strain on September 11, 1995. Appellant stopped working on the date of injury and returned to work on limited duty on December 19, 1994. The Office paid appellant compensation for appropriate periods.

Appellant stopped working on January 23, 1995, allegedly due to the pain in her right shoulder. She has not returned to work since that date.

Appellant submitted a February 6, 1996 report from Dr. Keith S. Nussbaum, a chiropractor, who noted complaints of neck and trapezius pain, which he stated were causally related to the November 13, 1994 employment injury. Dr. Nussbaum advised that orthopedic testing revealed cervical compression with pain in the right trapezius. He further stated that he took x-rays of appellant's cervical spine on December 18, 1995, which revealed a reversal of the normal curve and mild degenerative changes at C5-6. Dr. Nussbaum concluded:

“On November 13, 199[4] [appellant] suffered a severe cervical thoracic sprain/strain with some disc irritation, causally related to lifting up a tray of mail at the [employing establishment]. Based upon the history given to me by [appellant], my examination, my findings, and my training and experience in the area of chiropractic medicine, it is my opinion that [appellant] has suffered a permanent injury to her cervical spine. She suffers myoligamentous vertebral instability to the supporting soft tissues. [Appellant] suffers a permanent loss of

use of a body organ, member, function, or system, and more specifically, she has lost the use of her cervical spine. [Appellant] will continue to suffer significant limitation in her ability to perform her daily activities due to her injury.”

Dr. Nussbaum placed restrictions on appellant of no lifting more than 20 pounds, for not more than one third of her workday; carrying of no more than 20 pounds, for not more than one third of her workday; occasional bending, squatting, crawling and reaching above the shoulder, for not more than one third of the workday; and standing, sitting, or walking up to six hours per day, with periodic rest periods.

In a report dated February 26, 1996, Dr. Nussbaum stated:

“On [November 13, 1994], while lifting a tray of mail, [appellant] exhibited biomechanical stress in her neck and shoulder areas. This muscular stress caused vertebrae to misalign and sublunate in her cervical region, specifically C5[-]C6. Exhibited by a ... cervical [x]-ray, there is rotational subluxation of C5[-]C6.”

Dr. Nussbaum further stated that subluxation complex should be accepted as the primary diagnosis.

On June 8, 1996 appellant filed a Form CA-2a claim for benefits, alleging that she sustained a recurrence of disability on January 23, 1995 which was caused or aggravated by her November 13, 1994 employment injury.

By decision dated August 25, 1997, the Office denied appellant’s claim for recurrence of disability, finding that appellant failed to submit sufficient medical evidence establishing that the claimed condition was caused or aggravated by the November 13, 1994 employment injury.

By letter dated July 20, 1998, appellant’s attorney requested reconsideration. Appellant’s attorney also requested that the Office expand its acceptance of the claim to include a cervical spine condition based on Dr. Nussbaum’s reports, which he attached with his request.

By decision dated October 21, 1998, the Office vacated its August 25, 1997 decision denying benefits based on a recurrence of disability, and remanded for further development of the evidence.

By decision dated October 21, 1998, the Office denied appellant’s claim for compensation based on a cervical spine condition, and denied reimbursement of chiropractic services.

The Board finds that appellant failed to meet her burden of proof to establish that her claimed cervical condition was sustained in the performance of duty.

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of establishing that the essential elements of his or her claim including the fact that the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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>2</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>3</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 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.<sup>4</sup>

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused by her employment. As part of this burden she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.<sup>5</sup>

In the present case, the Office accepted the fact that appellant suffered an injury in the performance of duty on November 13, 1994 and accepted the claim for a right shoulder strain. Appellant has not submitted sufficient medical evidence, however, to establish that her alleged cervical condition resulted from the employment incident of November 13, 1994. 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.<sup>6</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

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<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Id.*

<sup>5</sup> *Arlonia B. Taylor*, 44 ECAB 591, 595 (1993).

<sup>6</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

establish causal relationship.<sup>7</sup> Causal relationship must be substantiated by reasoned medical opinion evidence which is appellant's responsibility to submit. In the instant case, appellant did not submit a rationalized medical opinion which relates the cause of this claimed condition to the November 13, 1994 employment injury.

The reports from Dr. Nussbaum do not constitute sufficient medical evidence demonstrating a causal connection between appellant's November 13, 1994 injury and her cervical condition. Causal relationship must be established by rationalized medical opinion evidence. The reports from Dr. Nussbaum merely state his findings and conclusions that appellant had a cervical condition based on examination and x-ray results, and do not establish that this condition was causally related to the November 13, 1994 employment injury. Dr. Nussbaum's opinion on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.<sup>8</sup> He did not describe appellant's accident in any detail or the process through which appellant's work injury would have been competent to cause the claimed cervical condition. 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 conditions were causally related to the November 13, 1994 employment injury.

As there is no probative, rationalized medical evidence addressing and explaining why her claimed condition and disability were caused by her original injury, appellant has not met her burden of proof in establishing that she sustained a cervical condition stemming from her accepted November 13, 1994 employment injury. The Board therefore finds that appellant did not sustain a cervical condition in the performance of duty.

The Board further finds that appellant is not entitled to reimbursement for chiropractic services, as appellant has failed to establish that her alleged cervical condition was causally related to her accepted employment injury.

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<sup>7</sup> *Id.*

<sup>8</sup> *William C. Thomas*, 45 ECAB 591 (1994).

The decision of the Office of Workers' Compensation Programs dated October 21, 1998 is therefore affirmed.

Dated, Washington, D.C.  
June 9, 2000

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member