

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY DANILISHEN and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Cleveland, OH

*Docket No. 99-861; Submitted on the Record;
Issued February 14, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury to his neck causally related to factors of his employment or to his May 30, 1991 employment injury.

The Board has duly reviewed the record and finds that the case is not in posture for decision.

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.¹

The medical evidence required to establish a 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,² must be one of reasonable medical certainty³ and must be supported by medical

¹ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

² *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

³ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

On June 20, 1991 appellant, then a 40-year-old distribution clerk, filed an occupational disease claim alleging that both arms and joints became too painful to work. He indicated that he first became aware of his condition on May 30, 1991 and he attributed this to throwing large quantities of mail.

On October 18, 1994 appellant filed a claim alleging a recurrence of disability on September 30, 1994 which he attributed to his May 30, 1991 employment injury.⁵ By decision dated August 21, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the medical evidence of record failed to establish that he sustained any injury on or after September 30, 1994 causally related to factors of his employment.

By letter dated September 15, 1995, appellant requested a review of the written record. By decision dated February 20, 1997, the Office hearing representative affirmed the Office's August 21, 1995 decision. By letter dated February 13, 1998, appellant requested reconsideration and submitted additional evidence. By decision dated March 20, 1998, the Office denied modification of its February 20, 1997 decision. By letter dated June 17, 1998, appellant requested reconsideration and submitted additional evidence. By decision dated September 15, 1998, the Office denied modification of its March 20, 1998, February 20, 1997 and August 21, 1995 decisions.⁶

In a report dated October 18, 1994, Dr. John H. Wilber, a Board-certified orthopedic surgeon, related a work history of throwing letters into boxes for prolonged periods, which caused pain and swelling in appellant's arms with pain extending into his neck. He noted that x-rays of the cervical spine revealed some degenerative disc disease. Dr. Wilber added that appellant had some symptoms of overuse syndrome of his arms and that a conditioning program and possible job modification would benefit him.

In a report dated December 20, 1994, Dr. Stephen H. Lacey, a Board-certified orthopedic surgeon and an associate of Dr. Wilber, noted that the Office had accepted appellant's claim for bilateral elbow tendinitis and upper arm and forearm strain/sprain. He added that appellant's job involved sorting letters which caused pain in his arms. Dr. Lacey provided findings on examination and opined that appellant had a continuing bilateral elbow condition causally related to the May 30, 1991 injury. He stated that the basis for his opinion was that appellant developed increasing symptoms with any attempt to increase activities and, specifically, to

⁴ See *James D. Carter*, 43 ECAB 113, 123 (1991); *George A. Ross*, 43 ECAB 346, 351 (1991).

⁵ While this claim was being developed under file number 09-0399599, another claim was filed and accepted for bilateral elbow tendinitis and right shoulder and forearm strain sustained on May 30, 1991 under file number 09-0356592. Therefore, the Office proceeded to develop appellant's claim in the case on appeal for a cervical condition.

⁶ The Board notes that additional evidence was submitted in this case subsequent to the issuance of the Office's September 15, 1998 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; see 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

perform his job. Dr. Lacey indicated that appellant also had some neck symptoms, "the exact nature of which has not been fully determined." He concluded that appellant had been totally disabled for his regular job since September 30, 1994.

In a report and notes dated April 25, 1995, Dr. Wilber related that he first saw appellant on October 18, 1994 for complaints of pain in his arms, shoulder and neck. He related that appellant had experienced increasing problems with his neck since 1991. Dr. Wilber stated his opinion that appellant's neck problem was related to repetitive activity at work -- throwing mail for prolonged periods -- but recommended further evaluation by a spine specialist who could "give further recommendations regarding treatment and his ability to work." He opined that appellant could return to work with restrictions and stated, "I do feel that there is a relationship from his neck problem and his work."

In a letter dated April 26, 1995, submitted by his attorney, appellant stated that he had worked as a manual distribution clerk for 11 years and was required to case mail, handle heavy sacks and boxes of mail, unload mail trucks, move mail containers weighing between 1,000 and 4,000 pounds when full over hundreds to thousands of feet numerous times each workday. He alleged that he had experienced pain in his neck, shoulders, arms and elbows since 1991.

In a letter dated May 19, 1995, the employing establishment stated that appellant did not unload trucks, was not required to pull mail (only push mail) and moved mail containers for no more than 20 feet each workday. The employing establishment noted that appellant had been employed for approximately five years without restrictions and had been on leave from 1988 until February 1991 and had worked limited duty since June 1991 with no lifting, no wheeling and no moving of large mail containers.

In a letter dated July 25, 1995, Dr. Wilber stated:

"There apparently is some confusion about [appellant's] ability to return to work. It is my previous opinion that regarding his elbows he probably could return to work following the restrictions laid out by Dr. Lacey; however, he also has an ongoing neck problem which complicates this issue. In view of these combined problems and due to the fact [that] [appellant] is currently being evaluated for his neck problem, I do not feel he is able to return to work at this time."

In a report dated September 12, 1995, Dr. R. Geoffrey Wilber, a Board-certified orthopedic surgeon and an associate of Dr. John Wilber, related that a myelogram and computerized tomography scan revealed a disc rupture at L4-5 with cervical spondylosis at the C6-7 level. He stated:

"This corresponds with [appellant's] ongoing symptoms. These appear to be directly related to [his compensation claim] with a job-related injury which occurred on May 30, 1991. Since [appellant] is markedly symptomatic and has continued symptoms with his C6 radiculopathy, [he] is a candidate for an anterior cervical discectomy and fusion, which should be a cure for his condition. I would anticipate that he would be able to get back to work, at that time, to a full[-]duty status, at approximately 3 months status-post [surgery]. I feel this is directly

related to his injury of May 30, 1991 and exactly corresponds to his symptom complex which has been present since that time.”

In a report dated April 24, 1997, Dr. John Wilber related that in 1994 appellant gave a history of throwing letters into boxes for prolonged periods. He stated:

“My evaluation revealed neck pain and stiffness and x-rays revealed degenerative disc disease and foramina narrowing of [appellant’s] cervical spine. It was my impression that his arm pain was very atypical coming from his cervical spine problem and not from true tendinitis. I did feel that the [*sic*] did have some element of bilateral tendinitis though I do not think this was [appellant’s] major problem. It is my opinion that the arm pain he had been complaining about all along was actually related to a neck problem. In view of [appellant’s] history of repetitive activity which requires not only use of his arms but with the movement of his head back and forth while sorting mail[,] I feel that his neck problem is directly related to repetitive use of his neck at work. I feel at least his neck and arm problems are related to an exacerbation by his repetitive use at work. It was my recommendation that [appellant] be evaluated by a spine specialist....”

In a report dated July 18, 1997, Dr. Gordon R. Bell, a Board-certified orthopedic surgeon, indicated that he had reviewed the medical evidence. He stated:

“After carefully reviewing [appellant’s] records, I am unable to find any clear relationship to a specific injury. I am well aware [that appellant] attributes his symptoms to a work-related injury although I cannot find any evidence of a specific incident. He apparently attributes this to his job which involved throwing of letters into boxes for prolonged periods of time. [Appellant] told me at the time of my initial evaluation of him on February 26, 1996 that he gradually developed his right arm symptoms of right arm pain and right-sided neck pain in 1991 but did not report to me any specific incident. As noted above, in my review of records from other physicians who have seen him, I was unable to find a mention of any specific incident that would relate his pain to a specific event. Therefore I have no data upon which to state that there was any injury which caused his specific symptoms of neck and arm pain. While it is certainly possible that activities such as reaching, throwing, stretching, turning, twisting, bending, grasping, carrying, lifting, pushing, pulling while loading and unloading mail, while casing mail, while pushing containers of mail, while lifting mail, etc. might have caused his symptoms, I would state that this is in the realm of possibility rather than probability.

“I find no evidence, either from what [appellant] told me nor what has been recorded by other physicians, that there is a specific incident of trauma that resulted in his symptoms and I therefore cannot state that his symptoms were caused or aggravated by his employment.”

In a report dated September 22, 1997, Dr. Teresa D. Ruch, a Board-certified neurosurgeon, related that appellant evidently had an injury from lifting at work, moving,

pushing heavy carts and bundles of mail and working long hours with an excessive manual load. She related his complaints of pain in his neck, upper back, shoulders, arms and hands since May 30, 1991. Dr. Ruch provided findings on examination and noted that a myelogram appeared normal. She recommended further evaluation and testing “to establish whether this is a real problem or not.”

In a report dated June 16, 1998, Dr. Bell stated that he had reviewed his July 18, 1997 letter and Dr. John Wilber’s April 24, 1997 letter and reiterated his statement that he was unable to state that appellant’s symptoms were caused or aggravated by his employment. He stated:

“I feel that I am also unable to give a medical opinion as to what, if anything, caused [appellant’s] neck symptoms. As you are well aware, many occupations and recreational activities involve repetitive activity requiring the use of both arms and movement of the head back and forth. I do not feel that I am unable to state that repetitive activities such as that are in any way associated with the symptoms reported by [appellant].”

An employee who claims benefits under the Federal Employees’ Compensation Act⁷ has the burden of establishing the essential elements of his or her claim.⁸ The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁹ However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁰

The Board notes that while none of the reports of appellant’s attending physicians is completely rationalized, they are consistent in indicating that appellant sustained an employment-related injury and are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not sufficient to meet appellant’s burden of proof to establish his claim, they raise an uncontroverted inference between appellant’s claimed condition and his

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Ruthie M. Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

⁹ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

¹⁰ *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

employment and are sufficient to require the Office to further develop the medical evidence and the case record.¹¹

Accordingly, the case must be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained an employment-related injury to his neck. 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 15 and March 20, 1998 are set aside, and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
February 14, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹¹ See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978). The Board further notes that, in this case, the record contains no medical opinion contrary to appellant's claim and the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion.