

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SOCORRO VAZQUEZ and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 01-642; Submitted on the Record;
Issued October 25, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate compensation benefits effective April 4, 2000.

On January 7, 1997 appellant, then a 35-year-old small postal bundle sorter (SPBS) clerk, filed a traumatic injury claim, alleging that on March 17, 1996 when she was working on the sorting machine, *i.e.*, SPBS #87, she felt pain shooting down both her arms, stiffness and neck pain. In a statement dated February 18, 1997, appellant stated that while working on the sorting machine involving keying, pulling gaylords and pushing U-carts, she started experiencing some "terrible headaches." Appellant stated that she had a similar disability in March 1994 when she had muscle spasms on the left side of her chest and pain shooting down her left arm.

In a report dated January 1, 1997, appellant's treating physician, Dr. Herbert M. Schecter, an osteopath, diagnosed severe cervical sprain with two areas of small central discs mainly at C6-7 with cervical radiculopathy and numbness of the hand. He stated that appellant's pain was "apparently work related."

In a report dated April 21, 1997, Dr. Larry S. Kramer stated that x-rays, an electromyogram (EMG), a computerized axial tomography (CAT) scan and magnetic resonance imaging (MRI) scan showed that appellant had a herniated disc at the C6-7 level. He stated the pain in appellant's neck was suggestive of cervical radiculopathy. He opined that appellant's pain and discomfort in her neck and herniated disc were a direct result of her duties at the employing establishment.

By decision dated March 6, 1997, the Office initially denied the claim, stating that appellant did not establish fact of injury on March 17, 1996. By letter dated March 20, 1997, appellant requested an oral argument before an Office hearing representative which was held on October 28, 1997. By decision dated November 24, 1997, the Office hearing representative determined that appellant's claim should be adjudicated as an occupational disease, and the medical evidence in the record warranted further development by the Office. The Office hearing representative therefore remanded the case, and instructed the Office to refer appellant with a

statement of accepted facts and the case record to an appropriate medical specialist for a second opinion.

According to the statement of accepted facts, appellant's job as a SPBS clerk involved pulling mail off the conveyer belt with her left hand, keying in the zip code with her right hand for one hour and then pushing, or pulling containers filled with mail. She mainly stood and bent while performing that portion of her job. Due to cervical pain, appellant performed light duty from March 20, 1996 until April 1997. Appellant's light-duty work involved casing mail which meant that most of the time she sat on a high back chair casing mail into slots in front of her. Appellant would intermittently stand and place mail in the lower slots and intermittently reach up and place mail in the top shelf of the case. Appellant would place mail aside that had to be cased in the upper shelf and then place all of the upper shelf mail into the case at the same time. Appellant performed that task several times a day. In April 1997 she started experiencing severe headaches at work, stopped working and has not worked since that time.

In a report dated November 18, 1997, Dr. Herbert M. Schechter, an osteopath, stated that appellant's neck pain and discomfort and herniated disc were a direct result of her work-related duties at the employing establishment. He stated that the pain and discomfort in her neck area originally started in 1994 and became more severe to the point she sought treatment in his office in March 1996 and was placed on work restrictions.

In a report dated January 22, 1998, Dr. Robert M. Cohen, a neurological surgeon, considered appellant's history of injury, performed a physical examination and reviewed the September 4, 1996 MRI, CAT scan and EMG. He stated that the MRI scan showed small lesions at C5-6 and C6-7 but he stated appellant did not have any findings related to these lesions. Dr. Cohen stated that appellant was neurologically normal and her complaints and symptoms stopped after she left the employing establishment. He noted that when appellant stopped working on the sorting machine, her condition improved and when she went back to it, she had a flare-up, which completely cleared up when she left work. Dr. Cohen stated that he could not "say why or how the specific work on that machine physiologically causes her pain syndrome but simple circumstances certainly appear to point in that direction." He stated that appellant could perform any work except working on the sorting machine.

In a supplemental report dated March 16, 1998, Dr. Cohen stated that "it [was] not even conceivably possible that the patient's flare-up of severe occipital neuralgic pain in April 1997 which put her totally out of work was related to working on the sorting machine." He stated that the flare-up could not be related to the sorting machine when she had not been working on that machine for a year, since March 17, 1996. Dr. Cohen stated that he did not know why appellant had the occipital flare-up in April 1997. He stated that the flare-up occurred on a spontaneous basis in April 1997 and the association between the sorting machine and the occipital neuralgia was "extremely shaky at most," and noted that appellant working on the sorting machine from May 1994 through March 1996 with no occipital neuralgia. Dr. Cohen stated that an association between the sorting machine work and appellant's pain syndrome was based on "an apparent partial temporal sequence of events, not science."

By decision dated May 12, 1998, the Office accepted appellant's claim to the extent that appellant sustained a cervical strain on November 12, 1995 but found that the claimant's neck condition ceased when she was removed from the sorting machine. The Office therefore

terminated her compensation benefits effective March 20, 1996, stating that appellant no longer had any residuals of the work-related injury after that date.

By letter dated June 8, 1998, appellant requested an oral hearing before an Office hearing representative which was held on June 28, 1999. At the hearing, she described her duties on the sorting machine and her light-duty work, the April 1997 incident when she felt terrible headaches while casing mail and stated that she felt the headaches were related to reaching above her shoulders casing mail and a pinched nerve in her cervical area. Appellant testified that she tried unsuccessfully to return to work in October 1997 and finally returned in January 1998 keying on the machine which she had been doing for a year. She stated that she filed a new claim in January or February 1999 for pain in her right hand shooting up her arm but the claim had not yet been decided. Appellant also stated that she was working on light duty, she continued to have pain in her neck but the headaches came and went.

In a report dated January 11, 1999, Dr. Kramer stated that appellant's job duties which included lifting more than 10 pounds or reaching above her shoulders, pushing and pulling the cart, and using the computer keyboard, caused the symptoms in her neck and that the neck pain and herniated disc were a direct result of her work-related duties.

By decision dated October 7, 1999, the Office hearing representative found that the case was not in posture for decision because Dr. Cohen did not explain whether appellant's continued neck pain from March 1996 through April 1997 was related to her employment. The Office hearing representative considered that Dr. Kramer stated that appellant's reaching over her shoulder while on light duty caused her neck condition. The Office hearing representative therefore remanded the case for the Office to obtain another supplemental report from Dr. Cohen addressing whether appellant's continued neck pain from March 1996 through April 1997 and appellant's occipital neuralgia resulted from her intermittently reaching above shoulder level while on light duty.

In a report dated February 29, 2000, Dr. Cohen opined that standing up a few times a day and slipping mail in slots higher up:

“Could not possibly be the cause of severe occipital neuralgic headache syndrome which would drive anybody out of work. Quite frankly the activity is simply not significant enough for me to be able to consider it a cause of that level of symptomatology. As you know, this case has been a real puzzle from the very beginning. In fact, I now feel this is a true conundrum *i.e.*, an insolvable puzzle. In truth there is no scientific basis one could use to blame the patient's episodes of neck and occipital neuralgic pain on any of her work activities.”

He stated the “most likely diagnosis” was a brachial plexus problem but he found no findings related to the brachial plexus on either side. Dr. Cohen also stated that appellant's complaints “do not fit at all” with the small herniated disc at C6-7 and the bulge at C5-6.

By decision dated April 4, 2000, the Office denied appellant's claim, stating that the evidence of record failed to establish that appellant continued to suffer from residuals of the work injury.

By letter dated July 24, 2000, appellant requested reconsideration of the Office's decision and submitted some emergency room reports dated March 26, 1994, a medical report from

Dr. William H. Simon, a Board-certified orthopedic surgeon, dated June 12, 2000 and her affidavit. In his June 12, 2000 report, Dr. Simon considered appellant's history of injury, performed a physical examination and interpreted the September 4, 1996 MRI scan as showing a degenerative bulging disc at C5-6 and a moderate sized central disc herniation at C6-7. He diagnosed cervical discogenic syndrome with right greater than left cervical radicular symptoms. Dr. Simon opined that based on the MRI scan alone he could not specifically determine when the disc herniation occurred. He noted that appellant had no difficulties prior to her March 1994 employment injury and therefore the disc herniation could be attributed to the 1994 injury. Dr. Simon stated that appellant "would then be working with her disc injury when she overexerted herself again in 1996 and again in 1999." He opined that appellant could not perform her former job and could be tested in a key functional assessment. In her affidavit, appellant elaborated upon her history of neck pain and stated that she had never had neck and arm pain prior to the March 15, 1994 lifting incident. She stated that she believed all her neck problems related to that incident.

By decision dated October 20, 2000, the Office denied appellant's request for modification.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.²

In his November 18, 1997 report, appellant's treating physician, Dr. Schecter, opined that appellant's neck pain and discomfort and herniated disc directly resulted from her work-related duties at the employing establishment. He, however, did not describe the job duties that caused her neck condition or provide a rationalized medical opinion explaining how the job duties caused her neck condition. The Board has held that a medical opinion not fortified by medical rationale is of little probative value.³ Further, in an occupational disease claim, the medical evidence must explain how appellant's specific job duties caused her medical condition.⁴ Dr. Schecter's opinion therefore does not establish that appellant continued to suffer from a work-related neck condition.

In his January 11, 1999 report, Dr. Kramer opined that appellant's job duties of lifting more than 10 pounds above her shoulders, pushing and pulling the cart and using the computer keyboard caused her neck pain and herniated disc. He, however, also did not provide a

¹ *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

² *Larry Warner*, 43 ECAB 1027, 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

³ *Ronald C. Hand*, 49 ECAB 113, 118 (1997).

⁴ *Dennis M. Mascarenas*, 49 ECAB 215, 217-18 (1997).

rationalized medical opinion explaining how appellant's job duties caused her neck condition, and therefore his opinion is not probative.

In his July 24, 2000 report, Dr. Simon opined that he could not determine from the MRI scan when the disc herniation occurred but because appellant did not have any symptoms prior to March 1993, he opined that the disc herniation "could be" attributed to the March 1994 injury. He stated that appellant worked with a disc injury and overexerted herself in 1996 and 1999. The Board has held, however, that a medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but not symptomatic after it is insufficient, without supporting rationale, to establish causal relation.⁵ Dr. Simon's report is therefore not probative.

In his March 16, 1998 report, the referral physician, Dr. Cohen opined that appellant's flare-up of occipital neuralgic pain in April 1997 was not related to her working on the sorting machine because she had not worked on that machine for a year. He did not know why she experienced the flare-up at that time but believed it occurred on a spontaneous basis. In his February 29, 2000 report, Dr. Cohen stated that appellant's standing up a few times a day and slipping mail in slots higher up did not cause her episodes of neck and occipital neuralgic pain because the activity was not significant enough for him to consider the cause of her symptomatology. He reiterated that he did not know what caused her neck condition. Dr. Cohen's report is complete and well rationalized, and his opinion that appellant's neck pain and herniated disc are not related to her employment, constitutes the weight of the evidence. His opinion justifies the Office's termination of benefits.

The October 20 and April 4, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
October 25, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁵ *Cleopatra McDougal-Saddler*, 47 ECAB 480, 489 (1996).