

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LORRAINE HEBERT and U.S. POSTAL SERVICE,  
POST OFFICE, Providence, RI

*Docket No. 01-1576; Submitted on the Record;  
Issued April 23, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she developed a neck condition in the performance of duty.

On March 6, 2000 appellant, then a 48-year-old letter carrier, filed a claim for compensation alleging that on January 26, 2000 she sustained a neck injury when she turned her head the wrong way. She stopped work on January 26, 2000 and returned to work on March 2, 2000.

Accompanying appellant's claim was a duty status report dated March 2, 2000 prepared by Dr. Stanley Leitzes, a general practitioner. The duty status report indicated a diagnosis of cervical radiculopathy. Dr. Leitzes recommended restrictions on lifting, pulling, reaching above the shoulder and prohibited repetitive motion.

By letter dated March 15, 2000, the Office of Workers' Compensation Programs requested additional medical evidence from appellant stating that the initial information submitted was insufficient to establish an injury. The Office particularly advised appellant of the type of medical evidence needed to establish her claim.

In response to the Office's request, appellant submitted a duty status report and note from Dr. Leitzes dated March 13, 2000; physical therapy notes dated March 31 to April 20, 2000; and a narrative statement. Dr. Leitzes' note indicated that appellant was able to return to work on March 14, 2000. The duty status report noted a diagnosis of cervical radiculopathy and recommended light duty with no repetitive motion. Appellant's narrative statement indicated that she was stretching over her head when she felt a kink in her neck. She delayed in reporting the incident because she thought it would resolve itself. Appellant noted that in the summer 1999 she experienced a pinched nerve in her neck which had resolved.

On April 21, 2000 the Office issued a decision denying appellant's claim for compensation under the Federal Employees' Compensation Act.<sup>1</sup>

Thereafter, appellant submitted several reports from Dr. Leitzes dated January 26 to June 21, 2000; physical therapy notes dated May 2, 2000; a magnetic resonance imaging (MRI) scan dated May 19, 2000; and a report from Dr. Craig Warnick, a Board-certified family practitioner, dated June 2, 2000. Dr. Leitzes' note, dated January 26, 2000, indicated that appellant was evaluated for neck and right arm pain. He noted that appellant did not sustain any significant trauma but experienced neck discomfort after suddenly turning her head. Dr. Leitzes indicated that appellant had a similar but more severe episode one year ago. He diagnosed appellant with cervical radiculopathy and recommended she not return to work at this time. Dr. Leitzes' notes dated April 26, 2000 indicated that appellant had been under his care for cervical radiculopathy and determined appellant's symptoms were work related. The doctors other records note appellant's intermittent neck problems with gradual improvement of her condition. The MRI scan revealed cervical kyphosis; spondylosis; right C6-7 osteophyte; disc herniation with cord flattening; right foraminal narrowing; a small left C5-6 osteophyte; and protrusion with mild cord contact. The report from Dr. Warnick indicated a history of appellant's injury noting that on January 26, 2000 appellant twisted and injured her neck. He noted that appellant continued to experience stiffness in her neck. Dr. Warnick indicated that appellant had good range of motion and that the neurological examination revealed no abnormalities. He concluded that appellant's injury on January 26, 2000 yielded her current symptoms. Dr. Warnick noted that appellant could not perform the duties of her employment.

By letter dated April 26, 2000, appellant requested an oral hearing before an Office hearing representative. The hearing was held on January 11, 2001. Appellant submitted additional medical evidence from Dr. Warnick dated July 28, 2000 and February 7, 2001. She testified that her neck condition was the culmination of a July 1999 incident in which she was lifting mail trays and pulled a muscle and a January 2000 incident where she was casing mail and twisted her neck. Dr. Warnick's letter provided a history of appellant's injuries in July 1999 and January 26, 2000. He concluded that appellant's injuries were the cause of her disability. In his report dated February 7, 2001, Dr. Warnick noted that appellant's diagnosed condition of cervical radiculopathy; C5-6 disc protrusion; and C6-7 disc herniation were causally related to her employment activities. He specifically indicated that appellant's employment duties require her to lift up to 70-pound mail tubs to case mail. Dr. Warnick further noted that on the date of the injury, appellant was lifting overhead when she experienced a pulling sensation in her neck and concluded there was a temporal relationship between the activity and the condition diagnosed as cervical radiculopathy.

By decision dated March 26, 2001, the hearing representative affirmed the decision of the Office dated April 21, 2000.

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

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

States within the meaning of the Act, that the claim was filed within the applicable time limitation 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 occupational disease.<sup>3</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>4</sup> In some traumatic injury cases, this component can be established by an employee’s uncontroverted statement on the Form CA-1.<sup>5</sup> An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee’s statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.<sup>6</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>7</sup>

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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician’s opinion.<sup>8</sup>

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<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>4</sup> *Elaine Pendleton*, *supra* note 2.

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

<sup>7</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>8</sup> *James Mack*, 43 ECAB 321 (1991).

In this case, it is not disputed that appellant was stretching over her head when casing mail on January 26, 2000.

In support of her claim appellant submitted treatment notes from Dr. Leitzes dated January 26, 2000 which indicated that appellant did not have any significant trauma but experienced neck discomfort when she suddenly turned her head. He diagnosed appellant with cervical radiculopathy. Dr. Leitzes' February 9, 2000 note indicated that the electrodiagnostic studies revealed radiculopathy at C5-6. His treatment notes dated April 26, 2000 indicated that appellant had been under his care for cervical radiculopathy and "her symptoms are work related by history."

Additional report's from Dr. Warnick dated June 2 and July 28, 2000 concluded that appellant's injury "on or about January 26, 2000, occurring while at work, was indeed the causal event which has yielded [appellant's] current symptoms and findings." He further noted in his July 28, 2000 report that "the injuries ... are, in fact, the cause of my patient's disability...." In his February 7, 2001 report, Dr. Warnick noted that appellant's diagnosed condition of cervical radiculopathy; C5-6 disc protrusion; and C6-7 disc herniation were causally related to appellant's employment activities. He specifically noted that on the date of the injury, appellant was lifting overhead when she experienced a pulling sensation in her neck and concluded there was a temporal relationship between the activity and the condition diagnosed as cervical radiculopathy.

The Board finds that the reports of Drs. Leitzes and Warnick, while insufficiently rationalized to establish that diagnosed conditions of cervical radiculopathy were causally related to appellant's January 26, 2000 employment injury, do provide enough support for appellant's claim as to require further medical development by the Office.<sup>9</sup> After such further development as it may deem necessary, the Office shall issue a *de novo* decision.

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<sup>9</sup> Cheryl A. Monnell, 40 ECAB 545, 551, (1989); see also Horace Langehorne, 29 ECAB 820, 821 (1978).

The March 26, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with the decision of the Board.

Dated, Washington, DC  
April 23, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

A. Peter Kanjorski  
Alternate Member