

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WENDY K. GJERDE and U.S. POSTAL SERVICE,
POST OFFICE, Detroit Lakes, MN

*Docket No. 01-2161; Submitted on the Record;
Issued May 9, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether appellant has sustained an injury to her neck, shoulders and arms causally related to factors of her federal employment.

On September 14, 2000 appellant, then a 36-year-old rural carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that on August 21, 2000 she first became aware that the pain in her shoulders, neck and arm was due to factors of her employment.¹ In a November 6, 2000 statement, appellant noted her duties included bending, stooping, heavy lifting, pulling and lifting bundles of mail and packages from the back seat approximately 25 times a day. She noted packages could weigh up to 70 pounds while the bundles of mail were about 8 pounds. The employing establishment contested the claim.

In a September 12, 2000 duty status report, Dr. Thomas M. Seaworth, an attending Board-certified family practitioner, diagnosed myositis, post upper back strain which was due to sitting in the car, reaching, stretching, lifting packages and bundles.

In a November 10, 2000 report, Dr. Ryan K. Weum, a chiropractor, diagnosed cervical thoracic sprain with myofascitis and paresthesia and radicular pain in the upper extremities. Dr. Weum also diagnosed subluxations at C2, C6-7 and T4 by x-ray interpretation. He attributed appellant's condition to her working long periods of time with her hands in sorting mail and driving and her "sitting in a posturally unstable position through the day."

By decision dated December 8, 2000, the Office of Workers' Compensation Programs denied appellant's claim on the basis that she failed to establish a causal relationship between her alleged condition and factors of employment. The Office also found that Dr. Weum could not be considered a physician under the Federal Employees' Compensation Act as he had failed to diagnose a subluxation by x-ray.

¹ Appellant referred to her sitting at an angle while delivering the mail as the cause of her pain.

Appellant requested a review of the record in a December 19, 2000 letter, as well as submitting a December 13, 2000 report by Dr. Seaworth.

Dr. Seaworth noted that appellant had been having upper back pain and posterior neck pain for the past four years. A physical examination revealed tenderness bilaterally in the upper back muscles and posterior cervical muscles. He diagnosed cervical strain and chronic myositis as well as “some upper back myositis.” Dr. Seaworth attributed appellant’s condition to her “carrying a heavy mailbag with inflammation of the muscles of the upper back and neck.”

By decision dated June 20, 2001 and finalized on June 21, 2001, the hearing representative affirmed the denial of appellant’s claim. She found that Dr. Weum could not be considered a physician under the Act as he failed to diagnosis a subluxation. The hearing representative also found Dr. Seaworth’s report of little probative value as he attributed her condition to carrying a heavy mailbag when appellant had not alleged she carried a heavy mailbag and the evidence failed to support her carrying a heavy mailbag.

The Board 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. The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.² 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.³ 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

It is well established that proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While appellant has the burden to establish entitlement to

² *Manuel Gill*, 52 ECAB ____ (Docket No. 99-915, issued March 2, 2001).

³ *Claudio Vazquez*, 52 ECAB ____ (Docket No. 01-416, issued August 30, 2001).

⁴ *Patricia J. Glenn*, 53 ECAB __ (Docket No. 01-65, issued October 12, 2001); *Victor J. Woodhams*, 41 ECAB 345 (1989).

compensation benefits, the Office shares responsibility in the development of the evidence.⁵ It has the responsibility to see that justice is done.⁶

In support of her claim, appellant submitted reports from Drs. Seaworth and Weum. Dr. Weum diagnosed cervical thoracic sprain with myofascitis and paresthesia and radicular pain as well as subluxations at C2, C6-7 and T4 by x-ray interpretation. Contrary to the hearing representative's finding, Dr. Weum's report does contain a diagnosis of a subluxation by x-ray and, therefore, he is considered a physician under the Act.⁷ Dr. Weum attributed appellant's condition to her incorrect posture while driving and sorting mail.

Dr. Seaworth diagnosed myositis, post upper back strain, which he attributed to employment factors in a September 12, 2000 duty status report. Specifically, the physician concluded that appellant's condition was due to sitting in the car, reaching, stretching, lifting packages and bundles. By report dated December 13, 2000, he diagnosed cervical strain and chronic myositis as well as "some upper back myositis" which he concluded was due to appellant's condition to her "carrying a heavy mailbag with inflammation of the muscles of the upper back and neck."

While Dr. Seaworth and Dr. Weum provided some rationale for their opinions that appellant's back and neck conditions are causally related to factors of her employment, they did not provide a factual background of the injury in their respective reports from which to establish a causal relationship. They merely attributed appellant's condition to her employment factors without providing supporting rationale. Nonetheless, the Board finds that the medical reports submitted by appellant, taken as a whole, raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.⁸ Additionally, the Board notes that in this case the record contains no medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion. The Board will set aside the Office's June 21, 2001 decision and remand the case for further development of the medical evidence. Following such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim.

⁵ *Marco A. Padilla*, 51 ECAB __ (Docket No. 98-1296, issued December 6, 1999).

⁶ *Jimmy A. Hammons*, 51 ECAB __ (Docket No. 98-1259, issued December 8, 1999).

⁷ Section 8101(2) provides that chiropractors are considered physicians only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. *Ronald Q. Pierce*, 53 ECAB __ (Docket No. 01-1007, issued February 7, 2002).

⁸ *John J. Carlone*, 41 ECAB 354 (1989).

The decision of the Office of Workers' Compensation Programs dated June 20, 2001 and finalized on June 21, 2001 is hereby set aside and the case remanded for further proceedings in accordance with this decision

Dated, Washington, DC
May 9, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member