

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARIANNE LAIZURE and U.S. POSTAL SERVICE,  
POST OFFICE, Kings Park, NY

*Docket No. 02-729; Submitted on the Record;  
Issued September 11, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has established that she sustained a cervical disc and shoulder injury in the performance of duty as alleged.

After a thorough review of the case record and the legal issues involved, the Board finds that the case is not in posture for a decision.

On July 14, 2000 appellant, then a 38-year-old distribution and window clerk, filed a claim asserting that she sustained cervical disc and right shoulder injuries on February 2, 2000 while throwing parcels.<sup>1</sup> She had intermittent work absences with periods of light duty, stopped work on approximately June 19, 2000 and did not return.

In July 31, 2000 letters, the employing establishment controverted appellant's claim, asserting that her neck symptoms were due to a nonoccupational motor vehicle accident in June 1996.<sup>2</sup> The employing establishment also alleged that appellant filed her claim only after the denial of her June 19, 2000 request to change the start of her tour from 8:45 a.m. to 4:00 a.m.

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<sup>1</sup> In an August 18, 2000 statement, appellant explained that the June 1996 motor vehicle accident involved a different cervical disc. She attributed her condition to "[u]nloading, loading trucks, throwing parcels, dumping heavy bags, unloading hampers and occasionally huge boxes or crates, heavy lifting, pushing heavy equipment, bending, stretching, twisting and turning." Appellant noted that "working the window compounded [her] pain" by having to work more than eight hours and "throwing letters and flats...."

<sup>2</sup> In a July 22, 1997 letter, Dr. Steven M. Bernadini, a chiropractor, noted treating appellant for "pinched nerves" in her neck following a June 19, 1996 motor vehicle accident.

By decision dated October 20, 2000, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that causal relationship was not established due to insufficient medical evidence.<sup>3</sup>

Appellant requested reconsideration by a December 26, 2000 letter and submitted additional medical reports. By decision dated March 1, 2001, the Office denied modification on the grounds of insufficient medical evidence. Appellant again requested reconsideration by September 7, 2001 letter and submitted additional medical evidence. The Office denied modification by November 19, 2001 decision, again on the grounds that appellant had submitted insufficient rationalized medical evidence.

The Board finds that appellant has submitted sufficient medical evidence to warrant additional development by the Office.<sup>4</sup>

Appellant submitted reports from three attending physicians: Dr. Frederic A. Mendelsohn, a Board-certified neurologist; Dr. Frank Segreto, a Board-certified orthopedic surgeon; and Dr. Thomas Dowling, a Board-certified neurosurgeon. Each of these physicians supported a causal relationship between factors of appellant's federal employment, in particular throwing parcels on February 2, 2000 and the claimed C4-5 herniation and right shoulder condition. Each physician also explained why appellant's current pathology and symptoms were due to the February 2, 2000 incident as opposed to the June 1996 motor vehicle accident.

Dr. Mendelsohn began treating appellant in October 1996, following the June 1996 motor vehicle accident. He reviewed or obtained several imaging studies of appellant's cervical spine over a four-year period, which gave him a detailed knowledge of the objective pathologies present in appellant's cervical spine both before and after February 2, 2000. A September 12, 1996 cervical magnetic resonance imaging (MRI) scan showed straightening of the cervical lordosis, a slight C3-4 disc bulge, and a minimal, developmental asymmetry "of the contour of the intervertebral disc and adjacent vertebral body margins at the C4-5 level." Dr. Mendelsohn obtained October 10, 1996 electromyography (EMG) and nerve conduction velocity (NCV) studies showing abnormalities "indicative of brachial plexus injury on the right."

Following the February 2, 2000 incident, Dr. Mendelsohn also obtained a May 26, 2000 MRI scan of the cervical spine showing straightening of the cervical lordosis, and a "C4/5 right parasagittal disc herniation mildly effac[ing] the central aspect of the thecal sac." August 14, 2000 EMG and NCV studies performed for Dr. Mendelsohn showed abnormalities in "the upper extremities consistent with right cervical radiculitis."

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<sup>3</sup> On December 7, 2000 appellant filed claims for recurrences of disability on May 22 and June 19, 2000, which occurred while she was on limited duty. In a January 12, 2001 letter, the Office advised appellant that, as her claim had been denied, the Office was unable to render decisions regarding recurrences of disability related to that claim.

<sup>4</sup> As the Board has jurisdiction over the merits of the case, the medical evidence will be discussed as a whole rather than by dividing the reports according to their dates of submission.

In June 8 and 20, 2000 reports, Dr. Mendelsohn diagnosed “cervical disc herniations and severe neck and back pain,” noting that appellant was unable to turn her head. He held appellant off work from May 23, 2000 onward.

In an October 30, 2000 report, Dr. Mendelsohn noted treating appellant six times since May 16, 2000 for severe and progressive right-sided neck pain. He observed severely limited range of neck motion with paracervical muscle spasm. Dr. Mendelsohn recalled that appellant described “that her duties as a postal clerk require[d] her to load and unload trucks, dump mail and sort parcels.” He diagnosed a C4-5 parasagittal disc herniation to the right and right cervical radiculitis. Regarding causal relationship, Dr. Mendelsohn noted that the June 1996 neck injury improved greatly following physical therapy, but “[b]eginning on or about Feb[ruary] 2000, the problem worsened again with increasing severe pain on the right side of her neck radiating into her shoulder and up her ear with a burning feeling in the posterior cervical spine.” He opined that, while it was “very possible” that the 1996 motor vehicle accident was the initial cause of her disc disorder,” work activities, including bending, lifting, pushing, pulling and carrying parcels “caused an aggravation of the cervical condition.”

Dr. Segreto began treating appellant in approximately June 2000. He held appellant off work intermittently through July 24, 2000, when he released her to limited duty.

In a November 7, 2000 report, Dr. Segreto opined that the February 2, 2000 work incident caused the “herniated right-sided C4-5 disc” as demonstrated by the May 26, 2000 MRI scan. He noted that the September 12, 1996 MRI scan did not show the C4-5 disc herniation, indicating that the February 2, 2000 work incident was causative by history. Dr. Segreto further explained in a May 21, 2001 report that, while processing parcels at work on February 2, 2000, appellant “felt a pull on her neck and shoulder,” the regions in which imaging studies found the herniated C4-5 disc, “slap lesion and labrum tear of the right shoulder” requiring surgical repair, all of which were “consistent with the mechanism of injury.” He also noted that appellant had completely recovered from the June 1996 neck injury prior to February 2, 2000.

In a March 6, 2001 report, Dr. Dowling noted treating appellant beginning on October 24, 2000 for severe right-sided neck pain and limited range of right shoulder motion. He stated that appellant provided a history, both orally and on a written patient intake form, that her neck and right upper extremity symptoms began while at work at the employing establishment on February 2, 2000, when she “was throwing parcels and felt a pull occur in [her] neck.” Dr. Dowling reviewed Dr. Mendelsohn’s reports and MRI scan, and diagnosed “right cervical radiculopathy secondary to a herniated disc at C4-5 along with a right shoulder impingement syndrome which normally does occur with people who do have a cervical problem.” He distinguished appellant’s symptoms beginning February 2, 2000 from the 1996 motor vehicle accident, as that was a “less severe” injury and occurred at C3-4, whereas her current complaints related to a C4-5 disc herniation. Dr. Dowling opined that the February 2, 2000 injury as described was “the competent producing source of her symptomatology and pathology today.”

Thus, appellant submitted reports from three Board-certified specialists supporting a causal relationship between throwing parcels on February 2, 2000 and the C4-5 disc herniation and right shoulder injury. Also, each physician explained why the June 1996 motor vehicle

accident could not have caused those injuries. The Board notes that an appellant is not required to prove that work factors are the sole cause of the claimed injury or condition.<sup>5</sup>

While the reports of appellant's physicians are insufficiently rationalized to meet appellant's burden of proof in establishing causal relationship, they are sufficiently consistent, detailed and rationalized to warrant further development by the Office.<sup>6</sup> The Office has not presented any controverting medical evidence. Also, the Board notes that the Office has not undertaken any medical development in this case, such as referring appellant to a second opinion physician to clarify the opinions of her treating physicians, which are uniformly supportive of causal relationship.

On remand of the case, the Office shall prepare a statement of accepted facts, and refer it, appellant and the complete record to an appropriate Board-certified specialist or specialists to obtain a detailed, well-rationalized opinion regarding any causal relationship between the identified work factors and the claimed neck and shoulder injuries. Following this and any other development that the Office deems necessary for a proper adjudication of the case, the Office shall issue an appropriate decision.

The decisions of the Office of Workers' Compensation Programs dated November 19 and March 1, 2001 are hereby set aside and the case remanded for further action consistent with this decision and order.

Dated, Washington, DC  
September 11, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>5</sup> *Beth P. Chaput*, 37 ECAB 158 (1985).

<sup>6</sup> *John J. Carlone*, 41 ECAB 345, 358 (1989).