

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RONALD STAMA and U.S. POSTAL SERVICE,  
POST OFFICE, Little Neck, NY

*Docket No. 02-894; Submitted on the Record;  
Issued September 12, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant established that his medical conditions are causally related to factors of his federal employment.

On November 8, 2000 appellant, then a 41-year-old letter carrier, filed an occupational disease claim, alleging that on or about October 31, 2000 he became aware that he had a work-related degeneration of his cervical spine along with aches and pains in his neck and shoulder area and other symptoms related to his neck and shoulder conditions, such as headaches and visual disturbances. In an accompanying statement, he advised that he has been getting aches and pains in his shoulders, neck and occasional headaches for the past three or more years. Appellant attributed those symptoms to the tension of the physical carrying of mail, climbing steps, walking in bad weather and emotional family related as well as pressure on the job. He advised that when he had extended time off, the symptoms would disappear, but this year it was accompanied by vision changes. Appellant noted that he had a cardiac condition and advised that he underwent coronary angiography on September 12, 2000. He stated that he first found out his neck condition might be job related and not cardiac related, after his computerized axial tomography (CAT) scan of October 2, 2000. A statement of appellant's symptoms written by appellant's wife, Carol Stama, to Dr. Emilio Oribe, a Board-certified neurologist, was submitted along with medical evidence. The record reflects that appellant stopped work on or about July 30, 2000.

A cervical spine computerized tomography (CT) scan dated September 29, 2000 revealed left paracentral disc herniation at the C3-4 level with left foraminal stenosis. A small central disc herniation at the C4-5 level without significant cord compression was also noted.

Copies of chart notes, medical studies, and medical records were also submitted. In an October 12, 2000 report, Dr. Joseph Wiesel, a Board-certified cardiologist, advised that appellant underwent a cardiac catheterization on September 12, 2000.

In an October 16, 2000 report, Dr. Oribe advised that appellant requires continued physical therapy and was instructed not to return to the type of work he usually does until further notice.

In an October 19, 2000 report, Dr. Ronald Kanner, a Board-certified neurologist, noted appellant's complaints of neck pain, headaches, vision and shaking with severe headaches, and left shoulder pain at times and noted appellant's history of present illness. Results of appellant's examination were provided along with a review of the objective medical studies. Dr. Kanner advised that appellant's examination was normal, with the exception of limited range of motion of the cervical spine. Radiological studies confirmed some degenerative disease of the spine. Dr. Kanner recommended a course of physical therapy and noted his concern that appellant's return to his job could exacerbate the condition.

In a letter dated November 28, 2000, the Office of Workers' Compensation Programs advised appellant that the medical documentation submitted did not support a work-related claim. Appellant was requested to provide additional information to the Office including a comprehensive medical report from his treating physician which contained a well-rationalized medical opinion, supported by objective evidence, explaining how and why appellant's federal duties contributed to his current condition.

Appellant submitted his responses to the Office's questions including a detailed statement of his symptoms and the type of work he performs. Physical therapy notes were also submitted.

In a December 15, 2000 report, Dr. Oribe related appellant's medical history.

"Neurological examination was normal. Musculoskeletal examination revealed limitation of neck rotation movements to a 45-degree angle. Several myofascial trigger points were identified located at the base of the neck near the occiput and over the shoulders. Pressure over the cervical trigger points elicited appellant's typical headache symptoms. A recent magnetic resonance imaging scan of the brain was unremarkable. A CT of the cervical spine of September 29, 2000 reported left paracentral disc herniation at C3-4 and small central disc herniation at C4-5. Electronystagmography of October 6, 2000 was normal."

Regarding appellant's headaches, Dr. Oribe stated that they were probably tension type headaches with some elements suggesting a cervicogenic origin. He noted that he had recommended that appellant not return to his usual work as a letter carrier as this required carrying heavy loads and walking significant distances until his symptoms and condition resolve. Dr. Oribe opined that it was his belief that appellant's neck pain and cervical spine disc herniation may be related to the nature of appellant's work as a letter carrier. He further opined that appellant had benign paroxysmal positional vertigo which appeared to be triggered by head position changes, for which he recommended vestibular rehabilitation exercises. Dr. Oribe further noted some features of depression.

In a December 26, 2000 addendum to his report of October 19, 2000, Dr. Kanner noted that appellant had inquired whether or not his profession as a letter carrier could have

contributed to the degenerative disease in his cervical spine. He noted that appellant's work involved numerous repetitions of arm elevation and head turning. Since these motions can produce stress on the cervical spine, Dr. Kanner opined that it was entirely possible that they contributed to the degenerative disease from which appellant now suffers. He advised that repetitive stress on joints is known to produce degenerative disease.

By decision dated February 5, 2001, the Office denied the claim, stating that appellant did not submit medical evidence which established how and why appellant's specific employment activities over time actually caused, aggravated or otherwise contributed to the diagnosed conditions.

By letter dated September 12, 2001, appellant, through his attorney, requested reconsideration.

In a May 29, 2001 report, Dr. Shlomo Piontkowski, a Board-certified orthopedic surgeon, noted appellant's history of neck pain and description of work duties as described by appellant. He advised that he reviewed the September 29, 2000 CT scan of the cervical spine, which showed:

“[A] left paracentral disc herniation with left foraminal stenosis at C3-4 and a small central disc herniation without compression or foraminal stenosis at C4-5. The rest of the CT scan was within normal limits.

“Physical examination of appellant's cervical spine showed that he had paracervical muscle spasm and diffuse tenderness along the paracervical muscles. He had limited range of motion of the neck secondary to pain and spasm. Neurological examination was ... grossly within normal limits.

“An x-ray of the cervical spine showed straightening of the normal cervical curvatures with a small subluxation at C3-4. There were mild diffuse degenerative changes throughout the upper part of the cervical spine.

“[Dr. Piontkowski's] impression was that appellant had signs compatible with cervical derangement, with possible radiculopathy and a subluxation at C3-4.”

Dr. Piontkowski opined that appellant's injuries “were compatible with chronic over utilization of the neck and upper extremities and could be related to his position as a letter carrier.” He noted that appellant had a moderate partial permanent disability, was unable to perform the usual activities involved as a letter carrier and needed to be in a strictly sedentary activity position in order to continue working.

In a June 12, 2001 report, Dr. Oribe reiterated his opinion that appellant's neck and shoulder region pain, myofascial pain syndrome and cervical spine disc herniations were work-related due to the nature of appellant's work as a letter carrier. In appellant's case, repetitive movements and overuse of the upper body over the course of many years of work as a letter carrier have resulted in muscle, tendon and joint strain. Appellant's pain involving the muscles supporting the upper limb girdle and head is similar to that seen in other workers engaged in

repetitive movements or activities. As to the cervical intervertebral disc herniations noted on the CT scan, Dr. Oribe opined that these are causally related to the repetitive flexion/extension motions of the cervical spine performed during the course of appellant's work as a letter carrier. He further noted that recent studies support the accepted concept that repetitive mechanical stress is associated with disc herniation. Dr. Oribe further noted that there was radiological documentation of progressive disc abnormalities indicating that cervical disc herniation is a cumulative process that can result even with modest forces if flexion/extension cycles are repetitive. In appellant's case, he stated that disc herniation was the only culminating event resulting from chronic repetitive stresses to the cervical spine, rather than the result of a discrete accident/traumatic event. Dr. Oribe therefore opined that chronic repetitive mechanical stresses to the cervical spine resulting from appellant's occupation have produced his cervical disc herniation. He further recommended that appellant not return to his usual work as a letter carrier.

In a letter dated September 26, 2001, an Office medical adviser reviewed Dr. Oribe's June 12, 2001 report and responded to the questions directed to him by the Office. The Office medical adviser opined that he believed chronic degenerative changes and "o.a"(osteoarthritis?—this portion is not readable) could develop after years of repetitive flexion/extension and rotary motions of the neck at work. However, he opined that he did not believe cervical herniated disc could occur from that type of activity. The Office medical adviser related that he was not aware of the studies referenced in Dr. Oribe's June 12, 2001 report and noted that most of the reports were speculative. The Office medical adviser further advised that repetitive stress and strains off the job over many years can also lead to chronic degenerative disease in the neck.

In a letter dated October 1, 2001, the employing establishment advised that appellant stopped work approximately July 30, 2000. A copy of the official duties of a letter carrier was also provided.

By decision dated December 10, 2001, the Office denied appellant's request for modification.

The Board finds that the case is not in posture for decision because of a conflict in the medical opinion evidence.<sup>1</sup>

To establish that an injury was sustained in the performance of duty, appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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 causal relationship, generally, is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence

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<sup>1</sup> See generally *Elizabeth J. Davis-Wright*, 39 ECAB 1232 (1988).

which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant'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 appellant.<sup>2</sup>

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.<sup>3</sup>

In this case, the medical reports from appellant's treating physicians, with the exception of the June 12, 2001 report of Dr. Oribe, are not probative because they are equivocal in nature or fail to offer a well-rationalized medical opinion explaining how or why appellant's conditions arose out of or were affected by his employment duties. In his October 19, 2000 report, Dr. Kanner failed to provide an opinion on causation and is not probative. Further, in his December 26, 2000 addendum, he was speculative stating it was "entirely possible" that that the numerous repetitious motions of appellant's work contributed to the degenerative disease from which he now suffers.<sup>4</sup>

In his May 29, 2001 report, Dr. Piontkowski diagnosed cervical derangement, with possible radiculopathy and a subluxation at C3-4 and opined that appellant's injuries were compatible with chronic over utilization of the neck and upper extremities and "could" be related to his position as a letter carrier. He presented no opinion as to the cause of appellant's neck condition specific to his situation.<sup>5</sup> Moreover, Dr. Piontkowski's opinion is equivocal in nature and is not probative.<sup>6</sup>

In his June 12, 2001 report, Dr. Oribe opined that appellant's neck and shoulder conditions, myofascial pain syndrome and cervical spine disc herniation were work related due to the repetitive flexion/extension motions of the cervical spine in appellant's job. He opined that the chronic repetitive stresses of flexion/extension motions to appellant's cervical spine performed during the course of appellant's work as a letter carrier have produced appellant's cervical disc herniation. Dr. Oribe provided a rationalized medical opinion explaining how repetitive mechanical stress was associated with disc herniation and related how appellant's specific activities at work contributed to the disc herniation. As such, his June 12, 2001 report established that appellant's cervical disc herniation arose from his employment with supporting medical rationale.

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<sup>2</sup> See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>3</sup> *Lucrecia M. Nielsen*, 42 ECAB 583, 593 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>4</sup> See *Wendell D. Harrell*, 49 ECAB 289, 291 (1998).

<sup>5</sup> See *Durwood H. Nolin*, 46 ECAB 818, 821-22 (1995).

<sup>6</sup> See *Wendell D. Harrell*, *supra* note 4.

The Board finds, therefore, a conflict exists in the medical opinion evidence between appellant's treating physician, Dr. Oribe, who opined in his June 12, 2001 report, that appellant's cervical intervertebral disc herniated was causally related to the repetitive flexion/extension motions of appellant's work as a letter carrier overtime, and the Office medical adviser, who essentially disagreed with the concept that a herniated disc could result from repetitive flexion/extension and rotary motions of the neck at work on the basis that he was unfamiliar with the studies Dr. Oribe referenced.

Section 8123 of the Federal Employees' Compensation Act provides that if there is disagreement between the physician, making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, who shall make an examination.<sup>7</sup> Accordingly, the case will be remanded to the Office for resolution of the conflict. On remand, the Office should refer appellant, along with a statement of accepted facts and the medical records, to an appropriate specialist for an impartial medical examination and report as to whether a cervical disc herniation could result from chronic repetitive mechanical stressors. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated December 10, 2001 is set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC  
September 12, 2002

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> 5 U.S.C. § 8123; *see Shirley L. Steib*, 46 ECAB 309 (1994).