

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND R. AULETTO and U.S. POSTAL SERVICE,
POST OFFICE, Eatontown, NJ

*Docket No. 03-382; Submitted on the Record;
Issued April 21, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has met his burden of proof to establish that he developed a cervical condition causally related to factors of his federal employment; and (2) whether appellant has any continuing disability as a result of his accepted carpal tunnel syndrome after July 20, 1999.

This is the second appeal in this case.¹ On the first appeal, the Board reviewed the Office's November 26, 1997 and April 13, 1998 decisions, by which the Office of Workers' Compensation Programs found that appellant failed to establish that he developed a cervical condition, causally related to factors of his federal employment. By decision dated February 24, 2000, the Board found that appellant had submitted evidence sufficient to establish a *prima facie* case and to require further development of the evidence. Specifically, the Board noted that appellant had submitted a May 24, 1993 report from Dr. Michael F. Lospinuso, who stated that appellant's cervical condition "was preexisting but has been aggravated by his work condition." In addition, Dr. John E. Fitzpatrick stated on January 26, 1994 that appellant had "cervical radiculopathy secondary to cervical degenerative spine disease, likely aggravated by his work at the post office," and later stated on March 23, 1998 that "a lot of the activities he does at work exacerbate the pain, especially bending and lifting." Finally, in a report dated July 9, 1997, Dr. Nasser Ani listed his cervical diagnosis as "dis[c] ridging at C4-5 to the right with right arm radiculopathy and degeneration at C4-5," and opined that the "nature of [appellant's] work aggravated the degenerative process, especially at C4-5 and precipitated his symptoms" and concluded that "in that sense these injuries are work related."

The Board found that, given the absence of any opposing medical evidence, the total evidence of record and in particular the January 26, 1994 and March 23, 1998 reports of Dr. Fitzpatrick and the July 9, 1997 report from Dr. Ani, were sufficient to require further

¹ Docket No. 98-2220 (issued February 24, 2000).

development of the record by the Office.² Consequently, the Board set aside Office's November 26, 1997 and April 13, 1998 decisions and remanded the case to the Office for the preparation of a statement of accepted facts and referral of appellant for a second opinion evaluation on the issue of whether appellant has a cervical condition causally related to factors of his employment. The complete facts of this case are set forth in the Board's February 24, 2000 decision and are herein incorporated by reference.

Subsequent to the Board's decision, in a separate decision dated March 15, 2000, the Office Branch of Hearings and Review found that appellant had provided sufficient evidence in support of his separate claim for employment-related right carpal tunnel syndrome to require referral for a second opinion on this issue.

In a decision dated May 3, 2000, the Office found that appellant had obstructed the second opinion examination process by failing to submit copies of several medical reports, which had previously been requested. Appellant requested an oral hearing and in a decision dated December 12, 2000, an Office hearing representative set aside the May 3, 2000 decision on the grounds that the requested medical evidence had since been received and the case was now ripe for referral to a second opinion physician.

By letter dated January 26, 2001, the Office referred appellant together with the case record, a list of questions to be resolved and a statement of accepted facts to Dr. Irving D. Strouse, a Board-certified orthopedic surgeon, to determine whether appellant developed either an employment-related right carpal tunnel syndrome, an employment-related cervical condition, or both and, if so, whether appellant had any injury-related disability as a result of these conditions.

In his February 5, 2001 medical report, Dr. Strouse provided a history of appellant's employment and medical conditions, reviewed the relevant medical evidence of record and provided his own findings on physical examination. He diagnosed cervical disc disease, postoperative fusion C5-6 and C6-7, postoperative cervical fusion of C4-5 and postoperative carpal tunnel syndrome, right. Based on his findings and his review of the record, Dr. Strouse stated:

“[Appellant] developed a cervical disc condition, which was degenerative in nature and required two operative procedures. The first in 1993, for a C5-6 and C6-7 fusion and the second in 1999, for a C4-5 fusion. The cervical disc condition and subsequent surgeries were unrelated to his employment as a mailhandler and have already been considered preexisting cervical conditions. The second cervical procedure performed in 1999, was not an aggravation of his preexisting condition that was related to his occupation, but was a natural course of the cervical degenerative disc disease, which resulted in a deterioration and requirement of a second operative procedure. When a fusion is performed in the spine there is excessive stress placed on the level above and below the fusion. The patient already had early changes of degeneration at C4-5 even prior to his first operation in 1993. These changes went on to progress over the years

² *Rebel L. Cantrell*, 44 ECAB 660 (1993); *John J. Carlone*, 41 ECAB 354 (1989).

requiring a second operative procedure in 1999, but this progression was related to the natural course of degenerative disease and the excessive stress placed on the level above the fusion and not due to employment.

“As far as the patient’s carpal tunnel syndrome is concerned, this is related to his employment and to the use of his hands in his work. It would be my opinion that the carpal tunnel syndrome did develop as a result of his occupation. This condition has resolved secondary to surgical treatment and is not disabling at this time. Further, surgery is not warranted. It is my opinion that this patient is capable of working a light-duty occupation and I have filled out the OWCP-5 form.”³

In a supplemental report, submitted at the request of the Office, Dr. Strouse stated that appellant was considered disabled by his employment-related right carpal tunnel syndrome for the period May 20 to July 20, 1999.

In a decision dated April 12, 2001, the Office found that appellant had not established that he had an employment-related cervical condition, but accepted that appellant had developed employment-related right carpal tunnel syndrome. The Office further found, however, that appellant’s right carpal tunnel syndrome had resolved through surgery and was no longer disabling.

Following an oral hearing, held at appellant’s request, an Office hearing representative affirmed the Office’s prior decision, on the grounds that the weight of the medical evidence, represented by the opinion of Dr. Strouse, established that appellant did not have an employment-related cervical condition and that his employment-related right carpal tunnel syndrome had resolved. The Office hearing representative noted that appellant could apply for a schedule award for any permanent impairment due to his carpal tunnel syndrome and related surgery.

By letter dated March 19, 2002, appellant, through counsel, requested reconsideration of the Office’s prior decision. In support of his request, appellant submitted a January 8, 2002 report from appellant’s treating physician, Dr. Ani. In his report, he listed his diagnoses as status postcervical discectomy and fusion at C4-5 with degeneration above at C3-4 and status post carpal tunnel release on the right. With respect to the relationship of these conditions to appellant’s employment, Dr. Ani stated:

“I feel that the disc degeneration in the cervical spine is a preexisting condition when the injury at work caused the problem and precipitated his symptoms. It caused his carpal tunnel on the right side. This will leave him with a certain degree of permanency and the prognosis is fair.”

³ On the accompanying work capacity evaluation, Form OWCP-5, Dr. Strouse indicated that appellant could work eight hours within certain physical restrictions.

In a decision dated June 21, 2002, the Office found that the weight of the medical evidence continued to rest with Dr. Strouse's opinion and that the opinion of Dr. Ani was insufficiently rationalized to warrant modification of the prior decision.

The Board finds that appellant failed to establish to that he has any disabling residuals of his accepted right carpal tunnel syndrome after July 20, 1999.

An employee seeking benefits under the Federal Employees' Compensation Act⁴ 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 States" within the meaning of the Act, that the claim was filed within the applicable time limitations 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.⁵ 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.⁶

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 claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. 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.⁷

The Board finds that with respect to whether appellant has any residuals of his accepted right carpal tunnel syndrome after July 20, 1999, the February 5 and May 14, 2001 reports, of Dr. Strouse constitute the weight of the medical evidence, as these are the only recent reports of record that adequately addresses whether appellant has any continuing disability from his accepted carpal tunnel syndrome. While appellant's treating physician, Dr. Ani, stated that appellant's employment-related right carpal tunnel syndrome would "leave him with a certain degree of permanency," he did not address whether this condition, was, had been, or would be

⁴ 5 U.S.C. § 8101-8193.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *Id.*

disabling, or whether appellant would need further medical treatment. The Board finds that Dr. Strouse provided a reasoned medical report that addresses the issues presented and provides an opinion that appellant's right carpal tunnel syndrome has resolved, with no periods of disability beyond May 20 to July 20, 1999 and no need for additional surgery. Appellant has not submitted any current medical evidence providing a contrary opinion. Accordingly, the Board finds that appellant has not established any continuing disability due to his accepted right carpal tunnel syndrome after July 20, 1999.

With respect to whether appellant has met his burden or proof to establish that his diagnosed cervical condition is causally related to his employment, whether directly or by aggravation, precipitation or acceleration, the Board finds that the case is not in posture for decision due to an unresolved conflict in the medical evidence.

Dr. Strouse, the second opinion physician, provided his medical opinion that appellant's current cervical disc condition was not the result of an employment-related aggravation of his preexisting cervical condition, but rather was the result of the natural course of the cervical degenerative disc disease, which resulted in a deterioration and requirement of a second operative procedure. On the other hand, Dr. Ani, a Board-certified orthopedic surgeon and treating physician since 1994, concluded that appellant's current cervical condition is a result of an employment-related aggravation of his preexisting cervical condition. While admittedly, on its face, Dr. Ani's opinion is not clearly expressed in his most recent report dated January 8, 2002, his meaning is better understood when one reads his earlier reports of record, in which he clearly stated "that the nature of [appellant's] work aggravated the degenerative process, especially at C4-5 and precipitated his symptoms...." His most recent report establishes that he still holds that view and, therefore, the Board finds that Dr. Ani's opinion, as expressed in his various reports, is sufficient to create a conflict with that of Dr. Strouse.

Section 8123 of the Act⁸ provides that, if there is a disagreement between the physician making the examination for the United States and the employee's physician, the Office shall appoint a third physician who shall make an examination.⁹

The Board finds that a conflict exists between Dr. Ani, appellant's treating physician and Dr. Strouse, the second opinion referral, on the issue of whether appellant's diagnosed cervical condition is causally related to his employment, either directly, or through aggravation, precipitation or acceleration. The case will be remanded for an impartial medical specialist to resolve the conflict in the medical opinions. On remand, the Office should refer the case record with all relevant medical records and a statement of accepted facts to an appropriate physician to reevaluate the evidence pursuant to section 8123(a) of the Act. Following this and such further development as the Office deems necessary, it shall issue a de novo decision.

⁸ 5 U.S.C. § 8123(a).

⁹ *Shirley L. Steib*, 46 ECAB 39 (1994).

The June 21 and February 20, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed in part and set aside in part and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
April 21, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member