

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DORA L. ALDERTON and U.S. POSTAL SERVICE,
POST OFFICE, Mays Landing, NJ

*Docket No. 03-508; Submitted on the Record;
Issued June 13, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant established that she sustained an injury causally related to factors of federal employment.

On March 9, 2001 appellant, then a 43-year-old rural letter carrier, filed an occupational claim alleging that on February 19, 2001 she became aware that she had work-related carpal tunnel syndrome of the left wrist and a pinched nerve in her neck due to the repetitive motion of her job. Her work included casing mail, lifting trays and tubs weighing approximately 50 pounds, delivering cluster boxes and, while in her vehicle, constantly turning to her left to grab mail, parcels and magazines. Appellant last worked on February 19, 2001.

Appellant submitted medical evidence to support her claim including a medical report from Dr. Robert A. Sammartino, an osteopath, dated April 11, 2001, a copy of a magnetic resonance imaging (MRI) scan dated March 29, 2001 and medical and disability notes dated April 12 through 25, 2001. In his April 11, 2001 report, Dr. Sammartino stated that the electromyogram (EMG) suggested bilateral C5 radiculopathy and that appellant should return to work in a limited capacity with subsequent increase as tolerable.

By decision dated May 9, 2001, the Office of Workers' Compensation Programs denied appellant's claim, stating that the medical evidence did not establish that she sustained an injury as alleged.

Appellant requested an oral hearing before an Office hearing representative, which was held on November 15, 2001. At the hearing, she described her work history, including her job duties and her medical history. Appellant described her surgery on September 13, 2001 and stated that she felt a lot better after the surgery but still was not able to return to work. She also submitted additional evidence consisting of medical reports from her treating physician, Dr. Robert J. Ponzio, an osteopath, dated June 25 and July 9, 2001, progress notes from Dr. Ponzio dated from July 8 through January 11, 2002, a report from Dr. Francis Meeteer, an osteopath, dated July 5, 2001 and disability and medical notes dated from February 19 through

May 29, 2001. Appellant underwent anterior interbody fusion at C5-6 and C6-7 on September 13, 2001.

In his June 25 and July 9, 2001 reports, Dr. Ponzio described appellant's medical condition, his treatment of her, the effect of the recommended surgery and appellant's ability to work but did not address the cause of her condition. In his July 5, 2001 report, Dr. Meeteer considered appellant's history of injury, performed a physical examination and reviewed the MRI scan. He diagnosed a disc herniation at C5-6, an annular tear at C6-7 and left upper extremity radiculopathy. Dr. Meeteer stated that the MRI scan revealed degenerative disc and bone disease at multiple levels but the degenerative process was not causally related to appellant's position as a rural letter carrier. He stated that appellant's heavy-lifting duties at work "could aggravate an underlying cervical spine condition and cause it to become symptomatic." Dr. Meeteer stated that, because appellant's pain and associated symptoms increased when she performed repetitive lifting and reaching at work and decreased when she did not perform that work, he believed that her cervical spine condition and her left upper extremity radiculopathy were aggravated by her work activities.

By decision dated February 11, 2002, the Office hearing representative affirmed the Office's May 9, 2001 decision.

By letter dated May 22, 2002, appellant requested reconsideration of the Office's decision and submitted reports from Dr. Ponzio she had previously submitted and a report from Dr. Jeffrey D. Polcer, an osteopath, dated July 30, 2001. In his July 30, 2001 report, Dr. Polcer described appellant's medical condition but did not address what caused it.

By decision dated June 15, 2002, the Office denied appellant's request for reconsideration.

By letter dated June 24, 2002, appellant requested reconsideration of the Office's decision and submitted a report from Dr. Ponzio dated June 4, 2002. In his report, he considered her history of injury, performed a physical examination and reviewed x-rays and MRI scans of the lumbar and cervical spines and an EMG. He diagnosed successful anterior cervical discectomy and fusion with plating, left radiculopathy at C6, a herniated disc at C5-6 on the left, an annular tear at C6-7 and carcinogenic headaches. Dr. Ponzio stated that it was "clear [that] the required duties and daily activities of the rural letter carrier do impart significant stresses to the cervical spine" and those activities "can alter neurologic function in the peripheral nerves, affecting the carpal tunnel and cubital tunnel." He stated:

"Based upon the above facts and findings on the MRI [scan], it is clear that [appellant] had preexisting degenerative disease to her cervical spine. However, it is felt, within a reasonable degree of medical certainty, that [she] did sustain injury to her cervical spine as a result of the repetitive forces involved in her every day activities while working. This produced disc herniations in her cervical spine, resulting in a permanent and irreversible change to her cervical spine that eventually required surgery. I felt that the series of acts that [appellant] performed over a period of time, as a result of the stresses imparted to her cervical spine from her activities at work, resulted in the disc herniations in her neck."

Dr. Ponzio stated that a repeat MRI scan and EMG and possibly a myelogram might be appropriate if appellant's complaints continued, but otherwise she would have reached maximum medical improvement.

In a report dated August 1, 2002, the district medical adviser diagnosed left radiculopathy at C6 based on the March 29, 2001 MRI scan and the EMG. The district medical adviser stated that the MRI scan also indicated spondylosis or degenerative problems and no trauma to the neck were reported. The district medical adviser was unable to conclude that appellant's cervical condition was work related but opined that "[i]t is most likely degenerative" and "[j]ust because [appellant] is a letter carrier does not mean she is going to wear out her neck any quicker than anyone else will."

The Office found a conflict in the medical opinion evidence between Dr. Ponzio and the district medical adviser regarding whether appellant's neck and hand conditions were work related. The Office referred her to an impartial medical specialist, Dr. Howard Zeidman, a Board-certified orthopedic surgeon. In a report dated September 5, 2002, he considered appellant's history of injury, performed a physical examination and reviewed the MRI scan, x-rays and an EMG. He stated that appellant had residual degenerative changes in the cervical spine, disc herniations and postsurgical status. Dr. Zeidman stated that there was some evidence of median nerve sensitivity as indicated by a positive Tinels sign at the wrist but the EMGs did not show any conduction difficulty and there were "certainly" no other clinical signs of carpal tunnel syndrome. He stated that there was no history of any particular injury to appellant's neck prior to onset of the symptomatic package and the patterns were "very consistent" with an ongoing degenerative problem. Dr. Zeidman stated that appellant "certainly did engage in fairly arduous activities, as discussed in the job description and there is probably an element of aggravation of the underlying process by her activities at work." He noted that appellant also had surgery and although she seemed to have a good result from the surgery, there was "no question that such an operation is a traumatic event in its own right." Dr. Zeidman stated that, if appellant's problems at the C6-7 level continued, at the very least, follow-up x-rays should be obtained.

By decision dated September 20, 2002, the Office denied appellant's claim.

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

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, 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.¹

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, are sufficient to establish causal relation.²

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.³

The Office found a conflict between appellant's treating physician, Dr. Ponzio and the district medical adviser regarding whether appellant's neck and hand conditions were work related and referred her to an impartial medical specialist, Dr. Zeidman. The Board finds, however, that there was not a conflict of medical opinion between Dr. Ponzio's and the district medical adviser as their medical reports are not of equal weight. In his August 1, 2002 report, the district medical adviser was unclear and speculative. He diagnosed left radiculopathy at C6 with spondylosis or degenerative problems based on the MRI scan and EMG. The district medical adviser stated that he was unable to conclude that appellant's cervical condition was work related but opined that it was "most likely" degenerative. He noted that "just because [appellant] is a letter carrier does not mean she is going to wear out her neck any quicker than anyone else will." The district medical adviser's opinion was speculative and tentative on causation and provided no medical rationale for his opinion. The Board has held that medical opinions which are speculative or equivocal and lack a medical rationale are of diminished probative value.⁴ Since the district medical adviser's opinion was inadequate to form a conflict with Dr. Ponzio's opinion, Dr. Zeidman cannot be regarded as an impartial medical specialist, but as a second opinion physician. A conflict in the medical record now exists between Dr. Ponzio and Dr. Zeidman regarding whether appellant's neck and hand conditions are work related and, therefore, the case must be remanded for the Office to refer appellant, with the case record and a statement of accepted facts, to an impartial medical specialist for another evaluation to resolve the conflict. After further development that it deems necessary, the Office should issue a *de novo* decision.

¹ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

² *Lucrecia M. Nielsen*, 42 ECAB 583, 593 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

³ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁴ See *Annie L. Billingsley*, 50 ECAB 210, 213 n 20 (1998); *Alberta S. Williamson*, 47 ECAB 569, 574 (1996).

The decisions of the Office of Workers' Compensation Programs dated September 20, June 15 and February 11, 2002 are hereby set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
June 13, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member