



working in a limited-duty capacity as a result of previously accepted conditions of stress fracture of the right talus and skin cancer. Appellant stated that his current condition was due in part to his supervisor's failure to comply with the limitations and restrictions of his other medical problems.

In a July 23, 2002 statement, appellant explained that he experienced increasingly severe chronic tension headaches and muscle spasms in the neck and shoulders. Appellant stated that the pain was most severe at work where his supervisor constantly pressured him to perform duties that were beyond his medical restrictions and limitations. Appellant described prior injuries to his left knee and right ankle as well as his diagnosed skin cancer. He also indicated that he had been diagnosed with cervical spondylosis. Appellant stated that his duties as a modified clerk required him to stand on his feet and walk around the station most of the day. He reiterated that his supervisor had demanded that he work beyond his restrictions and that she exhibited a lack of concern regarding his health problems. Appellant reported that he explained to his supervisor that, in addition to his ankle, knee and skin problems, he had to take painkillers to alleviate the pain in his neck and his severe headaches. He stated that his neck pain and headaches were most likely due to his neck posture while performing his modified duties, which required looking down a lot. Appellant also indicated that he would cringe and become tense when he heard his supervisor coming. This response was in anticipation and concern over the likely additional tasks she would demand that he perform. Appellant stated that he was depressed and very worried about job security because he believed his supervisor was trying to have him removed on the grounds that he was unfit for duty because of his use of medications.

Barbara J. Beierlein, customer service supervisor, indicated that appellant was never given any duties that were not within his medical limitations. She acknowledged that she always asked appellant to do small duties at the station, but never anything outside his restrictions. Ms. Beierlein also stated that several employees advised her that appellant was over medicating and the employing establishment raised the issue with appellant out of concern that he might injure himself while driving to and from work. She further stated that appellant was given several medical release forms in order to enable the employing establishment doctors to communicate directly with appellant's physicians.

Appellant submitted medical documentation regarding his claimed psychiatric and cervical conditions. The evidence included a June 21, 2002 magnetic resonance imaging (MRI) scan of the cervical spine, which revealed cervical disc disease at multiple levels. Additionally, Dr. Christopher J. Rae, a Board-certified family practitioner, reported on July 5, 2002 that appellant had a history of chronic head and neck pain related to cervical muscle spasms and cervical spondylosis. He noted that appellant's job duties included repetitive tasks involving pushing, pulling, lifting and sorting. Dr. Rae stated that it was more likely than not that work-related physical and mental stress aggravated appellant's condition. The record also included a report from Dr. Walter G. Griffith, Jr., a Board-certified psychiatrist, who diagnosed major depression and panic disorder. In a report dated July 16, 2002, Dr. Guy L. Tewksbury, a psychologist, diagnosed clinical depression and chronic pain syndrome with psychological component. Dr. David H. Baras, a Board-certified physiatrist, stated that appellant's cervical complaints were consistent with myofascial pain syndrome, which could be caused by the combination of abnormal MRI scan findings aggravated by the type of work appellant performed. In an August 13, 2002 report, Dr. Christine Weot, a Board-certified physiatrist,

described appellant's cervical MRI scan findings and stated that appellant's neck pain and headaches were aggravated by his work schedule and job duties.

By letter dated November 12, 2002, the Office requested additional factual and medical information regarding appellant's claim. The Office specifically requested information concerning appellant's claimed psychiatric condition and his allegation that he was worked beyond his medical limitations. The Office did not request any additional information regarding appellant's cervical condition or how it was allegedly aggravated by his duties as a modified clerk.

Appellant submitted a statement from Jean H. Mullins, a coworker, who indicated that approximately a week prior to Christmas 2001 she overheard a conversation between appellant and Ms. Beierlein regarding his work restrictions. Appellant reportedly told Ms. Beierlein that his work restrictions prohibited him from going out in the sun and, therefore, he could not go outside to empty the collection boxes. According to Ms. Mullins, Ms. Beierlein responded that she could care less what appellant's limitations were and he was to do what he was told.

In a December 8, 2002 statement, appellant described his duties as a modified clerk. He explained that when he reported to work in the morning he usually went directly to the box section where he sorted and distributed magazines and letters. This entailed bending his head forward and looking down at papers on a low desk. Appellant also stated that this involved constant standing for at least two to three hours each morning to distribute mail to the postal office boxes. He noted that his limitations were one hour per day standing intermittently and one hour walking intermittently. In the afternoon appellant was assigned to work in the registry room, which involved intermittent standing for another two to three and a half hours. Appellant stated that this job also required that he constantly look down with his head bent forward while inspecting paperwork on the desk. Additionally, appellant stated that he spent two to three hours per day sitting and constantly looking downward while writing notices. He explained that the total time for each duty varied from day to day. Appellant indicated that looking down with his head bent forward while performing his modified clerk duties caused severe headaches and muscle spasms in his neck, shoulders and back. He also stated that his 16 years of carrying a heavy satchel on his left shoulder and looking down as he walked and sorted the mail contributed to his cervical condition.

In a report dated December 5, 2002, Dr. Weot diagnosed cervical spondylosis. She noted that appellant continued to experience neck pain and that neurosurgical intervention was not an option. Dr. Weot stated that appellant's neck pain and headaches were aggravated by his work schedule and job duties. Appellant also submitted a January 7, 2003 report from Dr. George L. Warren, a Board-certified psychiatrist, who advised that appellant was permanently disabled and unable to work as a clerk. Dr. Warren stated that appellant was being treated for a pain disorder with both psychological factors and a general medical condition, which were directly related to his job.

In a decision dated January 17, 2003, the Office denied appellant's claim on the basis that he failed to establish that his stress arose out of the course of his employment. The Office found that appellant failed to substantiate his allegation that he was worked beyond his medical restrictions and limitations.

Appellant requested an oral hearing, which was held August 28, 2003. Additionally, appellant submitted reports from Drs. Baras and Warren and a June 18, 2003 report from John B. Hudson Jr., a Board-certified family practitioner. The doctors attributed appellant's psychiatric and orthopedic conditions to his employment. Appellant also submitted a second statement from Ms. Mullins along with two additional statements from other coworkers indicating that they each witnessed appellant at work standing and walking in excess of one hour.

By decision dated December 8, 2003, the Office hearing representative affirmed the January 17, 2003 decision. The hearing representative found that appellant failed to establish that he sustained an emotional condition in the performance of duty. He explained that the medical evidence did not support that appellant's work in excess of his restrictions was the causative factor of his depression. The hearing representative further noted that while the evidence indicated that appellant's duties may have aggravated his preexisting cervical condition, giving rise to the claimed headaches and depression, appellant did not file a claim relative to a neck or shoulder condition.

### **LEGAL PRECEDENT**

In order to establish that an injury was sustained in the performance of duty, 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 diagnosed condition is causally related to the employment factors identified by the claimant.<sup>1</sup> Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>2</sup>

In determining whether a claimant has discharged his or her burden of proof and is entitled to compensation benefits, the Office is required by statute and regulation to make findings of fact.<sup>3</sup> Section 8124(a) of the Act provides: "The [Office] shall determine and make a finding of facts and make an award for or against payment of compensation."<sup>4</sup> The Office's regulations at 20 C.F.R. § 10.126 provide in relevant part that the decision of the Office "shall contain findings of fact and a statement of reasons."

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<sup>1</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>2</sup> See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, *supra* note 1. Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

<sup>3</sup> *Robert L. Johnson*, 51 ECAB 480, 481 (2000).

<sup>4</sup> 5 U.S.C. § 8124(a).

## ANALYSIS

On appeal, appellant argues that the Office neglected to address his contention that his duties as a modified clerk aggravated his cervical condition, which in turn contributed to his diagnosed pain disorder and depression. Although appellant submitted factual and medical evidence in support of his contention that his duties aggravated his cervical condition, the Office did not attempt to further develop the record on this issue when it corresponded with appellant on November 12, 2002. Furthermore, the Office did not address appellant's cervical condition in the initial decision dated January 17, 2003. When the case was pending before the Branch of Hearings and Review, appellant stressed that the primary focus of his claim was not his disagreement with supervisors regarding being worked beyond his medical restrictions. He stated that his claim was for physical stress to his neck from repetitive motion, which caused his myofascial pain syndrome and aggravated his psychiatric disorder. Notwithstanding appellant's assertion that the primary basis of his claim was the aggravation of his cervical condition, the hearing representative compounded the Office's initial error by refusing to address appellant's cervical condition on the basis that appellant had not "filed a claim relative to a neck or shoulder condition."

Appellant did, in fact, file a claim for a neck and shoulder condition. In describing the nature of his illness under item 14 on Form CA-2, appellant noted "severe chronic tension headaches, muscle spasms (extremely hard 'knots') in the neck, shoulders and left lower back; and deep depression, chronic anxiety and panic attacks." The July 23, 2002 statement that accompanied the claim form as well as appellant's supplemental statement dated December 8, 2002 further delineated his contention regarding his cervical condition and how it was aggravated by his employment duties. Additionally, appellant submitted numerous medical reports regarding his cervical condition and its relationship to his employment.

Appellant's claimed employment-related cervical condition was properly before the Office and the Office neglected to develop this aspect of the claim.<sup>5</sup> Furthermore, the Office failed to make specific findings of fact as required under the Act and applicable regulations.<sup>6</sup> The case will be remanded to the Office for appropriate development followed by a *de novo* decision that includes specific findings relevant to appellant's claimed cervical condition and psychiatric disorder.

## CONCLUSION

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

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<sup>5</sup> 20 C.F.R. § 10.121 (1999).

<sup>6</sup> 5 U.S.C. § 8124(a); 20 C.F.R. § 10.126 (1999); *Robert L. Johnson, supra* note 3.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 8, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: August 6, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member