

**United States Department of Labor
Employees' Compensation Appeals Board**

GOLDIE K. BEHYMER, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Tampa, Fl, Employer**

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**Docket No. 03-1075
Issued: February 10, 2004**

Appearances:
Lenin Perez, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On March 19, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 3, 2003, finding that appellant had not established that her cervical condition was causally related to her federal employment. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant's cervical condition is causally related to her federal employment.

FACTUAL HISTORY

On January 7, 1985 appellant, then a 27-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that carrying a mailbag in the course of her federal employment resulted in pain to her left shoulder and back. Appellant remained off work for a week before returning to light duty. On January 25, 1985 she returned to her regular duties. In an August 8, 1985 decision, the Office accepted the claim for traumatic myositis, left trapezius and left latissimus dorsi. Appellant received periodic treatment for her shoulder, including

multiple injections, nonsteroidal medications and physical therapy. In a November 8, 1989 report, Dr. Joseph Sena, an attending Board-certified orthopedic surgeon, diagnosed chronic impingement syndrome of the left shoulder and rotator cuff tendinitis. On July 17, 1990 Dr. Sena performed surgery on appellant's left shoulder. In a September 19, 1991 decision, the Office found appellant entitled to a 10 percent schedule award for permanent impairment of her left upper extremity. On January 8, 1992 appellant was diagnosed with severe depression that led to total temporary disability and in March 1992 Dr. Sena diagnosed a herniated disc at C6-7 on the left with thecal compression.¹ Thereafter, on March 12, 1992, appellant accepted a limited-duty job offer.

Appellant continued with intermittent medical treatment for her accepted injury and the Office paid for time lost and medications. In a March 19, 1998 letter, Dr. Sena noted that appellant was seen for a follow-up to her work-related injuries. He stated that appellant had residual neck and left shoulder pain. He opined that the neck pain was considered part of the original work-related claim. Dr. Sena added that appellant continued to have some discomfort with impingement testing of the left shoulder, but manual testing was within normal limits. In a November 3, 1999 progress note, Dr. Sena wrote that appellant continued to have neck pain radiating into her left trapezial area and the medial border of the left scapula. He stated that within reasonable medical probability this condition was related to the accepted work injury. Appellant continued to miss work intermittently while seeking medical treatments.

On September 17, 2001 appellant claimed wage loss for August 27 and 28, 2001. In an October 3, 2001 letter, the Office informed appellant that the medical evidence of record was insufficient to support total disability for those two days. Appellant responded by submitting several progress notes from Dr. Sena. In a September 10, 1998 report, Dr. Sena indicated that appellant had some residual neck pain, left shoulder and pain radiating into the left upper extremity, which had not completely resolved and that he would see her on an as needed basis. In a March 17, 1999 progress note, Dr. Sena wrote that appellant has some residual neck and left shoulder pain, she had a positive Phalen's test and would wear wrist splints at night. In a November 8, 2000 progress note, Dr. Sena wrote that appellant had increased discomfort and stiffness in her neck and missed two days of work due to the pain. In a May 23, 2001 report, Dr. David Arango, an orthopedist, wrote that appellant had mild chronic pain in her left shoulder but was functioning well with work. In a June 19, 2001 report, Dr. Sena wrote that appellant had neck pain and stiffness with limited rotation. He noted that she also had cervical pain with extreme rotation of her neck. In a June 17, 1997 report, Dr. E. Borges, an attending Board-certified neurologist, wrote that appellant was experiencing significant cervical pain radiating into her left arm and complaining of increased parasthesias of the left hand causing her to drop objects. Dr. Borges noted that he had reviewed nerve conduction studies from a year ago that revealed a borderline normal left media nerve conduction velocity. Dr. Borges recommended repeating the nerve conduction tests to rule out carpal tunnel syndrome. He also stated that appellant complained of paraspinal muscle spasms of the cervical area and left trapezius.

¹ There is no indication in the record that appellant filed a claim related to her herniated disk or depression.

In an October 9, 2001 letter, the Office advised appellant that the progress notes from Dr. Sena were not enough to establish that appellant's cervical condition was causally related to her accepted left shoulder injuries. In a January 9, 2002 report, Dr. Sena wrote that appellant continued to experience neck pain, which was exacerbated with motion. He noted that she could rotate her neck to the left side to only 45 degrees with pain and to the right to 65 degrees and that she had pain in the left shoulder with abduction beyond 90 degrees. In a January 17, 2002 report, Dr. Sena stated that within a reasonable degree of medical certainty, appellant's shoulder and neck pain was related to carrying her mail satchel on a prolonged and repetitive basis. He opined that appellant's job permanently aggravated her preexisting cervical condition. Dr. Sena added that appellant had two magnetic resonance imaging scan tests in 1992 and 1996, years of physical therapy and a cervical traction unit paid by workers' compensation.

On a February 27, 2002 the Office denied appellant's claim for wage loss covering August 27 and 28, 2001, finding that the medical evidence did not support that her neck condition was causally related to her employment nor did it support disability for that time.

In an April 15, 2002 progress note, Dr. Sena wrote that appellant was totally disabled on August 27 and 28, 2001, due to a permanent aggravation of her existing condition. Due to the pain and numbness she was experiencing in her left shoulder she was required to take pain medication, which enabled her to operate a motor vehicle.² Therefore, on the above-mentioned days appellant was totally disabled. In a May 21, 2002 letter, appellant, through her representative, asked for a formal decision denying appellant's claim so she would have her appeal rights.

In a June 4, 2002 decision, the Office found that the medical evidence was insufficient to establish that appellant's cervical condition was work related.

Appellant requested a hearing that was held on December 4, 2002. At the hearing, appellant testified that she had assumed, because the Office paid for her medical treatments, that the pain in her shoulder and neck were accepted conditions.

In a March 3, 2003 decision, the hearing representative affirmed the June 4, 2002 decision finding that the medical evidence was insufficient to establish that appellant's cervical condition was causally related to her accepted shoulder condition or to her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition,

² The Board assumes from the context of this statement that this is an error and what Dr. Sena meant was that the pain medication prevented appellant from driving.

³ 5 U.S.C. §§ 8101-8193.

for which compensation is claimed are causally related to the employment injury.⁴ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury 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 compensable 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.⁵

ANALYSIS

In the present case, the medical evidence of record is insufficient to establish that appellant's cervical condition is causally related to her federal employment or the accepted injury. Most of the progress notes of Dr. Sena establish that appellant was treated for a neck condition and that the physician assumed that the cervical condition was part of the 1985 accepted injury. However, the Office has not accepted a cervical condition as related to the 1985 injury. Dr. Sena's reports are progress notes, which primarily provided a brief description of her condition at the time of his examination. The progress notes lack a statement or rationalized explanation on the causal relationship of the cervical condition to appellant's employment or the 1985 injury. For this reason, they are of diminished probative value.

In a January 17, 2002 report, Dr. Sena did address causal relationship when he stated that it was his understanding, within a reasonable degree of medical certainty, that appellant's shoulder and neck pain were related to carrying her mail satchel on a long and repetitive basis. He opined that appellant's job permanently aggravated her preexisting condition. However, this report is insufficient in that it fails to adequately explain how appellant's 1985 accepted shoulder condition progressed to cause or contribute to her cervical condition. As this opinion was made some 16 years following the 1985 injury, Dr. Sena did not provide a fully rationalized opinion to support his conclusion or causal relationship.

In an April 15, 2002 progress note, Dr. Sena wrote that appellant was totally disabled in August 27 and 28, 2001, due to the permanent aggravation of her existing condition and because the medication she was taking prevented her from driving a motor vehicle. This report is also insufficient to meet appellant's burden of proof because it also fails to explain how appellant's accepted left shoulder condition progressed to cause or contribute to the cervical condition. Additionally, Dr. Sena has not explained why appellant's light-duty job would aggravate her shoulder.

In a June 17, 1997 report, Dr. Borges, an attending Board-certified neurologist, noted that appellant was experiencing significant cervical pain radiating into her left arm and complaining of increased parasthesias of the left hand, causing her to drop objects. He noted that he had

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

reviewed nerve conduction studies from a year prior that revealed a borderline normal left media nerve conduction velocity. While this report indicates that appellant has a cervical condition, it suggests that the condition developed sometime after 1996, when objective tests showed appellant's shoulder, at least from a neurological standpoint, to be normal.

No medical evidence in the record adequately explains how appellant's accepted 1985 shoulder condition progressed into a cervical condition. This explanation is especially critical as appellant had other medical conditions, including a herniated disc at C5-6 and symptoms of carpal tunnel syndrome, that were not accepted as work related.

CONCLUSION

Appellant has not met her burden of proof to establish that her cervical condition is causally related to her employment factors.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 3, 2003 and June 4, 2002 are affirmed.

Issued: February 10, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member