

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

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**AILEEN F. SPELL-HILL, Appellant**

**and**

**U.S. POSTAL SERVICE, STRATFORD  
BRANCH, Stratford, CT, Employer**

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**Docket No. 04-402  
Issued: March 26, 2004**

*Appearances:*  
*Aileen F. Spell-Hill, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On November 9, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 16, 2003 finding that appellant had not established that she sustained an occupational injury in the performance of duty. 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 on appeal is whether appellant has established that she sustained a medical condition in the performance of duty, causally related to factors of her federal employment.

**FACTUAL HISTORY**

On February 6, 2003 appellant, then a 39-year-old letter carrier, filed a notice of occupational disease claiming that she had developed cervical spondylosis, a cervical disc injury, headaches and injury to her upper extremities, causally related to her employment duties. She claimed that she experienced discomfort, numbness, sleeplessness, headaches, stiffness and pain and could not perform any lifting, carrying, pushing or pulling without pain and stiffness in her neck and upper extremities. She claimed that her injuries resulted from repetitive stress and

repetitive motion which was required by her duties, including turning, twisting, lifting, carrying, pushing and pulling. Appellant's supervisor noted that she was on desk duty at the time due to another employment-related injury<sup>1</sup> and that she did not stop work. Appellant noted that she had previously been healthy, but sought medical treatment on August 1, 2002, was diagnosed as having cervical spondylosis, repetitive stress injury and degenerative change injury.

In a January 30, 2003 report, Dr. Patrick J. Carolan, a Board-certified orthopedic surgeon, noted that appellant had cervical spine discomfort with limited range of motion and occipital headaches that came on gradually. He noted tenderness upon palpation in the paracervical muscles on either side of midline and limited rotation and flexion. Dr. Carolan noted that appellant's August 2002 diagnosis had been cervical spondylosis and he diagnosed degenerative arthritis of the cervical spine.

On February 5, 2003 Dr. Carolan noted, on a Form CA-20, attending physician's report, that he diagnosed a herniated nucleus pulposus and cervical disc disease and he indicated by checking "yes," that he believed these conditions were caused or aggravated by appellant's repetitive employment activities. In a February 5, 2003 narrative, Dr. Carolan noted that appellant continued to be bothered by discomfort in the cervical spine with headaches and limited range of motion, and that a February 4, 2003 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated a moderate to large disc-osteophyte complex at C3-4 on the left and a small left-sided disc-osteophyte complex at C5-6 with spinal nerve impingement at the foramen.

In a March 4, 2003 narrative report, Dr. Perry A. Shear, a Board-certified neurosurgeon, noted that appellant believed that her current problems were related to repetitive movements and stress at work. He noted that appellant presented with neck stiffness and pain which radiated towards her head and caused headaches, but indicated that appellant had been out of work on vacation for three weeks and had experienced no headaches during that period. Dr. Shear noted that appellant had experienced decreased range of motion of the cervical spine with intermittent aching, numbness and paresthesias of the left arm and hand with activity. He also indicated that appellant had noticed minor left arm weakness. Upon examination Dr. Shear noted decreased range of neck motion, limitation of abduction and external rotation of the right arm/shoulder and postoperative right upper extremity carpal tunnel residuals. He noted that the cervical spine MRI scan of February 4, 2003 demonstrated straightening of normal cervical lordosis a moderate to large C3-4 disc herniation with C4 nerve root impingement and a moderate C5-6 disc herniation with left C6 nerve root impingement. Dr. Shear opined that appellant had muscular neck pain and that a component of the neck pain and left arm symptomatology were likely secondary to the disc herniations on the left at C3-4 and C5-6. On an included Form CA-20 Dr. Shear checked "yes" to the question of whether he believed the conditions found were caused or aggravated by employment activities and he wrote "possible given [appellant's] history." He also noted that appellant should continue on light duty and avoid repetitive movements.

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<sup>1</sup> The Office accepted that on October 21, 1999 appellant sustained cervical strain. This was assigned the case No. 01-0369139.

By letter dated March 27, 2003, the Office requested further information including a list of tasks that appellant implicated in causing her condition and a rationalized medical report diagnosing a specific condition and relating it to the employment factors implicated.

In an April 3, 2003 response, appellant claimed that excessive and repetitive use of her upper extremities such as lifting and carrying trays and tubs of mail across the workroom floor, pushing and pulling carts of mail and parcels to transport them and carrying a 35-pound mail satchel on her left shoulder. She also implicated racking mail, pulling down routes, delivering express mail, driving and doing data entry.

In a response dated April 14, 2003, appellant's supervisor noted that appellant's light-duty tasks consisted of casing/sorting mail for about two hours a day with the remainder being deskwork, answering the telephone and doing some filing. The supervisor noted that appellant had not performed her full-duty job as a letter carrier since June 12, 1999 when she began limited/light duty.

In an April 25, 2003 response to the Office, appellant indicated that her duties as a letter carrier over the preceding 15 years were the ones she implicated in causing her neck conditions, including excessive and repetitive use of her upper extremities. She mentioned awkward carrying positions to allow for her November 30, 2000 right shoulder impingement, lifting and carrying trays and tubs of mail, pushing and pulling carts and parcels, carrying her satchel, raking mail, pulling down routes, delivering express mail taking auxes to carriers, driving, doing data entry and looking down doing sedentary deskwork.

By report dated May 1, 2003, Dr. Shear repeated his earlier assessment and examination results and noted as follows: "[f]rom my history, there was no specific date of an injury to the cervical spine. However, [appellant] provided me with information regarding the type of work that she performs and it can be stated within reasonable medical probability that her current problem with cervical disc disease at C3-4 and C5-6 are causally related to repetitive trauma of the cervical spine."

By decision dated June 3, 2003, the Office denied appellant's claim finding that the evidence submitted was insufficient to establish that she sustained an employment-related condition. The Office found that Dr. Shear's opinion lacked medical rationale to support his opinion and did not relate appellant's conditions to specific employment activities.

On June 11, 2003 appellant requested reconsideration and, in support, submitted several medical progress notes from Dr. Carolan. In medical progress notes dated June 11 and May 14, 2003, Dr. Carolan reported appellant's present condition, repeated previous observations and diagnosed impingement syndrome, right shoulder, cervical disc disease and low back pain.

On a June 12, 2003 form report Dr. Carolan noted history of injury, clinical findings and diagnosis as "see office notes" and he checked "yes" to multiple questions. He checked "yes" indicating that he believed appellant's spondylosis and herniated discs were caused or aggravated by an employment activity, that appellant's history was consistent with symptoms that would be

considered a work-related injury, that appellant's specific employment duties<sup>2</sup> were sufficient to cause both of her cervical conditions, that her conditions were the result of repetitive motion, that appellant's other conditions would alter her carrying and lifting motions and that appellant's activities would weaken her cervical spine over an extended period. To the questions about opining whether there was reliable or substantial probative medical evidence of causal relation and about what evidence and physical findings supported this connection, Dr. Carolan wrote: "see office notes."

On July 1, 2003 the Office received a May 19, 2003 report from Dr. Carolan which noted appellant's claims and beliefs, noted her diagnosis as cervical spondylosis with a herniated disc at C3-4 and C5-6 and noted as follows:

"It is my opinion that [appellant] has experienced material aggravation of the underlying condition, specifically the cervical spondylosis, as a result of the repetitive type of work that she does in the course of her employment as a postal employee. While there is no single precipitating incident, it is my opinion that the cumulative activity has materially aggravated the underlying condition and has contributed to the development of the herniated disc and the requirement for medical treatment for that condition."

Appellant also resubmitted a copy of Dr. Shear's May 1, 2003 report and she provided an excerpt from a medical encyclopedia.

By decision dated September 16, 2003, the Office denied modification of its June 3, 2003 decision finding that the evidence submitted in support was insufficient to warrant modification.

### **LEGAL PRECEDENT**

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 specific 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. The medical opinion 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.<sup>3</sup>

However, proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of

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<sup>2</sup> Consisting of lifting and carrying trays and tubs of mail, pushing and pulling carts and parcels, carrying her satchel, raking mail, pulling down routes, delivering express mail, etc.

<sup>3</sup> *Solomon Polen*, 51 ECAB 341 (2000).

the evidence to see that justice is done.<sup>4</sup> This holds true in occupational claims as well as in initial traumatic injury claims.

### **ANALYSIS**

In this case, appellant provided medical evidence which identified a causal relationship between her cervical conditions and her repetitive upper extremity and neck movement over several years, either by causation or aggravation, but which did not contain enough rationale to establish her claim.

In his several reports, Dr. Carolan stated that the repetitive type of work that appellant did in the course of her employment, such as lifting and carrying tubs, trays of mail and satchels. He went on to state that the cumulative activity, materially aggravated the underlying condition, specifically the cervical spondylosis and contributed to the development of the herniated discs.

Dr. Shear stated that appellant provided him with information regarding the type of work that she performed and he stated that “within reasonable medical probability ... her current problems with cervical disc disease at C3-4 and C5-6 are causally related to repetitive trauma of the cervical spine.”

Therefore, both physicians support that appellant’s repetitive employment duties contributed, either by causation or aggravation, to her present condition, however, neither physician provided a pathophysiological analysis of the mechanism involved with this material aggravation.

As the Office bears some burden in the development of the evidence and as there are no contradicting medical reports of record and, as the Office did not even refer appellant’s case record to an Office medical adviser for a medical opinion, the Office must further develop the case by the creation of a statement of accepted facts and specific questions to be answered, to be followed by a referral of appellant together with the relevant case record, to a second opinion specialist of an appropriate specialty, for a rationalized medical opinion as to whether appellant’s 15 years of postal duties, particularly upper extremity and neck use and movements, caused or aggravated her cervical conditions of spondylosis and herniated discs at C3-4 and C5-6.

### **CONCLUSION**

The Board finds that, based on the evidence discussed above, the case is not in posture for decision and requires further development on the issue of causal relation.

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<sup>4</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated September 16 and June 3, 2003 are hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Issued: March 26, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member