

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

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**NANCY A. LEHMAN, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
New Castle, PA, Employer**

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**Docket No. 04-1328  
Issued: November 1, 2004**

*Appearances:*

*Jeffrey P. Zeelander, Esq., for the appellant  
Office of the Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On April 20, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs August 21, 2003 merit decision, denying her claim that she sustained employment-related cervical and bilateral arm conditions. Under 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 has met her burden of proof in establishing that her claimed cervical and bilateral arm conditions were causally related to her employment.

**FACTUAL HISTORY**

Appellant, a 43-year-old mail processing clerk, filed a Form CA-1 claim for traumatic injury on January 28, 2003 alleging that as of January 17, 2003 she felt a burning sensation in her neck which radiated across her shoulders and down both arms into her hands.

By letter dated March 5, 2003, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition and an opinion as to whether her claimed conditions were causally related to her federal employment.

In a report dated March 27, 2003, Dr. Robert S. Vandrak, an attending osteopath, stated that appellant had complaints of pain in the cervical spine with radicular pain in the right upper extremity. Dr. Vandrak noted that she began to experience increased cervical pain with radicular pain in the right upper extremity on January 17, 2003. He related the results of a magnetic resonance imaging (MRI) scan which showed evidence of paracentral disc herniation at the C4-5 level. Dr. Vandrak advised that appellant had cervical pain with increasing headache frequency and pain in the right arm, right shoulder and on occasion the left arm. He provided a diagnosis, which he indicated was “resultant” from the “January 17, 2003 work injury,” of paracentral disc herniation at C4-5, right C4-5 cervical radiculopathy and right shoulder impingement tendinopathy due to weakness associated with the cervical radiculopathy. Dr. Vandrak also produced several form reports, dated in February and March 2003, in which he noted that appellant reported sustaining a neck and upper extremity injury on January 17, 2003 while throwing “manual letters.” Dr. Vandrak stated that the diagnosis due to this injury was right shoulder impingement and either a herniation at L4-5 or “rule out cervical disc herniation.”

By decision dated April 9, 2003, the Office denied appellant’s claim that she sustained employment-related cervical and bilateral arm conditions.

By letter dated May 6, 2003, appellant requested a review of the written record.

In a report dated May 6, 2003, Dr. Vandrak stated that appellant had sustained previous injuries while working as an automation clerk in 1996 and 1999, when she was diagnosed with left shoulder impingement syndrome caused by repetitive motion from her work duties. This resulted in her undergoing left shoulder impingement surgery in November 1999 and September 2000. Based on his examination of appellant, Dr. Vandrak noted increased cervical pain with resisted flexion and extension and spasm in the right and left paracervical musculature. He also advised that appellant had difficulty with active range of motion in the right shoulder, in addition to pain in trigger points. Dr. Vandrak stated:

“[Appellant] had increasing complaints of cervical pain with radicular pain right upper extremity. Her migraines were more frequent and the pain she experienced with them was more severe. The pain in her right shoulder, right arm and right hand, left shoulder, left arm and left hand continued.... I noted myofascial pain syndrome, right shoulder impingement and possible disc injury, all of which were caused by the repetitive motion that the job she was working on January 17, 2003 -- manual letter clerk -- required. Mechanism of injury -- casing mail-repetitive activity caused injury.”

Dr. Vandrak stated that the “January 17, 2003 work injury diagnosis” was paracentral disc herniation at C4-5, right C4-5 cervical radiculopathy and right shoulder impingement tendinopathy due to weakness with cervical radiculopathy. He based this diagnosis on the fact

that appellant had increased cervical pain with resisted flexion, resisted extension and right shoulder provocative impingement test and that she had difficulty with right shoulder range of motion. Dr. Vandrak concluded that appellant's diagnosed condition was directly caused by factors of her employment.

By decision dated August 21, 2003, an Office hearing representative affirmed the April 9, 2003 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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 for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.<sup>4</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>5</sup> The term "injury" as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to or contact with, certain factors, elements or conditions.<sup>6</sup>

### **ANALYSIS**

In the instant case, appellant has failed to submit medical evidence containing a rationalized, probative report which relates her claimed cervical and bilateral arm conditions to factors of her employment. For this reason, she has not discharged her burden of proof to establish her claim that these conditions were sustained in the performance of duty.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

<sup>4</sup> *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

<sup>6</sup> *Elaine Pendleton*, *supra* note 2; 20 C.F.R. § 10.5(a)(14).

Appellant submitted Dr. Vandrak's March 27, 2003 report, which indicated that on January 17, 2003 she began to experience increased cervical pain with radicular pain in the right upper extremity. Dr. Vandrak advised that appellant had cervical pain with increasing headache frequency and pain in the right arm, right shoulder and on occasion the left arm. He noted that an MRI scan showed evidence of paracentral disc herniation at the C4-5 level and provided a diagnosis, which he indicated was "resultant" from the "January 17, 2003 work injury," of paracentral disc herniation at C4-5, right C4-5 cervical radiculopathy and right shoulder impingement tendinopathy, due to weakness associated with the cervical radiculopathy. Dr. Vandrak's opinion, however, is of limited probative value as it does not contain any medical rationale explaining how or why appellant's claimed cervical and bilateral arm conditions are currently affected by or related to factors of employment.<sup>7</sup> The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>8</sup> Although Dr. Vandrak indicated that appellant sustained neck and bilateral arm conditions due to his job duties on January 17, 2003 he did not provide any significant description of these job duties.<sup>9</sup> The Board has held that a report which is not based on a complete and accurate factual and medical history is of limited probative value.<sup>10</sup> Dr. Vandrak did not explain the medical process through which such duties would have been competent to cause the claimed conditions. Medical rationale is particularly necessary in the present case given the relatively serious and complex nature of the conditions diagnosed, disc herniation at C4-5, right cervical radiculopathy and right shoulder impingement.<sup>11</sup>

Appellant also submitted a May 6, 2003 report in which Dr. Vandrak indicated that appellant had sustained injuries caused by repetitive motion entailed by her work duties in 1996 and 1999, and had been diagnosed with left shoulder impingement syndrome. This resulted in her undergoing left shoulder impingement surgery in November 1999 and September 2000. Dr. Vandrak advised that appellant had increased cervical pain with resisted flexion and extension and spasm in the right paracervical musculature, in addition to the left paracervical. He stated that appellant also had pain in her right shoulder, right arm and right hand, left shoulder, left arm and left hand. Based on these symptoms, Dr. Vandrak diagnosed myofascial pain syndrome, right shoulder impingement and possible disc injury, all of which were caused by the repetitive motion required by her job and resulted in the January 17, 2003 employment injury; he also diagnosed paracentral disc herniation at C4-5, right C4-5 cervical radiculopathy

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<sup>7</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>8</sup> *See Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>9</sup> Dr. Vandrak noted in several form reports, dated in February and March 2003, that appellant reported throwing "manual letters" on January 17, 2004 but the reports do not provide any further description of the extent and nature of appellant's work duties.

<sup>10</sup> *See William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

<sup>11</sup> Appellant also submitted several form reports, dated in February and March 2003, in which Dr. Vandrak provided similar opinions regarding appellant's condition. These reports are deficient for the same reasons that Dr. Vandrak's March 27, 2003 report is deficient.

and right shoulder impingement tendinopathy due to weakness with cervical radiculopathy, which was also caused by factors of her employment.

Dr. Vandrak's May 6, 2003 report, however, is not sufficient to meet appellant's burden of proof to submit probative, rationalized medical evidence to establish that her claimed cervical and bilateral arm conditions were causally related to her employment. Although Dr. Vandrak indicated that appellant's job required repetitively picking up manual letters and placing them in a letter case he did not provide any further explanation of the duties she performed on January 17, 2003. For example, he did not indicate the weight of the objects appellant lifted or detail how often she was required to lift them. Dr. Vandrak again failed to explain the medical process through which appellant's work duties on January 17, 2003 could have contributed to the claimed injuries, including disc herniation at C4-5, right cervical radiculopathy and right shoulder impingement

**CONCLUSION**

The Board finds that appellant has met her burden of proof in establishing that her claimed cervical and bilateral arm conditions were causally related to her employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 21, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member