

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

CHARLES L. NEWTON, Appellant)
and) Docket No. 04-1459
U.S. POSTAL SERVICE, POST OFFICE,) Issued: October 4, 2004
Bedford Park, IL, Employer)

)

Appearances:

Charles L. Newton, pro se
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 May 10, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 23, 2004 and November 7, 2003 merit decisions denying his claim. 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 established that he sustained right shoulder, neck and head conditions in the performance of duty.

FACTUAL HISTORY

Appellant, a 43-year-old letter carrier, filed a Form CA-2 claim for benefits on August 6, 2003, alleging that he had developed muscle pain in his right shoulder, neck and head due to daily carrying of a mailbag on his right shoulder.

On August 26, 2003 the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days. Appellant submitted a September 5, 2003 note from Constance L. Jaegle, a nurse practitioner, which indicated that he intermittently had torticollis, which could be aggravated by carrying a mailbag.

By decision dated November 7, 2003, the Office denied appellant's claim, finding that appellant failed to submit medical evidence sufficient to establish that he sustained right shoulder, neck and head conditions in the performance of duty.

On November 29, 2003 appellant requested a review of the written record. Appellant submitted a copy of Ms. Jaegle's September 5, 2003 note, which was redated November 12, 2003 and cosigned by Dr. Glen L. Ricca, a Board-certified family practitioner.

By decision dated February 23, 2004, an Office hearing representative affirmed the November 7, 2003 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 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 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 is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a

¹ 5 U.S.C. § 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant'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 the claimant.⁴

ANALYSIS

In the present case, appellant failed to submit medical evidence demonstrating a causal relationship between his claimed right shoulder, neck and head conditions and factors of his employment. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁵ Causal relationship must be established by rationalized medical opinion evidence. The Office advised appellant of the type of evidence required to establish his claim; however, appellant failed to submit such evidence.

The Board has long held that a nurse is not a "physician" under the Act and cannot render a medical opinion on the causal relationship between a given physical condition and implicated factors of employment.⁶ Ms. Jaegle's September 5, 2003 note is of no probative medical value. On November 12, 2003 Dr. Ricca cosigned Ms. Jaegle's note indicating that appellant had torticollis which could be aggravated by his carrying the mailbag. The November 12, 2003 report is of limited probative value because Dr. Ricca offers no discussion as to the basis of the torticollis diagnosis, any examination of appellant, no opinion as to how long appellant had the condition and no explanation as to how carrying the mailbag caused the condition. While he did opine that the mailbag "could" have caused the torticollis, this statement is speculative at best. He offered no physiological explanation as to the cause.

Appellant did not provide a medical opinion to sufficiently describe or explain the medical process through which carrying a mailbag would cause or aggravate his claimed condition. Appellant failed to meet his burden that he sustained the claimed condition in the performance of duty.

Accordingly, as appellant has failed to submit any probative medical evidence establishing that he sustained right shoulder, neck and head conditions in the performance of duty, the Office properly denied appellant's claim for compensation.

⁴ *Id.*

⁵ *See id.*

⁶ *Vicky L. Hannis*, 48 ECAB 538 (1997).

CONCLUSION

The Board finds that appellant has failed to establish that he sustained right shoulder, neck and head conditions in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2004 and November 7, 2003 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: October 4, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member