

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

STEVEN L. WALTERS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Ellington, MO, Employer**

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**Docket No. 04-1280
Issued: January 6, 2005**

Appearances:
Steven L. Walters, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On April 15, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated January 28, 2004 that found appellant had not established that his neck condition was causally related to his employment duties. 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 has established that his neck condition is causally related to his employment duties.

FACTUAL HISTORY

On November 21, 1994 appellant, then a 36-year-old rural carrier, filed a claim for compensation for traumatic injuries sustained in a motor vehicle accident on July 20, 1994. Appellant returned to work on July 25, 1994, and the Office accepted that he sustained multiple contusions and a trapezius muscle spasm of the right shoulder.

On April 13, 1998 appellant filed a claim for a recurrence of disability related to his July 20, 1994 employment injury. Appellant, who did not stop work, listed the date of the recurrence as November 20, 1995, and stated that, following his return to work after the original injury, he had headaches, neck pain, shoulder pain and back pain. In response to the Office's request for further information, appellant stated that on November 20, 1995 his pain recurred while working on his route, with the pain starting on the right side of his head, then progressing to his neck, right shoulder and back. Appellant stated that he continued to work his route with headaches, a stiff neck and tingling in his back everyday and contended that his daily duties aggravated his condition. He underwent sinus surgery on June 17, 1997, which did not alleviate his headaches, and temporomandibular joint reconstruction on February 10, 1999, which was of no benefit.

By decision dated June 4, 1999, the Office denied appellant's claim for a recurrence and found that appellant had not shown that his chronic sinusitis, migraine headaches, neck and low back pain, and his temporomandibular joint condition were causally related to his July 20, 1994 employment injury.

On October 23, 2003 appellant filed a claim for a recurrence of disability related to his July 20, 1994 employment injury, listing the date of the recurrence as November 20, 1995. On November 19, 2003 appellant filed a claim for compensation for an occupational disease of muscle spasms and stiffness of the neck and shoulders, and headaches. Appellant stated that he did not have neck and shoulder pain and headaches until after the wreck, and that on his route the pain gets worse; off work, it eases up but does not go away. Appellant submitted a November 7, 2003 report from Dr. Curtis S. Cox, a neurosurgeon, noting that he first saw appellant on December 28, 2001 "with complaints of severe headaches and neck pain, which he attributed to a motor vehicle accident in 1994." Dr. Cox stated:

"It is conceivable, that with a motor vehicle accident, if there is a whiplash associated disorder, this could result in a sevenfold increase in cervical degenerative changes with chronic pain, usually with the symptoms becoming intolerable some 10 to 15 years after the incident and the patient requiring appropriate therapy.

"His employment as a rural carrier for the post office, with prolonged driving and neck movements could also result in the wear and tear on his spine and contribute to the degenerative changes I see in his neck.

"All I can say is that he has significant cervical spondylotic changes, which are symptomatic and have so far failed to respond to conservative therapy, and are therefore now in need of surgical intervention."

By letter dated December 8, 2003, the Office advised appellant that his claim for a recurrence was previously denied, and that no further action would be taken on that claim unless he used his appeal rights. In a December 15, 2003 letter, the Office requested that appellant provide a detailed description of the employment activities to which he attributed his condition, advised him that Dr. Cox's report was not sufficient to support his claim because it did not address what factors of his employment were affecting his claimed conditions, and requested that

he provide a comprehensive medical report including an explanation from the doctor on how factors of his employment contributed to his condition.

In a letter received December 22, 2003, appellant stated that each morning at work he sorted and cased his mail for three hours, tied the mail into bundles which he loaded into his car, then delivered the mail into 470 rural mailboxes, turning his head and neck and arm three to four times at each box. Appellant's postmaster stated that to the best of his knowledge appellant's statements were true, adding, "The repetitive neck and shoulder movements are approximately three hours during the morning casing mail and intermittently while delivering approximately five to six hours daily."

By decision dated January 28, 2004, the Office found that appellant had not established that his neck condition was causally related to factors of his employment.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.¹

ANALYSIS

Although the case record contains many medical reports addressing the relationship between appellant's medical conditions and his July 20, 1994 employment injury, this issue was last decided by the Office on June 4, 1999 and was not decided in the January 28, 2004 Office decision presently on appeal to the Board. The January 28, 2004 decision addressed only the issue of the relationship between appellant's neck condition and his day-to-day work duties.

The case record contains only one medical report that addresses the relationship between appellant's neck condition and his duties at work. In a November 7, 2003 report, Dr. Cox, a neurosurgeon, stated, "His employment as a rural carrier for the post office, with prolonged driving and neck movements could also result in the wear and tear on his spine and contribute to the degenerative changes I see in his neck." This is insufficient to meet appellant's burden of proof because the use of the word "could" is speculative,² and because it does not contain medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.³

¹ *Froilan Negron Marrero*, 33 ECAB 796 (1982).

² *Charles A. Massenzo*, 30 ECAB 844 (1979).

³ *Claudio Vazquez*, 52 ECAB 496 (2001).

CONCLUSION

Appellant has not established that his neck condition is causally related to his employment duties.

ORDER

IT IS HEREBY ORDERED THAT the January 28, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member