

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

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**CAROL A. GARY, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Waycross, GA, Employer**

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**Docket No. 05-631  
Issued: June 6, 2005**

*Appearances:*

*Carol A. Gary, pro se  
Office of 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 January 18, 2005 appellant filed a timely appeal of an October 12, 2004 decision of the Office of Workers' Compensation Programs, denying modification of prior decisions that determined that she had not established a cervical injury 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 has established that she sustained a cervical or other condition causally related to factors of her federal employment.

**FACTUAL HISTORY**

On April 26, 2002 appellant, then a 56-year-old distribution clerk, filed an occupational disease claim (Form CA-2a) alleging that she sustained a cervical syndrome causally related to her federal employment. In a narrative statement, appellant indicated that as a distribution clerk she had to "look up above my head" to check street addresses and had to reach above her head to

get mail. She indicated that, when sorting larger flats she would experience neck spasms. Appellant stated that she had carpal tunnel and tendinitis in her right arm and was on a 10-pound lifting restriction. She alleged stress from her employment because she was on workers compensation and could not bid on other jobs and because her request to attend religious meetings was not accommodated. Appellant was afraid her supervisor would tell her to sort the larger flats.

In response, a supervisor submitted a May 7, 2002 statement indicating that appellant did not have a quota and was allowed to work at her own pace within her physical limitations. He stated that the scheme board appellant referred to for street addresses was a reference and was not something she should be looking at for the duration of her time in that work area. The supervisor also stated that management had accommodated her medical restrictions and her requests regarding religious meetings. A second supervisor submitted a May 10, 2002 statement indicating that the “checking of the scheme board that is above the case should be very little.”

By letter dated May 21, 2002, the Office requested that appellant provide additional information regarding her claim, including a comprehensive medical report. Appellant submitted a January 28, 2002 report from Dr. William H. Noran, a neurologist, who provided a history that in the prior three weeks appellant experienced neck stiffness and discomfort when she looked up. He provided results on examination and diagnosed right cervical radiculopathy by history. In a May 1, 2002 report, Dr. Noran diagnosed cervical syndrome or myofascial pain and stated, “the work she does by continual repetitively bringing things down from above her head and/or lifting certainly may aggravate her situation.” He indicated that work limitations would be appropriate and appellant should undergo a functional capacity evaluation. The record indicates that appellant underwent a functional capacity evaluation on May 15, 2002. In a note dated June 10, 2002, Dr. Noran stated that he believed working above eye level would aggravate the myofascial cervical pain syndrome and he agreed with a recommendation to work at eye level or lower.

In a July 25, 2002 decision, the Office denied the claim on the grounds that the medical evidence was insufficient to establish a causal relationship between appellant’s cervical condition and her federal employment.

Appellant requested reconsideration and submitted a September 5, 2002 report from Dr. Emily Hoff-Sullivan, an orthopedic surgeon, who reported that appellant had neck pain and spasms from a January 8, 2002 work incident, after she looked up and had neck spasms. Dr. Hoff-Sullivan stated that a magnetic resonance imaging scan showed a C4-5 broad based disc bulge, which could have resulted from the normal course of aging or trauma such as with appellant’s motor vehicle accident of 1995.

By decision dated March 10, 2003, the Office denied modification of the July 25, 2002 decision.

Appellant again requested reconsideration and submitted medical evidence that included a March 27, 2003 report from Dr. Hoff-Sullivan, who stated that appellant's diagnosis was cervicalgia caused by bulging discs at C4-5 and C5-6. She stated:

"I cannot show you conclusively that the diagnosed condition was caused by work factors. I can, however, show you that the work factors certainly aggravate the condition. The repetitive motion of [appellant's] neck in order to accomplish her job tasks aggravate her condition. Flexion and extension of the vertebrae of the cervical spine produces micromotion of the vertebral segments which can aggravate an already unstable disc. The discs at the aforementioned levels are deemed unstable because they are protruding/bulging."

In a report dated April 7, 2003, Dr. Katherine Maurath, an orthopedic surgeon, stated that appellant had cervical spinal stenosis and cervical facet syndrome, "a degenerative arthritic condition that is aggravated by work activities. Specifically, the activities that aggravate her condition are repetitive tilting of her head back to see overhead writing and repetitive twisting of her head from side to side." Dr. Maurath concluded that appellant had an aggravation of a preexisting condition.

In a treatment note dated May 15, 2003, Dr. Robert Kleinhans, an orthopedic surgeon, stated that appellant had been involved in a motor vehicle accident since her last examination, which had aggravated her neck. He indicated that otherwise the right shoulder and neck were doing about the same and Dr. Noran was taking care of the neck problems.

By decision dated July 18, 2003, the Office denied modification of the March 10, 2003 decision. The Office found that there was no secure diagnosis and, although appellant occasionally performed the described activities, the evidence did not establish that she performed these activities on a regular basis. The Office also noted that appellant had been involved in a motor vehicle accident and the medical evidence did not provide a complete history of this incident.

Appellant requested reconsideration and submitted additional evidence. A coworker submitted a statement dated May 17, 2004, noting that he had observed appellant working and required her to look up and down and side to side. In a report dated May 11, 2004, Dr. Stephen Pappas, a neurologist, indicated that he began treating her in June 2003 for neck, hand and wrist pain. He stated that appellant's job required her to turn her head from left to right and to look up above numerous times per day. He diagnosed moderate spurring at C4-5 and degenerative changes C5-7. In a report dated May 12, 2004, Dr. Pappas noted that appellant had been involved in a motor vehicle accident when he initially treated her, but she had significant neck pain prior to the accident.

In a decision dated October 12, 2004, the Office denied modification of the July 18, 2003 decision. The Office found that appellant had not submitted rationalized medical evidence on causal relationship.

## **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 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.<sup>1</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and her federal employment.<sup>2</sup>

Neither the fact that a disease or condition manifests itself during a period of employment nor the claimant's belief that the condition was caused or aggravated by employment factors are sufficient to establish causal relationship.<sup>3</sup>

## **ANALYSIS**

The Board notes that appellant initially referred to "stress" in her job because she already had an accepted carpal tunnel injury and felt that she could not bid on certain other jobs. She also alleged that the employing establishment treated her differently by not accommodating her requests to attend religious meetings. Appellant did not provide additional information in this regard and it is not clear how these allegations relate to her claim for a cervical condition. To the extent that she was alleging an injury from administrative actions by the employing establishment the evidence would have to establish error or abuse by the employing establishment to find a compensable work factor.<sup>4</sup> Appellant did not submit any evidence of error or abuse by management regarding an administrative or personnel matter in this case. Moreover, her desire to bid on other job assignments does not involve her ability to perform her modified-work duties and is not a compensable factor of employment.<sup>5</sup>

In the present case, appellant submitted medical evidence in support of her claim, but the Board finds that it does not contain a reasoned opinion on causal relationship based on a complete and accurate factual and medical background. Dr. Noran provided a history and results on examination without providing a reasoned medical opinion on causal relationship between appellant's employment duties and a diagnosed condition. He stated that work certainly may aggravate appellant's situation, without providing additional explanation. Dr. Hoff-Sullivan initially referred to a January 8, 2002 work incident in her September 5, 2002 report and in her

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<sup>1</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>2</sup> *See Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>3</sup> *Richael O'Brien*, 53 ECAB 234 (2001).

<sup>4</sup> *See Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>5</sup> *Ernest J. Malagrida*, 51 ECAB 287 (2000).

March 27, 2003 report, she referred to repetitive neck motion without demonstrating an understanding of appellant's specific job duties or work history. She did not provide a complete report with an accurate factual and medical history. Dr. Maurath also provided a brief report stating that appellant had an aggravation of an arthritic condition by work activities, but did not provide a narrative report with a complete history, results on examination and a reasoned opinion on causal relationship with her employment. The Board notes appellant's history apparently included a recent motor vehicle accident and none of the medical reports provide an accurate history of the incident. Dr. Pappas referred to a motor vehicle accident without providing a complete history or a reasoned medical opinion.

In assessing medical evidence, the number of physicians supporting one position or another is not controlling. The weight of such evidence is determined by its probative value and convincing quality based on the thoroughness of the physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history and the care of analysis manifested.<sup>6</sup>

The Board finds that, although appellant submitted medical evidence in support of her claim, none of the reports are of sufficient probative value to meet her burden of proof in this case. Since she did not meet her burden of proof, the Office properly denied the claim.

### **CONCLUSION**

The Board finds that appellant did not submit rationalized medical opinion evidence, based on a complete and accurate factual and medical background, showing causal relationship between a cervical condition and her federal employment.

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<sup>6</sup> See *Maurissa Mack*, 50 ECAB 498 (1999).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 12, 2004 is affirmed.

Issued: June 6, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member