

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

FRANCES HENDERSON, Appellant

and

**U.S. POSTAL SERVICE, NEWARK FIELD
DIVISION, Newark, NJ, Employer**

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**Docket No. 05-642
Issued: June 10, 2005**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On January 21, 2005 appellant filed a timely appeal from an April 1, 2004 hearing representative's decision and an October 12, 2004 merit decision of the Office of Workers' Compensation Programs denying modification of its finding that she had not established an employment-related cervical condition. 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 condition causally related to factors of her federal employment.

FACTUAL HISTORY

On March 11, 2003 appellant, then a 51-year-old mail processor, filed an occupational disease claim alleging that she sustained cervical spinal cord compression due to factors of her federal employment. In a statement accompanying her claim, appellant attributed her condition to "lifting hundreds of trays of mail weighing between 15 to 35 [pounds]" and "[p]ulling skids of

mail weighing over 400 pounds and constantly bending with trays of mail” over a period of 11 years.

A magnetic resonance imaging (MRI) scan study of the cervical spine dated January 11, 2003 revealed disc protrusions at C4-5 and C5-6 compressing the spinal cord in the right ventral aspect.

In a report dated February 14, 2003, Dr. Alan B. Clark, a neurologist, diagnosed spinal cord compression causing partial paralysis on the right side. On April 4, 2003 Dr. Iris Yaron, a Board-certified orthopedic surgeon, performed a cervical decompression, fusion and discectomy at C4-5 and C5-6.

By letter dated April 11, 2003, the Office requested that Dr. Clark submit a comprehensive medical report regarding appellant’s condition and its relationship to her employment.

Dr. Clark did not respond within the time allotted.

In a decision dated June 10, 2003, the Office denied the claim on the grounds that appellant did not establish an injury in the performance of duty.

On July 7, 2003 appellant, through her representative, requested an oral hearing. At the hearing, held on February 18, 2004, appellant related that she developed problems with her right hand and arm in 2000¹ and that as a result she began working light duty in July 2001. She stated that she subsequently experienced pain in her right shoulder and right leg and, on April 4, 2003, had surgery on her cervical discs. Appellant noted that her symptoms worsened after the surgery.

Appellant submitted a report dated February 12, 2004 from Dr. Clark, who indicated that he initially treated appellant on September 10, 2002 for “pain and weakness of the right shoulder, arm and hand.” He related that objective tests, which included an MRI scan study of the brain and electroencephalogram, revealed a subluxation of the right shoulder and a “[s]mall perfusion deficit in the left mid parietal region.” Dr. Clark diagnosed right hemiparesis, lumbar radiculopathy, lumbosacral spondylosis, disc disorder of the lumbar region and spinal cord compression. He stated, “Due to [appellant’s] occupation, at some point she had an injury which she may have overlooked until the pain got worse to the point that she could not ignore her injuries. However, this injury has caused her to be totally disabled for any work.”

In a decision dated April 1, 2004, a hearing representative affirmed the Office’s June 10, 2003 decision after finding that the medical reports were insufficient to show that appellant’s employment duties caused or contributed to her cervical condition.

In a report dated September 25, 2003, Dr. Joseph A. Colao, an osteopath and Board-certified physiatrist, noted that three years ago appellant developed progressively worsening neck pain and pain in the right side with weakness of the right upper and lower extremity. He

¹ Appellant has an accepted claim for carpal tunnel syndrome under file number A02-2013797.

indicated that an MRI scan study of the brain was normal but that MRI scan studies of the neck and low back showed disc herniations. Dr. Colao stated, “In the face of ongoing weakness, she underwent surgical decompression of a disc in her neck but unfortunately, her weakness has not improved. This has now developed to paresis with spasticity and contracture formation.” He diagnosed central cord syndrome with right hemiplegia, a probable secondary underlying central deficit with right hemiplegia, reflex sympathetic dystrophy (RSD) of the right upper extremity and right shoulder adhesive capsulitis. He recommended inpatient rehabilitation.

In a report dated November 19, 2003, Dr. Colao noted that appellant had completed inpatient rehabilitation and found that she “did, in my opinion, have a central event, namely a CVA [cerebrovascular accident] with right hemiplegia.”

Dr. Colao treated appellant on December 1, 2003 for severe pain in her right shoulder and arm. He diagnosed right shoulder subluxation with adhesive capsulitis, RSD, and severe spastic right hemiplegia.

In a report dated March 31, 2004, Dr. Yaron noted that she had initially evaluated appellant on January 9, 2003 for complaints of “right shoulder pain and weakness of the right upper and lower extremities for the last two years.” She noted that appellant was subsequently examined by a neurologist and “was worked up for a stroke and told that it was a negative work up.” Dr. Yaron stated:

“Examination at the time was significant for a slap foot gait and an inability to heel walk on the right lower extremity. She also had severe weakness in the right upper extremity. Imaging study included an MRI [scan] [which] showed a C4-5 and C5-6 disc herniation that caused right sided cord compression with possible cord changes just distal to the C5-6 disc.

“After discussion with her neurologist it was felt that the symptoms which she had in the right upper extremity which included the pain and the severe weakness were probably caused by the herniated disc. An anterior cervical decompression and fusion was performed in April 2003. She did well post surgery as far as pain relief of the right upper extremity. Her weakness has not changed however.

“It is possible that working in the [employing establishment] with repetitive stress on the neck may have caused her at some point to have the disc herniations.”

On July 19, 2004 appellant, through her representative, requested reconsideration. By decision dated October 12, 2004, the Office denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under the Act 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 filed within the applicable time limitation of the Act; that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation

claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

To establish that an injury was sustained in the performance of duty in an occupational disease claim, appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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.³ The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a 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.⁴ Such an opinion of the physician 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.⁵

ANALYSIS

In this case, appellant has established that she lifted trays of mail and pulled skids of mail during the course of her employment as a mail processor. The issue, therefore, is whether the medical evidence establishes that these employment activities caused or contributed to a diagnosed cervical condition.

In a report dated February 12, 2004, Dr. Clark discussed his treatment of appellant since September 10, 2002 for right shoulder, arm and hand pain and weakness. He diagnosed right hemiparesis, lumbar radiculopathy, lumbosacral spondylosis, disc disorder of the lumbar region and spinal cord compression. Dr. Clark opined that, during the course of her employment, appellant sustained an injury "which she may have overlooked until the pain got worse to the point that she could not ignore her injuries." He found that she was totally disabled due to her injury. Dr. Clark, however, did not attribute any diagnosed condition to appellant performing her duties as a mail processor over a period of 11 years but instead speculated that at some unspecified time she sustained an injury of which she was not aware. He further did not provide any rationale for his opinion. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative

² *Rebecca LeMaster*, 50 ECAB 254 (1999).

³ *Charles E. Burke*, 47 ECAB 185 (1995).

⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁵ *Id.*

evidence, explained by medical rationale and be based on a complete and accurate medical and factual background.⁶

In a report dated September 25, 2003, Dr. Colao discussed appellant's history of progressive weakness and pain of the right upper and lower extremity. He diagnosed central cord syndrome with right hemiplegia, a probable secondary underlying central deficit with right hemiplegia, RSD and right shoulder adhesive capsulitis. Dr. Colao, however, did not address the cause of the diagnosed conditions. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁷

In a report dated November 19, 2003, Dr. Colao concluded that appellant had suffered a CVA. He also treated appellant on December 1, 2003 for right shoulder and arm pain. He diagnosed a right shoulder subluxation with adhesive capsulitis, RSD and severe spastic right hemiplegia. Again, as Dr. Colao did not address causation or related the diagnosed conditions to factors of appellant's federal employment, these reports are of little probative value.⁸

Dr. Yaron, in a report dated March 31, 2004, discussed appellant's history of right lower extremity and right shoulder pain and weakness and the MRI scan study results which revealed disc herniations at C4-5 and C5-6. She noted that appellant underwent an anterior cervical decompression and fusion in April 2003 but had continued weakness. Dr. Yaron stated, "It is possible that working in the [employing establishment] with repetitive stress on the neck may have caused her at some point to have the disc herniations." Her finding, however, that it was "possible" that repetitive stress at work "may have caused" appellant's cervical disc herniations is speculative in nature. The Board has held that medical opinions which are speculative or equivocal in nature are of diminished probative value.⁹

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.¹⁰ As appellant failed to submit a rationalized medical report supporting that she sustained a cervical condition causally related to her employment, the Office properly denied her claim for compensation.

On appeal, appellant's representative contends that the case should be remanded to the Office for further development of the medical evidence. As discussed in this decision, however, the medical evidence currently of record is not sufficiently positive or rationalized to warrant further development of the claim.

⁶ *Patricia J. Glenn*, 53 ECAB 159 (2001).

⁷ *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *Id.*

⁹ *Vahed Mokhtarians*, 51 ECAB 190 (1999).

¹⁰ *See Michael E. Smith*, *supra* note 7.

CONCLUSION

The Board finds that appellant has not established that she sustained a cervical condition causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 12 and April 1, 2004 are affirmed.

Issued: June 10, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member