

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

BERNADETTE H. GELARDO, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Port St. Lucie, FL, Employer**

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**Docket No. 04-130
Issued May 16, 2005**

Appearances:
Bernadette H. Gelardo, pro se
Natalie Cantor, Esq., for the Director

Oral Argument April 13, 2005

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On October 21, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated February 13, 2003, denying her claim for an injury on July 7, 2000. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the February 13, 2003 decision.

ISSUE

The issue is whether appellant sustained an injury on July 7, 2000 in the performance of duty causally related to factors of her federal employment.

FACTUAL HISTORY

On July 27, 2000 appellant, then a 38-year-old letter carrier, filed a traumatic injury claim alleging that on July 7, 2000 she experienced neck and right arm pain when she pulled on the hand brake of her delivery truck. Emergency room reports dated July 7 and 8, 2000 indicated that she sustained a muscle strain.

A report of a magnetic resonance imaging (MRI) scan of the cervical spine performed on July 11, 2000 indicated diffuse multi-level degenerative disc disease and moderately advanced degenerative cervical spondylosis.

In a report dated July 31, 2000, Dr. David M. MacMillan, a neurosurgeon, provided findings on examination and diagnosed nerve root compression. He noted that appellant experienced neck, arm and shoulder pain on July 7, 2000 associated with shifting an automobile.

In an August 18, 2000 disability certificate, Dr. MacMillan diagnosed cervical radiculopathy, nerve root compression and weakness of the right upper extremity and recommended surgery.

In an August 28, 2000 report, Dr. Hal M. Tobias, a Board-certified neurologist, diagnosed cervical radiculopathy and provided July 7, 2000 as the date of injury. He checked the block marked yes, indicating causal relationship between appellant's condition and the July 7, 2000 work incident.

In a handwritten note dated August 29, 2000, at the bottom of a form describing appellant's July 7, 2000 work incident, Dr. MacMillan stated, "This injury to the cervical spine is work-related secondary to repeated use of hand brake."

By decision dated October 3, 2000, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that she sustained an injury on July 7, 2000 causally related to factors of her employment.

In a November 15, 2000 decision, the Office denied appellant's request for reconsideration on the grounds that she did not submit any evidence warranting further merit review.

Appellant subsequently made several requests for reconsideration and submitted new evidence.

In a February 12, 2001 report, Dr. Tobias provided a history of appellant's condition, indicating that she injured her neck and right arm on July 6, 2000 due to repeated pulling on a delivery truck hand brake. He noted that the truck was not her usually assigned vehicle which had a looser hand brake. Dr. Tobias stated his opinion that appellant's neck and right arm condition "was directly related to using a loaner truck."

A November 20, 2001 report from Dr. Tobias was identical to his February 12, 2001 report with the exception that he changed the date of injury to July 7, 2000.

In a May 24, 2002 report, Dr. Tobias indicated that appellant developed pain in the middle of her back radiating into her right arm and hand on July 7, 2000 due to repeated pulling on the tight hand brake of a loaner delivery truck. He stated, "This appears to be a new workers' compensation injury as of July 7, 2000 with no prior complaints in regard to the above symptoms."

In June 6, 2002 report, Dr. MacMillan indicated that on July 7, 2000 appellant developed pain in her neck, shoulder and right arm and numbness in her fingers associated with the use of the hand brake on her delivery truck. He stated that she had spinal lesions at C4-5 and C5-6 for which surgery was recommended.

In a report dated October 11, 2002, Dr. Tobias provided an account of the July 7, 2000 work incident as described by appellant. He stated that on July 7, 2000 she was driving a loaner truck while her assigned truck was undergoing repair and the loaner truck's hand brake was set at a higher tension. Dr. Tobias stated that appellant was apparently able to tolerate the higher tension of the hand brake until the last pull of the day when she felt a pop in her neck with pain radiating into the right arm, necessitating a visit to the emergency room. He stated his opinion that appellant's symptoms were directly related to pulling the hand brake.

By decisions dated August 23, 2001, March 5 and September 30, 2002 and February 13, 2003, the Office denied modification of its prior decisions on the grounds that the evidence did not establish causal relationship between appellant's neck and right arm injury and the July 7, 2000 work incident.

LEGAL PRECEDENT

To establish a causal relationship between appellant's neck and right arm conditions and the July 7, 2000 employment incident, she must submit rationalized medical opinion evidence supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's 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.¹

ANALYSIS

Appellant alleged that she injured her neck and right arm on July 7, 2000 when she pulled on the tight hand brake of a delivery truck. A July 7, 2000 emergency room report indicated that she sustained a muscle strain, but did not give the cause of the condition or the specific area of the body affected.

In reports dated July 31 and August 18, 2000, Dr. MacMillan noted that appellant experienced neck, arm and shoulder pain on July 7, 2000 associated with shifting a motor vehicle and he diagnosed cervical radiculopathy, nerve root compression and weakness of the right upper extremity. However, his description of the activity which caused appellant's pain on July 7, 2000 is not accurate as she alleged that her pain resulted from pulling a hand brake, not shifting gears. In a note dated August 29, 2000, Dr. MacMillan stated, "This injury to the cervical spine is work-related secondary to repeated use of hand brake." In a June 6, 2002 report, he indicated

¹ *Gloria J. McPherson*, 51 ECAB 441 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

that on July 7, 2000 appellant developed pain in her neck, shoulder and right arm and numbness in her fingers associated with the use of the hand brake on her delivery truck, causing cervical lesions. However, Dr. MacMillan did not provide sufficient medical rationale explaining how pulling the hand brake on July 7, 2000 caused appellant's diagnosed cervical and right arm conditions *i.e.*, the specific mechanism of injury. Therefore, his reports are not sufficient to establish that appellant sustained a neck and right arm injury on July 7, 2000 causally related to pulling a hand brake or any other factor of her employment.

In an August 28, 2000 report, Dr. Tobias diagnosed cervical radiculopathy and checked the block marked yes, indicating causal relationship between appellant's condition and the July 7, 2000 work incident. However, the Board has held that an opinion on causal relationship which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.² Without any explanation or rationale, such a report is insufficient to establish causal relationship.³ Therefore, this report is not sufficient to establish that appellant sustained a neck and right arm injury on July 7, 2000 causally related to factors of her employment.

In reports dated November 20, 2001 and May 24, 2002, Dr. Tobias indicated that appellant injured her neck and right arm on July 7, 2000 due to repeated pulling on a tight delivery truck hand brake. In a report dated October 11, 2002, he stated that on July 7, 2000 she was apparently able to tolerate the higher tension of the hand brake until the last pull of the day when she felt a pop in her neck with pain radiating into the right arm, necessitating a visit to the emergency room. Dr. Tobias stated his opinion that appellant's symptoms were directly related to pulling the hand brake. He did not provide a specific diagnosis of her condition and provided insufficient medical rationale explaining how pulling on a hand brake caused appellant's neck and right arm symptoms. Therefore, the reports of Dr. Tobias are not sufficient to establish that appellant sustained a neck and right arm injury on July 7, 2000 causally related to factors of her employment.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a neck and right arm injury on July 7, 2000 causally related to factors of her employment.⁴

² *Calvin E. King*, 51 ECAB 394 (2000).

³ *Id.*

⁴ The jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c). However, this decision by the Board does not preclude appellant from submitting additional evidence to the Office along with a request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 13, 2003 is affirmed.

Issued: May 16, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member