

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

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**MARCY BOWEN, Appellant**

**and**

**U.S. POSTAL SERVICE, PROCESSING &  
DISTRIBUTION CENTER, Lancaster, PA,  
Employer**

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**Docket No. 05-345  
Issued: May 4, 2005**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member

**JURISDICTION**

On November 23, 2004 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated August 6, 2004 finding that she had not established an 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 met her burden of proof in establishing that she developed a low back and cervical condition due to factors of her federal employment.

**FACTUAL HISTORY**

On June 29, 2001 appellant, then a 42-year-old clerk, filed an occupational disease claim alleging that on that date she became aware of her neck and back pain. Appellant alleged that she had developed lumbar radiculopathy, stress and anxiety due to her federal employment.

Dr. Gary S. Gehman, a Board-certified family practitioner, completed a report on April 5, 2001 noting that appellant underwent a cervical laminectomy for a herniated disc in her neck. He provided work restrictions including no reaching above the shoulder; no repetitive bending or stooping below waist level; and no operation of the letter sorting machine. Appellant could lift up to 20 pounds.

On July 2, 2001 appellant sought treatment from Dr. William Bakken, a Board-certified family practitioner, who diagnosed work-related stress. He diagnosed acute anxiety and possible depression, work related. On July 17, 2001 Dr. Bakken stated that appellant injured her back pushing a cart and that she experienced pain down her leg as well as increasing stress at work related to her injury. He diagnosed chronic anxiety, lumbar radiculopathy and epigastric discomfort. In a note dated August 16, 2001, Dr. Bakken diagnosed chronic anxiety, depression and chronic neck pain. He completed a note on October 30, 2001 and diagnosed degenerative disc disease of the cervical spine, chronic low back pain and anxiety/depression all of which he opined were work related.

Dr. Bakken completed a narrative report on October 30, 2001 noting appellant's history of injury beginning in August 1997 for low back pain. He noted that appellant experienced cervical symptoms in May 1999 and that in July 2001 she reported increasing low back pain as her work restrictions were exceeded as well as work-related stress. Dr. Bakken attributed appellant's current conditions to her employment.

In a letter dated November 1, 2001, the Office noted that appellant had previously filed a claim for a lumbar condition accepted for sprain/strain and that her cervical claim was recently denied. The Office also requested clarification of appellant's stress claim. Appellant's attorney responded on November 27, 2001 and stated that appellant's claim was for a new occupational disease affecting appellant's neck, low back and shoulders as a result of her employment duties in operating a bundle sorting machine. He submitted a statement dated August 28, 2001 in which appellant described keying with right hand and moving bundles with the left hand for 40 minutes at a time. Appellant then swept the mail by tying heavy mail sacks and throwing these sacks over her shoulders for 20 minutes. She stated that the sacks were very heavy and that she was also lifting small parcel and bundle trays over her shoulders. Appellant stated that she had to stoop, lift above her shoulders and feed the mail with both hands for 40 minutes at a time. She stated that these activities caused pain and burning in her neck, shoulders and back as well as headaches and stress.

Dr. Bakken examined appellant on December 10, 2001 and diagnosed chronic back pain, work related. On January 16, 2002 he stated that appellant was totally disabled and unable to return to work.

On March 8, 2002 the Office referred appellant, a statement of accepted facts and a list of questions to Dr. Perry Eagle, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated April 9, 2002, he noted appellant's history of injury and found normal gait with no low back pain. Dr. Eagle stated that appellant may have previously sustained a lumbar strain, but that she had no clinical evidence of a herniated disc or radiculopathy. He noted that appellant's current objective lumbar examination was essentially

normal. Dr. Eagle completed a work capacity evaluation on April 10, 2002 and indicated that appellant could work eight hours a day with no limitations.

Dr. Bakken completed a report on June 4, 2002 and stated that appellant was disabled due to her chronic upper back and neck pain.

By decision dated September 6, 2002, the Office denied appellant's claim finding that the medical evidence did not establish that her neck or upper back conditions were caused or aggravated by her employment duties.

Appellant, through her attorney, requested an oral hearing on September 9, 2002. The hearing representative conducted the oral hearing on April 8, 2003 and appellant's attorney appeared on her behalf. He noted that appellant underwent neck surgery on February 16, 2000 and alleged that appellant's current claim was for aggravation of her preexisting neck and low back problems. Appellant's attorney argued that there was a conflict of medical opinion evidence between Drs. Bakken and Eagle.

By decision dated June 18, 2003, the hearing representative remanded the case for further development of the medical evidence. He found that Dr. Eagle had not addressed whether appellant's employment duties had aggravated her preexisting neck and back conditions.

In a letter dated September 9, 2003, the Office requested a supplemental report from Dr. Eagle regarding whether appellant's employment duties aggravated her neck and low back conditions, and whether any such aggravation was temporary or permanent. The Office also amended the statement of accepted facts and included records from her previous claims. Dr. Eagle responded on September 18, 2003 and opined that appellant's work duties from July 2000 to June 2001 did not aggravate her preexisting cervical and low back conditions. He stated, "There are no documentations in the records supplied which would support, by imaging or objective testing, that the patient's work on the [bundle sorting] machine caused aggravation of her symptoms."

By decision dated September 25, 2003, the Office denied appellant's claim finding that Dr. Eagle's reports were entitled to the weight of the medical opinion evidence.

Appellant, through her attorney, requested an oral hearing on September 26, 2003. Appellant's attorney appeared at the oral hearing on May 25, 2004 and argued that Dr. Eagle's supplemental report did not resolve the issue of aggravation of preexisting conditions as he failed to provide any medical reasoning in support of his conclusion.

By decision dated August 6, 2004, the hearing representative affirmed the Office's September 25, 2004 decision finding that Dr. Eagle's reports represented the weight of the medical opinion evidence.

### **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 of existence of the disease or condition for which compensation is claimed; (2) a factual

statement identifying the 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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.<sup>1</sup>

### ANALYSIS

Appellant attributed her diagnosed conditions of lumbar radiculopathy, chronic low back pain and chronic neck pain to her employment duties of operating a bundle sorting machine including keying, moving bundles, sweeping the mail, lifting sacks of mail as well as trays over her shoulders, stooping and feeding the mail with both hands. She stated that these activities resulted in pain in her back, shoulders and neck.

In support of her claim, appellant submitted a series of reports from Dr. Bakken, a Board-certified family practitioner, diagnosing a variety of conditions including, chronic anxiety and depression,<sup>2</sup> lumbar radiculopathy, chronic neck pain, degenerative disc disease of the cervical spine and chronic low back pain. He opined that these conditions were all related to appellant's employment and that she was totally disabled.

Dr. Bakken's reports are not sufficient to meet appellant's burden of proof as he failed to provide any medical reasoning in support of his opinion that appellant's employment duties caused or aggravated her cervical and low back conditions. The Office had previously accepted that appellant sustained a lumbar strain due to her employment duties, but had denied her claim for a cervical injury due to her work. Appellant underwent a cervical laminectomy prior to her July 29, 2001 claim. Due to the complex history including preexisting employment and nonemployment-related conditions, in order to meet appellant's burden of proof, Dr. Bakken must not only provide a detailed history and physical findings, but medical reasoning explaining why he felt that appellant's condition was related to her employment duties and how her employment duties resulted in the alleged aggravation of her conditions. As his reports lack this necessary medical rationale, the reports are not sufficient to meet appellant's burden of proof.

The Office referred appellant for a second opinion evaluation with Dr. Eagle, a Board-certified orthopedic surgeon, who found that appellant's physical examination of the lumbar spine was normal with no clinical evidence of a herniated disc or radiculopathy. He noted that appellant had previously undergone cervical spine surgery and did not diagnose a current cervical condition. In his supplemental report dated September 18, 2003, Dr. Eagle responded to the Office's queries by opining that appellant's work duties on the bundle sorting machine did not aggravate her preexisting cervical and low back conditions. He stated that there was no evidence either through imaging or objective findings supporting that appellant's preexisting

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<sup>1</sup> *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

<sup>2</sup> The Office has not issued a final decision regarding the emotional component of appellant's case and the Board will not address this issue for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

conditions were aggravated by her employment. Dr. Eagle did not support appellant's claim for any condition caused or aggravated by her accepted employment duties.

As there is no rationalized medical opinion evidence establishing a causal relationship between appellant's diagnosed conditions and her employment duties, appellant has failed to meet her burden of proof in establishing that she sustained an aggravation of her preexisting conditions as a result of her work.

**CONCLUSION**

The Board finds that appellant has failed to submit the necessary medical opinion evidence to establish her claim for an occupational disease resulting in an aggravation of her preexisting cervical and low back conditions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 6, 2004 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: May 4, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member