

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

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**JOSEPH M. JOHNSON, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Oak Creek, WI, Employer**

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**Docket No. 06-449  
Issued: April 13, 2006**

*Appearances:*  
*Joseph M. Johnson, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On December 20, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated November 8, 2005, denying his claim for a traumatic injury. 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 sustained a neck or shoulder condition in the performance of duty on August 30, 2005 causally related to factors of his federal employment.

**FACTUAL HISTORY**

On September 15, 2005 appellant, then a 41-year-old mail handler, filed a traumatic claim alleging that on August 30, 2005 his degenerative disc and joint disease was aggravated by

his job duties, which included continuous picking up and wrapping of damaged mail and caused a chronic neck and shoulder condition.<sup>1</sup>

In a May 24, 2004 report, Dr. Anita M. Maitra, an attending Board-certified anesthesiologist, stated that appellant was being treated for low back and neck pain caused by degenerative disc disease. A May 24, 2004 report regarding a magnetic resonance imaging (MRI) scan of appellant's cervical spine performed on February 5, 2004 revealed multilevel degenerative disc disease. Unsigned medical notes dated May 24, 2004 report listed symptoms of neck, back and shoulder pain and provided a diagnosis of degenerative disc disease of the cervical spine and a herniated disc of the lumbar spine.

In a March 1, 2005 report, Dr. Randa K. Noseir, an attending Board-certified anesthesiologist specializing in pain medicine, stated that appellant was being treated for chronic lower back, neck and shoulder pain secondary to degenerative disc and joint disease.

In an October 4, 2005 letter, the Office advised appellant that he needed to submit additional evidence in support of his claim, including a diagnosis of his condition and a rationalized opinion from a physician explaining how his medical condition was causally related to factors of his employment. No further medical evidence was submitted at this time.

By decision dated November 8, 2005, the Office denied appellant's claim on the grounds that the evidence did not establish that he sustained a neck and shoulder injury on August 30, 2005 causally related to factors of his employment.<sup>2</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden to establish the essential elements of his claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.<sup>5</sup> Second, the employee must

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<sup>1</sup> In an earlier compensation claim under a separate file number, the Office accepted that appellant sustained a permanent aggravation of degenerative disc disease at L4-5.

<sup>2</sup> Appellant submitted additional evidence subsequent to the Office decision of November 8, 2005. The Board's jurisdiction 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). The Board may not consider this evidence for the first time on appeal.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

submit medical evidence to establish that the employment incident caused a personal injury.<sup>6</sup> An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.

To establish a causal relationship between appellant's condition and any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background 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.<sup>7</sup>

### ANALYSIS

The Office indicated in its November 8, 2005 decision that appellant had not established that a specific work event or incident had occurred on August 30, 2005 at the time, place and in the manner alleged. The Board notes that there is no evidence of record contradicting appellant's statement that he was picking up and wrapping damaged mail at work on August 30, 2005. The Board finds that the incident that day is established. Therefore, the issue is whether he sustained a medical condition on that date causally related to these job duties.

In a May 24, 2004 report, Dr. Maitra stated that appellant was being treated for low back and neck pain caused by degenerative disc disease. However, she did not provide a diagnosis or explain how appellant's neck and back condition was caused or aggravated by his job duties on August 30, 2005 or explain the relationship of his degenerative disc disease, if any, to his employment. Therefore, this report is not sufficient to establish that appellant sustained a work-related neck or shoulder condition on August 30, 2005.

In a March 1, 2005 report, Dr. Noseir stated that appellant was being treated for chronic lower back, neck and shoulder pain secondary to degenerative disc and joint disease. However, she did not provide a diagnosis or an explanation as to how appellant's back, neck and shoulder pain was caused or aggravated by his August 30, 2005 employment duties or the relationship of his degenerative disc and joint disease, if any, to his employment. Therefore, this report is not sufficient to discharge appellant's burden of proof.

There is no medical report of record from a physician who explains, with medical rationale, how appellant's neck and shoulder conditions were causally related to the performance of his job duties on August 30, 2005 or any other employment factor. Therefore, appellant's claim is not supported by the medical evidence and the Office properly denied his claim.

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<sup>6</sup> *Shirley A. Temple*, 48 ECAB 404 (1997).

<sup>7</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, *supra* note 6.

**CONCLUSION**

The Board finds that appellant failed to establish that he sustained a neck or shoulder condition on August 30, 2005 causally related to factors of his employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 8, 2005 is affirmed.

Issued: April 13, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board