

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

BARBARA R. MOKHTAR, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Devon, PA, Employer**

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**Docket No. 06-540
Issued: April 20, 2006**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of the 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 January 10, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' September 15, 2005 merit decision. Under 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 her claimed neck and bilateral upper extremity conditions were causally related to her employment.

FACTUAL HISTORY

On February 14, 2003 appellant, a 55-year-old mail handler, filed a Form CA-2 claim alleging that she developed a neck condition caused by factors of her employment.

By decision dated June 11, 2003, the Office denied appellant's claim, finding that appellant failed to submit medical evidence sufficient to establish that she sustained the claimed neck condition in the performance of duty.

By letter dated July 3, 2003, appellant's attorney requested an oral hearing, which was held on March 1, 2004.

In a report dated January 27, 2004, Dr. H. Newton Spencer, a specialist in orthopedic surgery, related appellant's history of recurrent pain in her neck, which radiated into her left shoulder, left arm, left hand and fingers while handling mail at the employing establishment. He stated that examination of appellant's cervical spine revealed tenderness and palpable spasm of the cervical paravertebral muscles bilaterally, with limited range of motion; examination of appellant's shoulders revealed tenderness of the subacromial area bilaterally. Dr. Spencer diagnosed acute sprain of the cervical spine, herniated intervertebral disc of the cervical spine, and acute sprain of the left shoulder. He stated that there was a direct causal relationship between all of appellant's ongoing and continued complaints and work injuries sustained on April 18, 1995, June 2, 1998 and October 1, 2002.¹

By decision dated May 21, 2004, an Office hearing representative affirmed the June 12, 2003 decision.

By letter dated August 24, 2004, appellant's attorney requested reconsideration.

In a March 9, 2004 report, Dr. Spencer essentially reiterated his previous findings and conclusions regarding appellant's cervical and shoulder conditions; *i.e.*, that there was a direct cause and relationship between all of appellant's ongoing and continued complaints and his previous work injuries. He stated that appellant was permanently disabled and would not be able to return to any type of work with the employing establishment.

Appellant also submitted a February 26, 2003 report from Dr. Michele Y. Holding, Board-certified in physical medicine and rehabilitation, who stated that appellant was experiencing intermittent pain in her head which radiated into her neck, in addition to pain in the upper back area. She stated that appellant began to notice these symptoms in January 2003. Dr. Holding ruled out cervical radiculopathy and diagnosed bilateral cervical strain and sprain, bilateral medial epicondylitis and bilateral lateral epicondylitis. She did not render an opinion as to whether these conditions were causally related to her employment.

On September 15, 2005 the Office denied modification of the May 21, 2004 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that 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 timely filed within the applicable time limitation period of the Act, that an injury was

¹ Dr. Spencer noted that appellant had previously sustained injuries at work. One of these occurred on April 18, 1995, when a gate fell on her head and she sustained injuries to her head and neck. She sustained another work injury, to her neck and right upper extremity, on June 2, 1998. However, there is no documentation in the case file pertaining to these injuries, and the subject claim is based on work-related cervical and upper extremity conditions.

² 5 U.S.C. §§ 8101-8193.

sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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. The medical evidence required to establish causal relationship is usually rationalized medical 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. 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.⁵

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed bilateral carpal tunnel condition and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁷ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

The Board finds that appellant has failed to submit any medical evidence containing a rationalized, probative report which relates her claimed neck and bilateral upper extremity

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

⁶ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁷ *Id.*

conditions to factors of her employment. For this reason, she has not discharged her burden of proof to establish her claim that these conditions were sustained in the performance of duty.

Appellant submitted reports from Dr. Spencer, but the physician did not provide a probative, rationalized medical opinion explaining how the claimed neck and bilateral upper extremity conditions were causally related to employment factors. In his January 9, 2004 report, Dr. Spencer stated findings on examination and diagnosed acute sprain of the cervical spine, herniated intervertebral disc of the cervical spine and acute sprain of the left shoulder. He advised that appellant had tenderness and palpable spasm of the cervical paravertebral muscles bilaterally, with limited range of motion and tenderness of the subacromial area bilaterally. Dr. Spencer stated that appellant had a history of recurrent pain in her neck, which radiated into her left shoulder, left arm, left hand and fingers while handling mail at the employing establishment. He opined that there was a direct cause and relationship between all of appellant's ongoing and continued complaints and her employment. However, Dr. Spencer did not fully explain how appellant's job duties as a mail handler would cause or contribute to the diagnosed conditions. His report is of limited probative value for the further reason that it is generalized in nature and equivocal in that he only noted summarily that appellant's cervical and upper extremity conditions were caused by her previous work injuries. Dr. Spencer did not provide adequate medical rationale in support of his stated conclusions.⁸ He did not describe how factors of appellant's employment would have been competent to cause the claimed cervical and shoulder conditions. Therefore, the Office hearing representative properly determined that appellant did not sustain neck and bilateral upper extremity conditions in his May 21, 2004 decision.

Following the May 21, 2004 decision, appellant's attorney requested reconsideration and submitted reports from Drs. Spencer and Holding. Dr. Spencer reiterated his previous findings and conclusions regarding appellant's cervical and shoulder conditions in a March 9, 2004 report. He found that appellant was permanently disabled and unable to return to any type of work with the employing establishment. Dr. Holding stated findings on examination, diagnosed bilateral cervical strain and sprain, bilateral medial epicondylitis and bilateral lateral epicondylitis, and noted appellant had complained of neck and upper back pain since January 2003. She did not, however, submit an opinion as to whether these conditions were causally related to factors of appellant's employment.

The medical reports appellant submitted did not contain a probative, rationalized medical opinion that the claimed cervical and bilateral upper extremity conditions were causally related to employment factors. These reports are therefore of limited probative value as they do not contain any medical rationale explaining how or why appellant's claimed conditions were currently affected by or related to factors of employment.⁹ Although Dr. Spencer diagnosed several cervical, shoulder and upper extremity conditions, he failed to provide a probative, rationalized medical opinion to establish that these conditions were causally related to any of her work duties. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the

⁸ *William C. Thomas*, 45 ECAB 591 (1994).

⁹ *Id.*

facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹⁰ Dr. Spencer failed to submit an opinion which sufficiently described the medical process through which appellant's employment would have been competent to cause the claimed conditions. The Office therefore properly found that appellant did not sustain neck or bilateral upper extremity conditions in the performance of duty.

The Office advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Consequently, appellant has not met her burden of proof in establishing that her claimed neck and bilateral upper extremity conditions were causally related to her employment. The Board therefore affirms the Office's September 15, 2005 decision.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establishing that her claimed bilateral carpal tunnel condition was sustained in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 20, 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

¹⁰ See *Anna C. Leanza*, 48 ECAB 115 (1996).