

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

A.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Montclair, NJ, Employer**

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**Docket No. 06-525
Issued: August 11, 2006**

Appearances:

*James D. Muirhead, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 15, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated June 22 and November 22, 2005 denying his occupational injury claim. 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 his burden of proof in establishing that he sustained an injury in the performance of duty.

FACTUAL HISTORY

On August 10, 2004 appellant, then a 43-year-old letter carrier, filed an occupational disease claim alleging that he injured his left arm, shoulder, side and back as a result of repetitive duties associated with his employment. He stopped work on February 26, 2004, the day he realized that his condition was job related.

Appellant submitted a February 26, 2004 note written on a prescription pad signed by Dr. Edward T. Kalmar, Jr., a treating physician, who had treated appellant for inflammation of the left arm and shoulder. In a similar March 1, 2004 note, he reported that he had treated appellant for cervical disc disease, inflammation of the arm and shoulder and the flu. The record also contains prescriptions dated March 5, 2004 from Dr. Kalmar for a magnetic resonance imaging (MRI) scan of the cervical spine and for physical therapy. In an April 9, 2004 note, he stated that he treated appellant for cervical disc disease, radiculopathy and back pain, and recommended light duty with no heavy lifting.

Appellant submitted a March 10, 2004 report of an MRI scan of the cervical spine signed by Dr. Robert F. Traflet, reflecting a bulging annulus at C4-5 and C5-8.

Appellant provided an April 16, 2004 report from Dr. Irfan A. Alladin, a Board-certified physiatrist. Following a physical examination and needle electromyogram (EMG), he listed impressions of cervical strain, reticulates and right carpal tunnel syndrome. Dr. Alladin noted that appellant's cervical extension was limited to approximately 30 degrees, with full cervical flexion. Lateral cervical rotation in both directions was 60 degrees without pain. Spurling and Adson signs were negative. Appellant had full passive and active range of motion of the upper extremities. Dermatome testing revealed decreased sensation in appellant's right C7, C8 distribution. Dr. Alladin found electrophysiological evidence consistent with left C5, C6 and C7 irritation of the posterior primary ramie, which was consistent with irritation proximal to the aforementioned cervical roots. He found no evidence of acute radiculopathy, sympathy, plexopathy or peripheral polyneuropathy.

In an April 14, 2004 work capacity evaluation, Dr. Kalmar recommended restrictions, including no lifting over 20 pounds, no repetitive movement of the wrists and elbows, and no reaching above the shoulder for more than two to three hours. On April 19, 2004 appellant accepted a modified carrier position that accommodated his restrictions. In an April 28, 2004 work capacity evaluation, Dr. Alladin indicated that appellant had cervical radiculopathy, right carpal tunnel syndrome and left shoulder impingement. Appellant stated that his mail route prevented him from using a mail push cart and was unable to carry his mailbag.

By letter dated May 6, 2004, the Office asked Dr. Alladin to explain whether appellant's reported work activities caused or aggravated his diagnosed conditions. The Office also informed appellant that the information submitted was insufficient to establish his claim and provided appellant 30 days to submit additional evidence.

Appellant submitted a narrative statement dated May 20, 2004, in which he claimed that 14 years of repetitive employment tasks, such as using his right hand to case and strap mail, made him susceptible to carpal tunnel syndrome. As a mail carrier, he was required to deliver mail and open doors, mailboxes, and door slots. Appellant claimed that he was predisposed to carpal tunnel syndrome due to a January 15, 1994 injury (File No. 020673308), when he fell during a mail delivery, injuring his shoulder, wrists and back, and a January 29, 1996 lifting accident, when he injured his wrist. He alleged that on February 25, 2004 he developed strong neck, arm and shoulder pains while at work, which caused him to miss work until March 1, 2004.

The record contains reports of appellant's January 15, 1994 and January 29, 1996 injuries; a March 10, 2004 prescription from Dr. Kalmar for physical therapy; physical therapy notes dated May 12, 2004; a work excuse from Dr. Kalmar dated March 19, 2004, indicating that appellant was unable to work from February 26, 2004 due to "cx [cervical] disc disease"; a work excuse dated May 12, 2004 bearing an illegible signature; and work capacity evaluations dated May 17 and 22, 2004 bearing illegible signatures.

In a June 2, 2004 narrative statement, appellant indicated that he had suffered from pain in his neck, left arm and shoulder, and right hand since August 2003, and could no longer work under those conditions.

Appellant submitted a June 2, 2004 work capacity evaluation from Dr. Alladin, who indicated that appellant could work four hours per day with restrictions, including no carrying or lifting over 30 pounds. He recommended that appellant be restricted to one hour of reaching over the shoulder. In a June 2, 2004 report, Dr. Alladin provided impressions of cervical radiculopathy, carpal tunnel syndrome and left shoulder impingement. He stated that repetitive activities and lifting heavy objects intensified appellant's pain and that he required a modified-duty position.

By decision dated June 7, 2004, the Office denied appellant's claim, finding that he had failed to establish that his diagnosed conditions were causally related to factors of employment.

In a report dated June 18, 2004, Dr. Alladin provided a history of appellant's injury, as reported by appellant. Appellant stated that he had developed pain and numbness in his hands as a result of lifting his bag and handling envelopes and other objects throughout the workday. He alleged that lifting and strapping a heavy bag over his shoulder over the past several years caused pain in his neck, which radiated into his left upper extremity. Dr. Alladin stated that appellant "appears to have radicular symptoms that may be related to lifting heavy objects that pull on the neck itself and on the shoulder." He indicated that "such activities would place pressure in the neck region and on the cervical spine in particular and may result in cervical disc herniation or early development of cervical facet arthropathy and cervical myofascial pain."

Appellant submitted an unsigned prescription dated June 2, 2004 for an evaluation by Dr. William Von Roth, Jr., a Board-certified orthopedic surgeon.

On June 11, 2004 appellant submitted a request for an oral hearing, which he withdrew on August 27, 2004.

On April 5, 2005 appellant, through counsel, requested reconsideration of the Office's June 7, 2004 decision. He submitted a February 23, 2004 workers' compensation progress note bearing an illegible signature, indicating that he could return to work on February 24, 2004. Counsel also submitted copies of Dr. Alladin's June 2 and 18, 2004 reports.

By decision dated June 22, 2005, the Office denied modification of its June 7, 2004 decision. The Office noted that appellant had previously filed a claim for right carpal tunnel syndrome, which was accepted under File No. 022055040.

On August 24, 2005 appellant requested reconsideration of the Office's June 22, 2005 decision and submitted a July 29, 2005 report from Dr. Von Roth, who had treated appellant since May 20, 2004. He reviewed appellant's history of carrying a mailbag on his left shoulder for 14 years and using his arms in repetitious work activities, such as mail sorting and delivery. Dr. Von Roth stated a March 10, 2004 MRI scan documented disc pathology at C4-5 and C5-6. He also noted that a March 10, 2004 EMG nerve conduction study showed evidence of cervical nerve root irritation at C5-6 on the left and carpal tunnel syndrome on the right. Dr. Von Roth opined "within a reasonable degree of medical probability that there [is] a direct relationship between [appellant's] documented findings and the etiology of the mechanism of production." Appellant also submitted an unsigned June 29, 2004 operative record of an arthroscopic carpal tunnel release of the right wrist and unsigned physician's notes dated July 30 and October 4, 2004.

In a letter dated November 4, 2005, appellant's representative clarified that appellant's claim related only to his left shoulder and arm pain, not right carpal tunnel syndrome.

By decision dated November 22, 2005, the Office denied modification of its June 22, 2005 decision. The Office found that Dr. Von Roth's July 29, 2005 report to be ambiguous and required clarification as to whether he was referring to carpal tunnel syndrome or a cervical condition. The Office also stated that Dr. Roth had failed to submit results of a physical examination to support a finding of a "nerve root irritation" and had not provided a rationalized explanation as to how appellant's conditions were causally related to identified work factors.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 timely filed within the applicable time limitation period of the Act, that an injury was 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.² 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.³

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

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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, generally, 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. 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.⁴

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁵

The Board has consistently held that unsigned medical reports are of no probative value⁶ and that any medical evidence upon which the Office relies to resolve an issue must be in writing and signed by a qualified physician.⁷

ANALYSIS

The Board finds that this case is not in posture for decision regarding whether appellant sustained an injury in the performance of duty.

An employee who claims benefits under the Act has the burden of establishing the essential elements of his or her claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁸ However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden of establishing entitlement to

⁴ *Id.*

⁵ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁶ *Merton J. Sills*, 39 ECAB 572, 575 (1988).

⁷ *James A. Long*, 40 ECAB 538, 541 (1989).

⁸ *See Virginia Richard*, claiming as executrix of the estate of *Lionel F. Richard*, 53 ECAB 430 (2002); *see also Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁹

Dr. Von Roth opined that appellant's repetitive work activities as a mail carrier and carrying a mailbag on his left shoulder for 14 years caused his documented disc pathology and cervical nerve root irritation. He gave a history of appellant's condition and indicated that he had reviewed appellant's medical records and test results. Dr. Von Roth reflected an understanding of appellant's job requirements and the nature of his job duties. He identified an EMG which showed evidence of left-sided cervical irritation at C5-6 and opined that there was a causal relationship to appellant's work duties.

Dr. Alladin provided an accurate history of appellant's condition and injury consistent with that reported by appellant, and indicated that his repetitive work activities and lifting of heavy objects intensified his pain. He reported findings of his examination and stated that appellant appeared to have radicular symptoms that "may be related to lifting heavy objects that pull on the neck itself and on the shoulder." Dr. Alladin indicated that "such activities would place pressure in the neck region and on the cervical spine in particular and may result in cervical disc herniation or early development of cervical facet arthropathy and cervical myofascial pain."

The Board notes that, while none of the reports of appellant's attending physicians is completely rationalized, they are consistent in indicating that he sustained an employment-related cervical condition and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet his burden of proof to establish his claim, they raise an uncontroverted inference between appellant's claimed conditions and the identified employment factors and are sufficient to require the Office to further develop the medical evidence and the case record.¹⁰

On remand the Office should prepare a statement of accepted facts and refer appellant, along with his medical records, for a second opinion examination, in order to obtain a rationalized opinion as to whether his current condition is causally related to factors of his employment, either directly or through aggravation, precipitation or acceleration.

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant sustained an injury in the performance of duty.

⁹ *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004); *see also Virginia Richard*, *supra* note 8; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

¹⁰ *See Virginia Richard*, *supra* note 8; *see also Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that, in its November 22, 2005 decision, the Office stated that Dr. Roth's July 29, 2005 report required clarification.

ORDER

IT IS HEREBY ORDERED THAT the November 22 and June 22, 2005 decisions of the Office of Workers' Compensation Programs are set aside and remanded for further development consistent with this decision.

Issued: August 11, 2006
Washington, DC

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

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