

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

C.G., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Omaha, NE, Employer

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**Docket No. 06-1120
Issued: November 15, 2006**

Appearances:

John J. Higgins, Esq., for the appellant
Office of Solicitor, for the Director

Oral Argument October 11, 2006

DECISION AND ORDER

Before:

MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 12, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 9, 2006 which denied modification of a March 16, 2004 decision denying her 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 her burden of proof in establishing that she sustained an injury in the performance of duty.

FACTUAL HISTORY

On May 7, 2003 appellant, then a 49-year-old clerk, filed an occupational disease claim alleging that she sustained a cervical neuropathy with impingement of the right and left shoulders

and injuries to both wrists and elbows as a result of repetitive motion associated with sorting mail. She first became aware of her condition on April 9, 2003.¹

In a February 4, 2002 letter, Dr. Michael Gross, a treating physician, recommended an evaluation by a neurosurgeon for neck pain radiating to the shoulder area. In a July 15, 2002 letter, Dennis E. Allen of the employing establishment stated that appellant worked with restrictions provided by Dr. Elvira Rios, Board-certified in family medicine, on July 5, 2002. A job description dated February 24, 2003 reflected that the duties of a regular clerk included handling telephones and paper work, printing labels, verifying mail and walking around.

In a letter dated February 24, 2003, Minhtri Pham, a supervisor, stated that appellant had been under his supervision since 1999 and had never cased mail or performed any physical work for over 30 minutes at a time. Appellant submitted a January 30, 2002 report of a bilateral ultrasound, which revealed no rotator cuff tear in either shoulder. The record contains a June 30, 2000 letter from the employing establishment to appellant's supervisor, certifying that she could return to work provided that she be restricted from making repetitive motions or lifting more than 1 pound with the left arm and from making repetitive motions for more than 30 minutes in a 4-hour period or lifting more than 10 pounds with the right arm. In an August 6, 2001 duty status report, Dr. Ian Crabb, a Board-certified orthopedic surgeon, provided restrictions, including limitations on lifting and carrying more than 20 pounds continuously and 70 pounds intermittently. On November 16, 2001 Dr. Gross opined that appellant needed surgery to release her capsule and deltoid. Appellant submitted a March 5, 2000 "assignment of light duty" form signed by Dr. Bruce D. Smith who stated that appellant should work light duty because she had chronic cervical neuropathy and left shoulder impingement and right tennis elbow.

On May 13, 2003 the employing establishment controverted the claim, contending that appellant had failed to establish a causal relationship between her diagnosed conditions and factors of employment, noting that her cervical neck claim had been denied on July 19, 2002.

On January 25, 2002 Dr. Gross stated that appellant's left shoulder was doing well from the surgical release, but that it seemed "again, that she just did not want to return to work." He stated that "you just can [not] keep a person off work on [hearsay]."

By letter dated May 16, 2003, the Office informed appellant that the information submitted was insufficient to establish her claim, noting that the record did not contain factual information that adequately described the work activities she believed were responsible for her condition and that there was no medical evidence, that established a disabling condition resulting from factors of her federal employment. The Office informed appellant that she had 30 days to submit additional evidence to support her claim.

¹ Appellant filed two previous occupational disease claims alleging a cervical injury. Her April 10, 2002 claim (file number 112008112), was denied by decision dated July 19, 2002, for failure to establish causal relationship. Appellant's February 6, 2003 claim (file number 112014804), was denied on March 28, 2003 on the grounds that the medical evidence did not contain a diagnosis. On June 17, 2003 the Office consolidated case file numbers 112008112; 112014804; and 112015953, under master file number 112015953, as they all related to appellant's allegations of a cervical condition.

Appellant submitted a May 27, 2003 narrative statement, indicating that she began working for the employing establishment in 1997 in a position that required her to case mail and bend her neck repetitively. In 1998, she cased letters and flats and bent her neck repetitively. Appellant's duties allegedly included lifting letter and flat trays and transferring mail from flat and letter cases to other trays. Appellant stated that the repetitive motion of her arm and neck for eight hours per day, five days per week, resulted in neck pain which worsened in the winter of 1999 to the degree that she was able to work only three days per week. After shoulder surgery she worked facing a table, which required her to bend her neck, resulting in increased pain. She experienced continuous pain since approximately February 2002, when she developed a stiff neck and shock pains to the base of her skull after bending her neck at work for about 30 minutes.

In a May 22, 2003 light-duty restriction form, Dr. Rios recommended that appellant be restricted from any repetitive motion of the neck, arms or hands.

By decision dated June 17, 2003, the Office denied appellant's claim, finding that the claimed work events had occurred, but that the medical evidence did not provided a diagnosis that could be connected to the events or the work injury of April 9, 2003.

On February 4, 2004 appellant, through her representative, requested reconsideration of the June 17, 2003 decision. Counsel contended that appellant's cervical condition did not occur on April 9, 2002, but rather she "discovered" that she had sustained a work-related herniated disc when she was so diagnosed by Dr. R. Schuyler Gooding, a Board-certified neurosurgeon, on April 9, 2003. The representative contended that Dr. Gooding's April 9, 2003 report connected appellant's herniated cervical disc to work factors, such as repetitive head and neck activities as a mail handler.

Appellant submitted a report of a computerized tomography (CT) scan of the cervical spine and a report of a cervical myelogram dated April 11, 2003. In light-duty restriction forms dated June 24, July 24 and September 4, 2003, Dr. Rios recommended that she be restricted from reaching above the shoulder; lifting more than five pounds; working more than four hours per day; casing mail; and repetitive motion of the neck, arms and hands. In a December 15, 2003 report, Dr. Peter M. Cimino, a Board-certified orthopedic surgeon, provided impressions of bilateral shoulder tendinitis, postoperative left shoulder rotator cuff tear, cervical spine disc disease and right elbow lateral epicondylitis. Dr. Cimino stated that "it [was] difficult to be certain what [was] actually work related. Repetitive duties can cause the various symptoms."

In a February 6, 2004 attending physician's report, Dr. Rios diagnosed discogenic disease; impingement syndrome; and chronic neck, shoulder, arm and elbow pain. In response to the question as to whether appellant's condition was caused or aggravated by employment activity, she stated that appellant's condition "will be exacerbated by repetitive activity." In a February 25, 2004 attending physician's report, Dr. Patrick Bowman, a Board-certified orthopedic surgeon, diagnosed cervical spine syndrome. In response to the question as to whether appellant's condition was caused or aggravated by employment activity, he stated that "the demands of [her] job affect [her] shoulders bilaterally."

By decision dated March 16, 2004, the Office noted that the medical evidence of record provided a diagnosis of cervical disc syndrome. However, it found that a causal relationship had not been established between the diagnosed condition and factors of employment.

In a March 18, 2004 letter, appellant's representative requested reconsideration contending that the Office failed to consider Dr. Gooding's April 29, 2003 report. The Office denied the reconsideration request by decision dated March 24, 2004. It found that the representative's arguments were cumulative in nature. It also noted that appellant's attending physicians appeared to be unaware that she had been on limited duty since May 2000, with lifting restrictions of five pounds; that she worked only four hours per day from October 2002 through October 2003; and that she had not worked at all since October 2003.

On March 24, 2004 appellant's representative filed another request for reconsideration, contending that the Office failed to consider both Dr. Gross' February 4, 2002 report and Dr. Gooding's April 29, 2003 report. By decision dated April 8, 2004, the Office denied modification of its prior decisions findings that the record did not contain a well-reasoned medical opinion establishing causal relationship.

On July 24, 2004 appellant's representative filed for reconsideration and submitted an April 16, 2001 report from Dr. Mark A. Pitner, a Board-certified orthopedic surgeon, who diagnosed right shoulder impingement and rotator cuff tendinitis. Dr. Pitner indicated that appellant's right shoulder pain began in 1997 when she began working for the employing establishment. Appellant also submitted unsigned notes from Dr. Rios dated December 23, 2003, reflecting an impression of status post fusion C5-6; a January 14, 2004 operative report; a February 25, 2004 radiology report; occupational therapy notes for the period February 4 through March 18, 2004; a February 24, 2004 report of a magnetic resonance imaging (MRI) scan of the cervical spine; and a February 18, 2004 report of a CT scan of the cervical spine.

Appellant also submitted notes and reports from Dr. Bowman. Unsigned notes dated December 7, 2003 and February 18, 2004, reflected her complaints of a recurrence of pain in her right shoulder following her surgery and recommended a referral to Dr. Murphy as soon as possible. On April 21, 2004 Dr. Bowman stated that he had been treating appellant since September 2003 for a cervical spine condition. He provided a diagnosis of cervical disc syndrome with active radiculopathy and stated that her condition was severely impacted by the repetitive nature of her job. Dr. Bowman stated that appellant "developed a breakdown of several cervical discs as a result of repetitive work activity which ultimately resulted in severe intractable neuropathic pain in her upper extremities. He noted that he had "reviewed with [her] in detail, her job profile as a mail processing clerk. In particular, the need for repetitive look[ing] up and rotation of the neck would be, in my opinion, strictly contraindicated because of [appellant's] cervical spine condition." On May 5, 2004 Dr. Bowman opined that appellant was disabled from performing her job at the employing establishment, stating that she had significant residual shoulder blade pain, right shoulder pain and right upper extremity pain. He indicated that her condition would be severely exacerbated by the repetitive nature of her job. In a June 13, 2004 report, Dr. Bowman related that appellant had a history of occupational injury relating to repetitive work duties, which began in 1997. He noted that appellant had a severe spine pathology and severe shoulder disease. Dr. Bowman stated, "In my opinion it is clear that the significant herniated dis[c] at C5 on the cervical spine imagery carried on February 24, 2004 was indeed a significant pain generator, participating in her neck, shoulder and upper extremity

symptoms.” He opined that appellant’s cervical dis[c] syndrome “could, as a result of her employment activities, participate as an additional pain generator.” On May 5, 2004 Dr. Bowman opined that appellant’s condition “would be severely exacerbated and impacted by the repetitive nature of her job.”

In an August 10, 2004 decision, the Office denied appellant’s request for reconsideration finding that the evidence submitted was insufficient to warrant further merit review.

Appellant filed an appeal with the Board. By decision dated January 10, 2006, the Board remanded the case to the Office for consideration of all the evidence of record, including Dr. Gooding’s April 29, 2003 report.²

Dr. Gooding’s April 29, 2003 report reflects that he examined appellant for the first time on April 9, 2003 and reviewed her history as she reported it to him. Physical examination revealed that her right biceps and brachial radialis reflexes were absent, as was the biceps reflex on the left. The left triceps reflex was significantly depressed. Dr. Gooding concluded that the objective findings “strongly reinforced suspicion” that appellant’s discomforts involving her right and left upper extremities were due to her neck. He noted that the report of her cervical myelogram revealed significant nerve root entrapment abnormalities on the right at C5-6 and C6-7. [Appellant’s] CT scan revealed a disc herniation with an extruded disc fragment on the right. Dr. Gooding stated that the findings suggested that appellant’s neck “problem” was the result of her repetitive head and neck movement activities in the workplace, “an unavoidable aspect of being a ‘mail handler.’”

By decision dated February 9, 2006, the Office denied modification of its previous decisions finding that the medical evidence of record failed to establish a causal relationship between appellant’s diagnosed cervical condition and factors of her federal employment. On appeal, appellant’s representative contends that the medical evidence of record clearly establishes a causal relationship between her work duties as a clerk and her diagnosed herniated cervical disc.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act³ 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.⁴ 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.⁵

² Docket No. 05-99 (issued August 10, 2006).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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, 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.⁶

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.⁷

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 compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁸

ANALYSIS

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

Dr. Bowman opined that appellant's cervical disc condition resulted from repetitive work activity and that her condition was severely impacted by the repetitive nature of her job. He gave a history of her condition and indicated that he reviewed appellant's medical records and test results. Dr. Bowman reflected an understanding of appellant's job requirements and the nature of her job duties. He identified an MRI scan which showed evidence of a herniated disc at C5 and opined that there was a causal relationship to appellant's work duties.

Dr. Gooding provided an accurate history of appellant's condition and injury consistent with that reported by her and indicated that her repetitive work activities intensified appellant's

⁶ *Id.*

⁷ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁸ *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004); *see also Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

pain. Physical examination revealed that her right biceps and brachial radialis reflexes were absent, as was the biceps reflex on the left. The left triceps reflex was significantly depressed. Dr. Gooding concluded that the objective findings strongly reinforced suspicion that appellant's discomforts involving her right and left upper extremities were due to her neck. He noted that the report of her cervical myelogram revealed significant nerve root entrapment abnormalities on the right at C5-6 and C6-7. Appellant's CT scan revealed a disc herniation with an extruded disc fragment on the right. Dr. Gooding opined that appellant's cervical condition was the result of her repetitive head and neck movement activities in the workplace, "an unavoidable aspect of being a 'mail handler.'"

The Board notes that, while none of the reports of appellant's attending physicians is completely rationalized, they are consistent in indicating that she sustained an employment-related cervical condition and are not contradicted by any substantial medical or factual evidence of record. The Office found that appellant's physicians did not seem to have a clear understanding of her work duties or her physical restrictions. However, the Board notes that the Office failed to provide her physicians with a statement of accepted facts which delineated her job functions and restrictions over the course of her employment. While the reports are not sufficient to meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between her claimed conditions and the identified employment factors and are sufficient to require the Office to further develop the medical evidence and the case record.⁹

On remand the Office should prepare a statement of accepted facts which includes a detailed employment history, job descriptions for each position held, specific functions performed by appellant in each position and the restrictions imposed by her treating physicians. It should submit the statement of accepted facts to appellant's treating physician or to a second opinion examiner, in order to obtain a rationalized opinion as to whether her current condition is causally related to factors of her employment.

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 See *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: November 15, 2006
Washington, DC

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board