

federal employment. She stopped work on September 24, 2004. In a statement accompanying her claim, appellant related:

“On approximately Sept[ember] 1, 2004, I started to notice tingling and weakness in my thumb and left hand. I mentioned it to my immediate supervisor, but figured it was nothing and continued working.

“Within a week or two, I started to feel pain in my left shoulder. I notified the supervisor and told him that my neck was stiff and that when I put the mailbag on my shoulder it was causing me a great deal of pain.”

She stated that a magnetic resonance imaging (MRI) scan study dated October 5, 2004 revealed herniated discs at C4-5 and C5-6.

In a statement dated November 8, 2004, Mary McGee, the postmaster, controverted appellant’s claim. She noted that when appellant initially mentioned her neck and shoulder problems on September 17, 2004 she indicated that she might have “slept wrong.” On October 4, 2004 appellant informed Ms. McGee that she had either a torn rotator cuff, tendinitis or bursitis due to carrying her mailbag for 16 years.¹

In a report dated October 22, 2004, Dr. Marc Chernoff, a Board-certified orthopedic surgeon, discussed appellant’s complaints of pain running from above the left clavicle through the shoulder. The pain began in September 2004 and was accompanied by wrist and left hand numbness and weakness. Appellant attributed her condition to working as a letter carrier. Dr. Chernoff diagnosed herniated discs at C4-5 and C5-6 by MRI scan study with left C6 radiculopathy.

By letter dated December 3, 2004, the Office requested additional factual and medical information from appellant, including a comprehensive medical report addressing the relationship between her condition and her federal employment.

On December 7, 2004 appellant described the chronology of her pain and maintained that she notified her immediate supervisor of her symptoms. She further described her history of medical treatment.

In a report dated December 17, 2004, Dr. Ajay V. Berdia, a Board-certified neurologist, reviewed appellant’s complaints of pain extending through her left shoulder into the hand. He related, “[Appellant] is a mail carrier for sixteen years, with [a] history of daily strenuous repetitive lifting of heavy trays and mailbags on [the left] shoulder, resulting in herniated discs in her cervical spine.”

In a report dated December 21, 2004, Dr. Edilberto S. Santos, an internist, noted appellant’s complaints of neck and left shoulder pain and her history of working as a letter

¹ Ms. McGee submitted statements dated November 4 and 5, 2004 from two supervisors, who related that appellant did not inform them that she had neck problems.

carrier. He stated, “[Appellant] lifts heavy trays and carries [a] mailbag on her left shoulder daily. All these activities resulted in her getting herniated discs on her C4-5 and C5-6 discs.”

In a letter dated December 23, 2004, appellant described her employment duties, including lifting trays of mail to put in her truck or on a cart, carrying her mailbag on her left shoulder and carrying heavy packages. She indicated that she performed daily lifting and carrying for a minimum of four hours daily.

On January 4, 2005 the Office requested a detailed medical report from Dr. Santos, including history of injury, findings on examination and his reasoned opinion on the causal relationship between any diagnosed condition and appellant’s employment.

By letter dated January 10, 2005, Ms. McGee controverted appellant’s statement that she lifted mail tubs, letter trays, parcels and a mailbag four hours per day. She noted that appellant only lifted up to 70 pounds 30 minutes per day. Ms. McGee described in detail appellant’s employment duties.

In a report dated October 10, 2004, received by the Office on January 21, 2005, Dr. Berdia described appellant’s complaints of pain in her left collarbone through her shoulder blade with left hand numbness and neck stiffness. He noted, “[Appellant] states the pain has been insidious and has been going on for several months. There is no history of past or recent [injury] and no history of neurological pathology.” Dr. Berdia indicated that he would rule out a rotator cuff tear and bursitis.²

By decision dated January 31, 2005, the Office denied appellant’s claim on the grounds that she did not establish that her herniated cervical discs were causally related to factors of her federal employment. The Office accepted as factual that she carried mailbags on her left shoulder but not that she lifted heavy trays of mail. The Office further determined that the medical evidence was insufficient to establish causal relationship.

In a progress report dated October 15, 2004, received by the Office on February 14, 2005, Dr. Berdia diagnosed cervical radiculopathy at C4-5 and C5-6 which he found was “a work-related injury from being a letter carrier and carrying heavy bags on the left.”³ He concluded that she was totally disabled. In progress reports dated November 5 and 29, 2004, Dr. Berdia listed findings on examination and diagnosed a cervical spine injury due to years of carrying a mailbag. He also diagnosed a left shoulder injury.⁴

In a report dated February 14, 2005, Dr. Chernoff noted that appellant was “status post a work-related injury, which occurred while working as a letter carrier in September 2004.” He

² In a report dated November 19, 2004, also received on January 21, 2005, Dr. Chernoff diagnosed a herniated disc at C4-5 and C5-6 on the left side and found that she was totally disabled.

³ The record also contains reports dated October 1, 2004 and April 11, 2005 signed by Leonard Esposito, a physician’s assistant. A physician’s assistant, however, is not considered a physician under the Federal Employees’ Compensation Act. See 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551 (2002).

⁴ In a report dated December 15, 2004, received by the Office on February 14, 2005, Dr. Berdia diagnosed radiculopathy of the cervical spine and left shoulder bursitis.

diagnosed herniated discs at C4-5 and C5-6 on the left side with left C6 radiculopathy. Dr. Chernoff opined that appellant was disabled from employment and recommended a surgical consultation.

Appellant submitted statements from coworkers confirming that work as a letter carrier required heavy lifting on the left side. Frank R. Ludwig, a coworker, asserted that he lifted buckets of mail, put the mail into trays and then carried the trays, which can weigh 40 pounds, to his truck for delivery.

On March 14, 2005 appellant requested reconsideration. In an accompanying March 10, 2005 statement, she reiterated her job duties. Appellant attributed her condition to the routine lifting she performed daily in the course of her employment.

By decision dated April 13, 2005, the Office denied modification of its January 31, 2005 decision. It determined that the medical evidence was insufficient to establish that carrying her mailbag caused radiculopathy.

In a report dated June 29, 2005, Dr. Chernoff discussed his treatment of appellant from October 22, 2004 to the present. He noted that on her initial visit she complained of pain from the left clavicle down into the left hand which she related to her work as a letter carrier. Dr. Chernoff stated, "Given the history and based on repeated examinations and the fact that these symptoms started and related to her work as a letter carrier, it is my opinion that [appellant's] herniated disc at C4-5 and C5-6 as well as her C6 radiculopathy is causally related to her work as a letter carrier." He opined that she was disabled from employment and may need a cervical discectomy and fusion.

On December 16, 2005 appellant, through her attorney, requested reconsideration. By decision dated March 22, 2006, the Office denied modification of its prior decision.⁵ The Office indicated that it had accepted the factual basis for appellant's claim but found that the medical evidence was insufficiently rationalized to establish that she sustained a medical condition causally related to the identified employment factors.

LEGAL PRECEDENT

An employee seeking benefits under the Act⁶ 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 filed within the applicable time limitation; that an injury was sustained while 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

⁵ The Office inappropriately used language relevant to the clear evidence of error standard for review of untimely requests for reconsideration under 5 U.S.C. § 8128. It is apparent, however, from the March 22, 2006 decision that the evidence was weighed and reviewed on its merits.

⁶ 5 U.S.C. §§ 8101-8193.

employment injury.⁷ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁸

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;⁹ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;¹⁰ and (3) medical evidence establishing 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.¹¹

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.¹² The opinion of the physician must be based on a complete factual and medical background of the claimant,¹³ must be one of reasonable medical certainty¹⁴ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁵

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility to see that justice is done.¹⁶

ANALYSIS

Appellant attributed her herniated cervical discs to her work as a letter carrier, in particular carrying a bag of mail over her left shoulder. She has established as factual that she lifted and carried mail trays and carried a mailbag on her left shoulder. The issue, therefore, is

⁷ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *See Irene St. John*, 50 EAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 7.

⁹ *Solomon Polen*, 51 ECAB 341 (2000).

¹⁰ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

¹¹ *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹² *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹³ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁴ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁵ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹⁶ *Jimmy A. Hammons*, 51 ECAB 219 (1999).

whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

In a report dated October 22, 2004, Dr. Chernoff discussed appellant's complaints of pain from her left clavicle into her shoulder and weakness in the wrist and left hand. He diagnosed herniated discs at C4-5 and C5-6 by MRI scan study with left C6 radiculopathy and noted that she attributed her condition to her work as a letter carrier. In a report dated February 14, 2005, Dr. Chernoff indicated that appellant was status post a September 2004 work injury which occurred while she was working as a letter carrier. In a report dated June 29, 2005, he stated, "Given the history and based on repeated examinations and the fact that these symptoms started and related to her work as a letter carrier, it is my opinion that [appellant's] herniated disc at C4-5 and C 5-6 as well as her C6 radiculopathy is causally related to her work as a letter carrier."

The record also contains evidence from Dr. Berdia, who, in a report dated December 17, 2004, noted appellant's 16-year history as a mail carrier. He diagnosed herniated cervical discs due to the lifting of heavy mail trays and mailbags on her left shoulder. In progress reports dated October and November 2004, Dr. Berdia listed findings on examination, diagnosed herniated cervical discs and attributed her injury to her years of carrying a mailbag on the left side.

In a report dated December 21, 2004, Dr. Santos stated, "[Appellant] lifts heavy trays and carries [a] mailbag on her left shoulder daily. All these activities resulted in her getting herniated discs on her C 4-5 and C5-6 discs."

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.¹⁷ In this case, the reports of Drs. Chernoff, Berdia and Santos, while not sufficiently rationalized to establish that appellant sustained herniated cervical discs causally related to factors of her federal employment, raise an inference of causal relationship sufficient to require further development by the Office.¹⁸ Additionally, there is no opposing medical evidence in the record.

The case will, therefore, be remanded to the Office for further development of the medical evidence to determine whether appellant sustained herniated cervical discs at C4-5 and C5-6 due to factors of her federal employment and, if so, the nature and extent of any disability or need for medical treatment. After such further development as the Office deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹⁷ *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004).

¹⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 22, 2006 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: November 1, 2006
Washington, DC

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

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

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