

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

P.H., Appellant)
and) Docket No. 07-1016
U.S. POSTAL SERVICE, GENERAL MAIL) Issued: August 15, 2007
FACILITY, Denver, CO, Employer)

)

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 5, 2007 appellant filed an appeal of April 13 and June 29, 2006 and January 24, 2007 decisions of the Office of Workers' Compensation Programs denying her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that she sustained a neck, shoulder or upper back condition in the performance of duty.

FACTUAL HISTORY

On December 7, 2005 appellant, then a 45-year-old mail processing clerk, filed a notice of occupational disease claim (Form CA-2), alleging that she sustained "sore/bruise right side neck/shoulder" and across her upper back in the performance of duty on or before November 29, 2005. She attributed her condition to loading and unloading mail from a machine,

loading a mail cage and performing repetitive movements with her upper body and arms. Appellant did not stop work.

In a December 12, 2005 letter, the Office advised appellant of the additional medical and factual evidence needed to establish her claim. It requested that she submit a detailed description of the work activities alleged to have caused or contributed to her condition. The Office emphasized the importance of submitting a rationalized statement from her attending physician explaining how and why the identified work factors would cause the claimed condition.

In a December 6, 2005 letter, Dr. Jackie L. McCollum, an attending Board-certified family practitioner, released appellant to restricted duty.

In January 25, 2006 reports, Dr. Marco Antonio Gomez, an attending Board-certified family practitioner, observed a limited range of neck motion due to pain. He diagnosed a neck strain and noted light-duty restrictions.

By decision dated April 13, 2006, the Office denied appellant's claim on the grounds that causal relationship was not established. It accepted that the identified work factors occurred at the time, place and in the manner alleged. The Office found that appellant did not submit sufficient medical evidence explaining how the accepted work exposures caused the claimed condition.

In a May 23, 2006 letter, appellant requested reconsideration. She submitted additional evidence. In November 30, 2005 reports, Dr. Gomez noted appellant's employment as a mail clerk. He commented that she worked considerable overtime. Dr. Gomez diagnosed a "[n]eck strain due to overuse." In March 6, 2006 reports, he diagnosed cervicalgia due to repetitive reaching and overhead lifting at work. In a May 12, 2006 report, Dr. Gomez checked a box "yes" indicating his support for causal relationship between the diagnosed cervicalgia and appellant's employment. He stated that appellant had "trouble lifting overhead." Dr. Gomez released appellant to full duty as of May 17, 2006.

By decision dated June 29, 2006, the Office denied modification of the April 13, 2006 decision on the grounds that appellant submitted insufficient rationalized medical evidence to establish causal relationship. The Office noted that pain was considered a symptom and not a compensable diagnosis under the Federal Employees' Compensation Act.

In a September 16, 2006 letter, appellant requested reconsideration. She asserted that her neck strain was caused by repetitive motion while operating a data bar code scanner (DBCS) machine at work, lifting trays of mail weighing up to 40 pounds, throwing and pushing mail, bending, stooping and overhead reaching. Appellant submitted diagrams of the DBCS machine.

By decision dated January 24, 2007, the Office denied modification on the grounds that the evidence submitted was insufficient to establish causal relationship. The Office reiterated that cervicalgia was a symptom and not a compensable diagnosis.

LEGAL PRECEDENT

An employee seeking benefits under the 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 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 employment injury.² 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.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) 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 generally 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

ANALYSIS

The Office accepted that appellant’s duties as a mail clerk entailed repetitive motion of her arms and upper body. To meet her burden of proof, appellant must establish a causal relationship between the accepted work factors and the claimed neck, back and upper extremity condition.

Appellant submitted reports from Dr. Gomez and Dr. McCollum, attending Board-certified family practitioners. Dr. McCollum did not provide a diagnosis or address causal relationship. Dr. Gomez submitted reports from November 30, 2005 to May 12, 2006 diagnosing cervicalgia, joint pain and a neck strain. He attributed the cervicalgia to repetitive lifting and overhead reaching at work but did not explain the interrelationship between the neck strain and work factors. The Board notes that pain is considered a symptom, not a diagnosis and

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Solomon Polen*, 51 ECAB 341 (2000).

does not constitute a basis for payment of compensation.⁵ Dr. Gomez also diagnosed a neck strain, but he did not provide medical rationale explaining how or why the accepted work factors caused or contributed to the diagnosed neck strain. His opinion is thus insufficient to establish causal relationship.⁶ Therefore, appellant has failed to meet her burden of proof.

CONCLUSION

The Board finds that appellant has not established that she sustained a neck, shoulder or upper back condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 24, 2007, June 29 and April 13, 2006 are affirmed.

Issued: August 15, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

⁵ See *Robert Broome*, 55 ECAB 339 (2004).

⁶ *Steven S. Saleh*, 55 ECAB 169 (2003).