

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

---

M.M., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
San Jose, CA Employer )

---

**Docket No. 07-444  
Issued: May 10, 2007**

*Appearances:*  
*Appellant, pro se*  
*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  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 7, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 29, 2006, which denied modification of a May 15, 2006 decision finding that she did not sustain an injury as alleged. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these decisions.

**ISSUE**

The issue is whether appellant has met her burden of proof in establishing that she sustained an occupational injury in the performance of duty.

**FACTUAL HISTORY**

On April 10, 2006<sup>1</sup> appellant, then a 44-year-old letter carrier, filed an occupational disease claim alleging that she sustained right shoulder rotator cuff tendinitis and cervical strain. She stopped work on November 3, 2005. In an undated statement, appellant alleged that, on November 3, 2005, her physician treated her for shoulder pain. She referred to a prior work-

---

<sup>1</sup> The form is signed April 10, 2005, but this appears to be a typographical error.

related injury of September 8, 2001.<sup>2</sup> Appellant alleged that, in September 2005, her employer required her to drive a coworker around the City of Watsonville to do mapping. She alleged that she would arrive at the employing establishment and work on the computer for about an hour, and then she would drive for the rest of the day with the exception of a 30-minute lunch break. Appellant alleged that she did this almost every day for several months and this aggravated her preexisting shoulder condition and caused neck problems.

The employing establishment provided an accident investigation sheet, completed by LaLaine Cristobal, an injury compensation specialist, who indicated that no supervisors were notified that appellant complained of pain. Ms. Cristobal also noted that Supervisor Joe Meagher indicated that appellant was riding and making notations to maps, while her coworker, Sharon Sanborn, was driving. Additionally, it was noted that appellant drove 95.53 miles from her home to the employing establishment.

In a December 22, 2005 report, Dr. Nicholas Colyvas, a Board-certified orthopedic surgeon and appellant's treating physician, noted her history of injury and treatment, which included two surgeries on the right shoulder due to work-related injuries. He indicated that appellant was "permanent and stationary" on February 12, 2004, with the exception of needing occasional cortisone injections. Appellant returned on November 3, 2005 with a severe increase in pain. She did not describe any traumatic incident but rather related that she had been performing her usual duties. Dr. Colyvas noted that appellant related the pain to her repetitive work. He placed her on temporary total disability and recommended physical therapy and cortisone injections. Dr. Colyvas conducted an examination and indicated that appellant had evidence of right shoulder rotator cuff tendinitis and some compensatory cervical strain. He recommended physical therapy, an electromyography (EMG) scan and a nerve conduction study. In reports dated April 10, 2006, Dr. Colyvas diagnosed right cuff tendinitis and compensatory cervical strain. He noted that appellant fell on her right shoulder, advised that the diagnosis was due to the injury and placed her on temporary total disability for 30 days.

By letter dated April 13, 2006, the Office informed appellant of the evidence needed to support her claim. The Office requested clarification from appellant regarding whether she or Ms. Sanborn was driving. Additionally, appellant was advised to have Dr. Colyvas discuss what effect, if any, her 95-mile commute to work each way had on her condition. The Office also advised appellant that her physician must identify clinical findings and explain how her underlying medical condition had changed.

In a statement dated April 21, 2006, Sharon Benassi, a mapping specialist, stated that the employing establishment was gathering street information for route adjustments. She confirmed that for two to three weeks appellant drove from the employing establishment to Watsonville, five and a half to six hours each day from Monday to Friday.

On May 1, 2006 the Office received a statement from appellant, in which she confirmed that she drove the car, while Ms. Benassi mapped out the city of Watsonville. Appellant also stated that she informed her supervisor that the driving was bothering her. She noted that Ms. Benassi was replaced by Sharon Stafford, a coworker, who drove while appellant mapped

---

<sup>2</sup> This case is accepted for right shoulder impingement and tendinitis. File No. 132036411.

out Watsonville. Appellant noted, however, that she continued to drive to and from Watsonville, even though Ms. Stafford, drove while they were in Watsonville. She contended that she drove for six and one-half hours each day and was constantly making turns, which she believed contributed to her condition.

By decision dated May 15, 2006, the Office denied appellant's claim finding that she had failed to submit the necessary medical evidence in support of her claim. The Office found that the medical evidence did not establish that the claimed medical condition was related to established work-related events.

Appellant requested reconsideration of the Office's May 15, 2006 decision on May 22, 2006. The Office also received duplicates of appellant's statement describing her injury and Ms. Benassi's statement.

In an April 14, 2006 report, Dr. Colyvas opined that appellant had flare-ups related to her right shoulder surgeries. He opined that repetitive lifting and carrying in appellant's position as a postal worker contributed to her current condition. Dr. Colyvas opined that the "specific work activities include repetitive reaching, carrying, pushing, pulling and lifting." Regarding appellant's 95-mile commute to work, he opined that it had "likely contributed somewhat to the condition but I would certainly not consider it the sole cause of appellant's current condition." Dr. Colyvas noted a lack of range of motion in the right shoulder, with forward flexion of 90 degrees, passive range of motion of 160 degrees, and abduction of 80 degrees, and a positive Spurling sign. He also noted limited range of motion in the neck. In an August 21, 2006 report, Dr. Colyvas noted that appellant related that her neck was "killing" her and that she had shoulder pain with walking or driving, and her pain was getting worse. He diagnosed a sore shoulder and cervical strain. In a separate report of the same date, Dr. Colyvas opined that appellant could not use the right upper extremity, that the diagnosis was due to the injury and that appellant could not return to work.

By decision dated August 29, 2006, the Office denied modification of the May 15, 2006 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> 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.<sup>4</sup> These are the

---

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

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

essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

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.<sup>6</sup>

### ANALYSIS

Appellant alleged that her preexisting shoulder condition and neck conditions were caused or aggravated while driving and mapping in the city of Watsonville every day for several months. The Office accepted appellant's statement that in September 2005 she drove a coworker to Watsonville while mapping for several months. However, the Office denied the claim finding that she had submitted insufficient medical evidence to establish that her shoulder condition was caused or aggravated by driving to the city of Watsonville and mapping for several months or any other specific factors of her federal employment.

Dr. Colyvas provided a December 22, 2005 report in which he noted that appellant did not describe any traumatic incident but that she had been performing her usual duties. He opined that appellant's pain was due to the repetitive nature of her work. However, appellant did not allege that she was doing repetitive work, but rather that she was driving around the city of Watsonville for several hours per day for several months. Medical evidence predicated on unsubstantiated diagnoses or factual or medical history is of diminished probative value.<sup>7</sup> In reports dated April 10, 2006, Dr. Colyvas noted that appellant fell on her right shoulder and opined that the diagnosis was due to the injury. However, in this claim, appellant did not allege that she fell, but rather that her condition arose after driving each day for several hours, while

---

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *Id.*

<sup>7</sup> *See Bilile C. Rae*, 43 ECAB 192 (1991).

mapping. This report was also based on an inaccurate factual history and is of limited probative value.<sup>8</sup>

On April 14, 2006 Dr. Colyvas opined that the repetitive activities of appellant's position as a postal worker contributed to her current condition. He related that the "specific work activities include repetitive reaching, carrying, pushing, pulling and lifting." As noted, appellant did not make any specific allegations regarding these types of activities, but instead alleged that her condition arose after she spent several months driving while mapping in the city of Watsonville. This report included allegations that were not alleged by appellant and is of diminished probative value.<sup>9</sup> Dr. Colyvas did not explain how appellant's driving at work caused or aggravated her claimed condition. He merely noted that appellant's 95-mile commute to work "may have contributed somewhat to the condition." Dr. Colyvas' August 21, 2006 report did not offer any reasoning to explain the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. A medical opinion not fortified by medical rationale is of little probative value.<sup>10</sup>

The record contains no rationalized medical opinion explaining the cause of appellant's right shoulder condition or the role of her preexisting shoulder condition in her current condition. The Office informed appellant of the deficiencies in the medical evidence and what was needed to establish her claim in a letter dated April 13, 2006. She did not submit a medical report from her physician that explained how specific duties of her federal employment caused or aggravated her diagnosed condition. This is particularly important where appellant attributed driving at work as the cause of her claimed condition but where she also had a significant commute to and from the employing establishment. The physician would need to provide a rationalized opinion to explain why driving to Watsonville and mapping would cause or aggravate such a condition, as opposed to her daily commute.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>11</sup> Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>12</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

As there is no probative, rationalized medical evidence addressing and explaining why appellant's right shoulder condition was caused and/or aggravated by factors of her employment, appellant has not met her burden of proof in establishing that she sustained a medical condition in the performance of duty causally related to factors of her employment.

---

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Caroline Thomas*, 51 ECAB 451 (2000).

<sup>11</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>12</sup> *Id.*

**CONCLUSION**

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 29 and May 15, 2006 are affirmed.

Issued: May 10, 2007  
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