

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

D.V., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Independence, MO, Employer**

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**Docket No. 07-2342
Issued: April 23, 2008**

Appearances:
Linda Temple, for the appellant
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 September 17, 2007 appellant filed a timely appeal from a June 20, 2007 merit decision of the Office of Workers' Compensation Programs denying his claim for compensation. Under 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 met his burden of proof to establish that his cervical condition was sustained in the performance of duty.

FACTUAL HISTORY

On March 17, 2005 appellant, then a 41-year-old letter carrier, filed an occupational disease claim (Form CA-2) for benefits, alleging that herniated discs in his neck were caused by his federal employment. He addressed the physical requirements of his job, which involved carrying a mail satchel, twisting, loading and unloading and delivery of 20 pounds of parcels from his mail vehicle approximately two times per week. Appellant was first aware of his condition on June 3, 2004 and realized that his condition was caused or aggravated by

employment on December 2, 2004. The record reflects that he stopped work on June 3, 2004 and underwent surgery for spinal cord compression and cervical myeloradiculopathy on August 18, 2004. Appellant returned to full-time work in December 2004 with a permanent 20-pound lifting restriction.

By letter dated March 22, 2005, the Office advised appellant that it required a comprehensive medical report from a treating physician that included an opinion as to whether his cervical condition was causally related to his federal employment.

Appellant submitted an undated statement describing the physical requirements of his job for the prior 20 years. He began experiencing numbness, tingling and pain in his left shoulder which radiated down his left arm in February 2004. Appellant described the pain as intermittent, more intense when carrying a satchel on his left shoulder and that loading his vehicle worsened the pain. Prior to seeing a doctor on June 3, 2004, he struck his forehead on a beam underneath the deck he was building at home in May 2004. Appellant stated that the pain and numbness became so severe after he hit his head, that he was unable to sleep for several days.

In a June 3, 2004 report, Dr. Renjini Chandra, a Board-certified physiatrist, stated that appellant presented with pain complaints on the left side of his neck and arm. Appellant had left shoulder pain from building a deck he was working on and knocked his forehead against the deck and fell with minimal loss of consciousness. He felt he had jammed his neck at that time. Dr. Chandra indicated that, after hitting his head against the deck, appellant noticed pain on the left side of his neck that radiated to the elbow. She also noted that appellant's hands had been going to sleep for years on both sides involving the lateral three fingers. Dr. Chandra provided the results of her examination and opined that appellant had early left cervical radiculitis. In a December 10, 2004 report, she indicated that a June 19, 2004 magnetic resonance imaging (MRI) scan showed large herniated discs at C5-6 and C6-7 and that an electromyogram (EMG) and nerve conduction studies (NCS) were positive for radiculopathy. After appellant failed conservative management, he was referred to Dr. Nicholas Ahn, a Board-certified orthopedic surgeon. A decompression at C5-6 and C7 along with fusion and cage placement from C5 to C7 was performed on August 28, 2004.

In a March 2, 2005 report, Dr. Chandra stated that appellant had numbness and pain in his left shoulder and arm for months prior to being treated and that he fell off a deck and hit his forehead. She noted that appellant worked as a mail carrier for the prior 20 years carrying a mailbag weighing at least 25 pounds for two to three hours per day. Dr. Chandra noted that during the three months prior to June, appellant had been involved in the pick-up and transfer of 20 to 30 boxes weighing around 50 pounds each, twice a week. She opined that appellant's job was consistent with or contributory to the herniated cervical discs. Appellant's cervical condition was exacerbated by his fall off the deck in May, as the history indicated that he had experienced problems for a few months prior to his fall off the deck. Dr. Chandra opined that the basic underlying cervical condition was due to his employment and that the fall from the deck had aggravated his condition. Appellant was released to light duty on December 13, 2004 and remained restricted to no lifting over 20 pounds and no frequent stooping.

In an August 5, 2004 report, Dr. Ahn advised that appellant presented with severe neck pain that radiated to his arms and hands and with numbness, tingling and weakness in both arms.

He stated that appellant had these symptoms for over 14 weeks and continued to deteriorate despite conservative measures. Dr. Ahn noted the results of examination and objective tests and diagnosed severe bilateral C6- and C7-type radiculopathy with very large herniated discs at C5-6 and C6-7. He advised that a C6 corpectomy and C5-6 and C6-7 discectomy and anterior fusion were appropriate. Dr. Ahn's operative report of August 18, 2004, as well as subsequent progress notes, were submitted.¹

In a June 13, 2005 report, an Office medical adviser noted Dr. Chandra's opinion that appellant's job duties over 20 years contributed to his cervical spine condition. The medical adviser opined that Dr. Chandra's opinion was speculative and unsupported by any mechanism of causation or aggravation.² The Office medical adviser concluded that there was no basis for accepting appellant's cervical spine condition as employment related.

By decision dated June 15, 2005, the Office denied appellant's claim, finding that he had not submitted sufficient medical evidence to establish a causal relationship between his employment duties and his cervical spine condition.

Appellant requested an oral hearing, which was held on January 25, 2006. He stated that he began building a deck on his house about May 1, 2004 and while he was walking underneath the deck, he hit his forehead on a floor joist. Appellant was by himself at the time and was not sure if he lost consciousness. He saw Dr. Chandra on June 3, 2004 and she told him that hitting his head did not cause his cervical spine condition. Since his surgery, appellant still experienced neck stiffness.³ He submitted a union president's statement about his duties, copies of the June 19, 2004 MRI scan, the August 3, 2004 EMG/NCV and copies of previously submitted medical reports.

In an August 3, 2005 report, Dr. Bailey noted appellant's treatment with Dr. Ahn and advised that he had done well post surgery. He opined that it was possible that appellant's lifting significant weight as a postal carrier had contributed to or caused the herniated discs. Dr. Bailey stated that the lifting and bending associated with his job may also have caused the degenerative changes noted on appellant's x-rays and MRI scan. He advised that it was impossible for him to fully assign causation, but it was reasonable to assume that this happened on the job given appellant's history and his large herniated discs. Dr. Bailey further indicated that this would depend on identifying whether appellant had sustained an injury at work.

In a March 21, 2006 decision, the hearing representative affirmed the Office's denial of the claim, finding that the medical evidence did not establish that appellant's work duties caused or contributed to his cervical degenerative disease or need for surgery.

¹ In his December 2, 2004 report, Dr. Ahn released appellant to return to work with a lifting restriction of 25 pounds. On December 7, 2004 he advised that appellant had a permanent 20-pound lifting restriction.

² The Office medical adviser noted that Dr. Chandra's June 3, 2004 report indicated that appellant did not experience radicular left arm pain until he jammed his neck on the deck and there were no medical records of record indicating that appellant had any neck or radicular pain predating the deck injury.

³ Appellant indicated that, after Dr. Ahn transferred to another state, he followed up with an associate of Dr. Ahn, Dr. Alexander S. Bailey, a Board-certified orthopedic surgeon.

In a March 20, 2007 letter, appellant requested reconsideration and submitted additional medical evidence. An August 16, 2004 chest x-ray noted that there was no acute cardiopulmonary disease prior to the scheduled neck surgery. An August 18, 2004 cervical spine x-ray noted postoperative changes.

In an April 10, 2006 report, Dr. Bailey opined that appellant's heavy lifting, repetitive bending, and repetitive lifting caused or significantly contributed to his pain syndrome which ultimately resulted in his cervical spinal surgery. He explained that repetitive lifting, repetitive bending, and heavy lifting could cause and be part of a progression of degenerative disc disease of the cervical spine as well as cause and aggravate a herniated nucleus pulposus. Dr. Bailey stated that the repetitive use component was far more medically likely to have contributed to appellant's cervical spine abnormalities than hitting his head while walking under a deck. He reiterated that appellant had a degenerative component to his cervical spine problem and that it was reasonable to assume that his condition happened on the job.

In a March 19, 2007 report, Dr. Ahn advised that appellant had severe neurogenic symptoms caused by massive disc herniations at C5-6 and C6-7 for which he performed surgery. He opined that the minor fall appellant had in May 2004 was unlikely to cause his cervical condition or the need for surgery. Dr. Ahn advised that appellant's condition was more consistent with his job, which involved the repetitive lifting of boxes and mail parcels, and noted that appellant had symptoms well before the May 2004 fall. He explained that appellant's condition was generally progressive and the fact that he had symptoms before the May 2004 fall suggests that it was more due to his occupation than due to a specific injury.

In a June 20, 2007 decision, the Office denied modification of its previous decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁴ 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.⁵ 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.⁶

An occupational disease or injury is one caused by specified employment factors occurring over a longer period than a single shift or workday.⁷ The test for determining whether appellant sustained a compensable occupational disease or injury is three-pronged. To establish

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *D.D.*, 57 ECAB ____ (Docket No. 06-1315, issued September 14, 2006).

the factual elements of the claim, appellant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the 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 factors identified by the claimant.⁸ 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.⁹ The opinion of the physician must be based on a complete factual and medical background of the claimant¹⁰ and must be one of reasonable medical certainty¹¹ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his or her claimed injury and his or her employment.¹³ To establish a causal relationship, appellant must submit a physician's report, in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, states whether the employment injury caused or aggravated appellant's diagnosed conditions and presents medical rationale in support of his or her opinion.¹⁴

ANALYSIS

Appellant submitted evidence of significant herniated discs and stenosis at C5-6 and C6-7, for which he underwent surgery on August 18, 2004. He was diagnosed with degenerative changes of the cervical spine. The record establishes that appellant's job as a letter carrier involved repetitive lifting, repetitive bending and heavy lifting. However, he has not submitted sufficient medical evidence to establish a causal relationship between the identified employment factors and his cervical condition and need for surgery. For this reason, appellant has not discharged his burden of proof to establish his claimed cervical condition and subsequent surgery was caused or contributed to by his federal employment.

⁸ *Michael R. Shaffer*, 55 ECAB 386, 389 (2004), citing *Lourdes Harris*, 45 ECAB 545 (1994); *Victor J. Woodhams*, *supra* note 6.

⁹ *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹¹ *John W. Montoya*, 54 ECAB 306 (2003).

¹² *Judy C. Rogers*, 54 ECAB 693 (2003).

¹³ *Donald W. Long*, 41 ECAB 142 (1989).

¹⁴ *Id.*

On June 3, 2004 Dr. Chandra treated appellant for pain after working on his deck. Appellant experienced neck and left arm pain after he struck his head on a joist. Dr. Chandra noted that the lateral three fingers on appellant's hands had been going to sleep for years. She diagnosed early left cervical radiculitis but did not render any opinion on causation. In a March 2, 2005 report, Dr. Chandra mentioned that appellant had experienced numbness and pain in his left shoulder and arm for months and that he had lifted heavy boxes for a three-month period prior to seeing her. She attributed appellant's herniated disc and need for surgery to his employment, based on his history that he had cervical problems for a few months prior to his deck accident, the nature of his job, which he performed for over 20 years, and the lifting of heavy boxes for a three-month period. However, Dr. Chandra did not present sufficient rationale supporting her conclusion. She did not adequately explain how appellant's work duties would cause or aggravate his cervical condition. The Board has held that a medical opinion not fortified by medical rationale is of little probative value.¹⁵ The mere fact that appellant may have experienced symptoms during his employment is insufficient to establish causal relation. The Board has held that the concurrence of symptoms with a period of employment is insufficient to establish causal relationship.¹⁶ Dr. Chandra did not explain the nature of appellant's preexisting degenerative disease or why his employment gave rise to the need for surgery. This is important as appellant did not seek treatment until he sustained injury on May 1, 2004.¹⁷

In a March 19, 2007 report, Dr. Ahn opined that the minor fall appellant sustained on May 1, 2004 was unlikely to cause his degenerative cervical condition or the subsequent surgery performed on August 18, 2004, noting that he had symptoms before the May 2004 fall. However, he did not submit sufficient medical evidence to support his opinion. Given the fact that appellant initially reported to Dr. Chandra that his neck and radicular left arm pain did not occur until after the May 1, 2004 deck incident, Dr. Ahn did not sufficiently explain why he characterized the incident as minor. Dr. Ahn did not fully address why appellant's preexisting degenerative condition would have caused his condition and the need for surgery. When he first examined appellant on August 5, 2004, he reported that appellant had been experiencing symptoms in his neck and upper extremities for the prior 14 weeks and made no mention of any symptoms prior to the May 1, 2004 deck incident. Dr. Ahn did not present sufficient medical rationale to support his conclusion that appellant's work duties contributed to the degeneration of his cervical spine or the development of the herniated disc at C5-6 or C6-7. He noted that appellant's condition was generally progressive. Thus, Dr. Ahn's opinion is insufficient to establish causal relationship. Other reports by him do not specifically address the causal relationship between appellant's work activities and his cervical spine condition.

Dr. Bailey noted that appellant had a preexisting degenerative component and opined it was "possible" that lifting significant weight as a postal carrier had contributed to or caused the herniated discs. He also stated that lifting and bending associated with appellant's job may have also caused his cervical degenerative disease. However, Dr. Bailey's opinion is speculative. He

¹⁵ *Caroline Thomas*, 51 ECAB 451, 456 n.10 (2000); *Brenda L. Dubuque*, 55 ECAB 212, 217 (2004).

¹⁶ *Robert M. Sanford*, 27 ECAB 115 (1975).

¹⁷ See *Vernon R. Stewart*, 5 ECAB 276, 280 (1953) (where the Board held that medical opinions based on histories that do not adequately reflect the basic facts are of little probative value in establishing a claim).

did not address the May 1, 2004 deck accident. In addressing causal relationship, Dr. Bailey did not provide adequate medical explanation of how the identified work factors caused or contributed to appellant's herniated discs or degenerative disease. Medical opinions that are speculative or equivocal in character are of diminished probative value.¹⁸ On April 10, 2006 Dr. Bailey explained that repetitive lifting and bending could cause and be part of a progression of degenerative disc disease of the cervical spine as well as cause or aggravate a herniated nucleus pulposus. He opined that the repetitive use component was far more likely to have contributed to appellant's cervical spine abnormalities than striking his head on May 1, 2004. Dr. Bailey failed to provide sufficient reasons why the identified work factors would have caused or aggravated appellant's cervical spinal condition, given the absence of symptoms prior to the May 1, 2004 deck incident. Therefore, his opinion is insufficiently rationalized to support causal relationship.

The other reports submitted by appellant, including objective testing of record, are insufficient to establish the claim as they do not address whether his work caused or contributed to his cervical condition. The medical evidence of record is insufficient to establish that appellant's work factors caused or aggravated a diagnosed condition.

CONCLUSION

Appellant has not met his burden of proof in establishing that he developed a cervical spine condition in the performance of duty.

¹⁸ *D.D., supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 20, 2007 is affirmed.

Issued: April 23, 2008
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