

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

C.U., Appellant	)	
	)	
and	)	<b>Docket No. 08-32</b>
	)	<b>Issued: April 1, 2008</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DISTRIBUTION CENTER, Dallas, TX,</b>	)	
<b>Employer</b>	)	
	)	

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

*Case submitted on the record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 1, 2007 appellant filed a timely appeal of the April 18 and June 29, 2007 merit decisions of the Office of Workers' Compensation Programs, finding that he did not sustain an injury in the performance of duty on February 15, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction of the merits of this appeal.

**ISSUE**

The issue is whether appellant has established that he sustained a neck injury in the performance of duty on February 15, 2007.

**FACTUAL HISTORY**

On February 21, 2007 appellant, then a 51-year-old electronics technician, filed a traumatic injury claim. He alleged that on February 15, 2007 he sustained a neck injury while working on mail processing equipment. Appellant stopped work on February 21, 2007 and

returned to work on March 23, 2007. On the claim form, Rosemary Lloyd, appellant's supervisor, stated that she received notice of the alleged injury on February 21, 2007.

Appellant submitted a February 21, 2007 authorization for treatment (Form CA-16) signed by Dr. Suzanne D. Fisher, an attending Board-certified physiatrist and a medical report of the same date. Dr. Fisher stated that he suffered from cervicgia and numbness of the face and arm. On the CA-16 form, she reviewed a history that appellant was lying on the floor looking up when he sustained the above conditions. Dr. Fisher opined that appellant's cervicgia condition was caused or aggravated by the employment activity and that his numbed face and arm were not work related.

In a February 21, 2007 note, appellant described his symptoms. Several days following the February 15, 2007 incident, he experienced severe headaches, stiffness of the neck and numbness of the left arm and facial area.

By letter dated February 26, 2007, the employing establishment controverted appellant's claim. On February 16, 2007 appellant called in sick after his request to use annual leave was denied. He did not report the injury to his supervisor until February 21, 2007. The CA-16 form noted that his symptoms were not due to the alleged work-related injury. In a February 21, 2007 letter, Ms. Lloyd stated that she denied appellant's February 14, 2007 request to use annual leave on February 16, 2007 due to service needs. She related that he called in sick on February 16, 2007. Ms. Lloyd stated that he returned to work on February 20, 2007 with no documentation regarding his absence. Appellant was notified of the possibility that his request for leave would be changed to absent without leave status. On his return to work, appellant did not mention that he sustained an injury on February 15, 2007. Appellant performed his work duties as normal. Ms. Lloyd stated that he notified her about the alleged injury on February 21, 2007. On that date, he left work to undergo medical treatment and later returned to pick up his wife who worked at the employing establishment. He advised Ms. Lloyd that a physician told him to go to an emergency room as soon as possible. Ms. Underwood told her supervisor, Beverly McCray, that appellant may have had a stroke.

In reports dated February 21, 2007, Dr. Fisher reiterated her diagnoses and opinion regarding causal relation. She also provided appellant's physical restrictions.

In a February 23, 2007 report, Dr. Julian R. Gershon, Jr., an osteopath specializing in family practice, stated that appellant sustained cervical, trapezius and thoracic strains and a transient ischemic attack (TIA). He opined that appellant was disabled for work until he was seen by a specialist for his TIA condition.

By letter dated March 7, 2007, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the additional factual and medical evidence he needed to submit.

In a February 23, 2007 report, Dr. Gershon reiterated his prior diagnoses and stated that appellant also sustained cervicgia. In reports dated March 2 to 13, 2007, Dr. Kenneth H. Baldwin, an osteopath specializing in family practice, opined that appellant had cervicgia, trapezius/rhomboid, cervical and thoracic strains and TIA. A February 21, 2007

Concentra Medical Centers report prepared by Dr. Gershon reviewed a history that appellant hurt his neck on February 15, 2007 while lying on the floor changing switches on a “Dios.”

Treatment notes of LaDawn S. Stevenson and Grace Miller, appellant’s physical therapists, indicated that he was treated for his cervicgia, trapezius/rhomboid, cervical and thoracic strains on intermittent dates between March 15 and 28, 2007.

On March 23, 2007 Dr. Stace T. Bradshaw, a Board-certified radiologist, performed a magnetic resonance imaging (MRI) scan of appellant’s cervical spine. She found minimal disc bulges at C3-4 and C4-5 but no canal or neural foramina stenosis. Dr. Bradshaw also found mild uncovertebral spurring and lateralizing disc bulges at C5-6 and C6-7 with no canal stenosis. At C5-6, the right neural foramen was widely patent and there was mild left neural foramen stenosis. At C6-7, there was mild right neural foramen stenosis and moderate to severe left neural foramen stenosis. Dr. Bradshaw opined that appellant had multilevel spondylosis that was most severe towards the left at C5-6 and C6-7.

In a March 19, 2007 letter, appellant stated that he could not provide witness statements regarding the February 15, 2007 incident since he was working alone on that date. He did not mention the alleged injury to anyone, except his wife, until February 21, 2007. Appellant related that it was not uncommon for him to experience aches and pains due to the nature of his job and his age. He noted that the remainder of his workday was not strenuous so he took a pain reliever and finished his shift. Appellant delayed seeking medical attention because he thought rest and relaxation over a holiday weekend would be sufficient to take care of the alleged injury. He first received medical treatment from Dr. Fisher. His condition prevented him from working the day after February 15, 2007 and the following three days were his normal days off from work and he was off due to the holiday previously mentioned. On February 20, 2007 appellant returned to work. That evening, he experienced pain radiating down his left shoulder and into his left arm. He filed a claim on the next day. Appellant sustained a prior neck injury, a bulging disc at C5-6 for which he underwent physical therapy and spinal decompression. He filed a prior claim in 1995 for work-related stress.

In a March 21, 2007 report, Dr. Fisher reiterated her diagnosis of cervicgia and cervical strain and also diagnosed trapezius/rhomboid and thoracic strains. She stated that appellant could return to work on that date with restrictions. In reports dated March 27, 2007, Dr. Fisher diagnosed unspecified neuralgia, neuritis and radiculitis and cervical radiculopathy.

By decision dated April 18, 2007, the Office found that appellant did not sustain an injury in the performance of duty. The medical evidence of record failed to establish that he sustained a medical condition causally related to the accepted February 15, 2007 employment incident.

On March 13, 2007 Dr. Baldwin stated that appellant’s cervical sprain was caused by a February 15, 2007 employment incident.

In a May 12, 2007 letter, appellant requested reconsideration of the Office’s April 18, 2007 decision. In a May 10, 2007 report, Dr. Fisher reviewed a history that on February 15, 2007 appellant was lying prone on the floor and extending his head and neck back to work on a machine above him. She noted his neck and left arm symptoms and medical treatment.

Dr. Fisher reviewed the March 23, 2007 MRI scan. She opined that, while the cervical spondylosis was not deemed work related, a flare of pain symptoms from the spondylosis could have resulted from the reported mechanism of injury of prolonged awkward neck positioning. Dr. Fisher opined that the lateralizing disc bulges at two levels could generate pain and could have resulted from the reported mechanism of injury from prolonged cervical spine extension.

In a June 29, 2007 decision, the Office denied modification of the April 18, 2007 decision. The evidence submitted by appellant was insufficient to establish that he sustained an injury in the performance of duty on February 15, 2007.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</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 filed within 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.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.<sup>3</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>4</sup> In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.<sup>5</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>6</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

<sup>4</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>5</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

identified factors.<sup>7</sup> The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.<sup>8</sup>

### ANALYSIS

The record supports that on February 15, 2007 appellant was lying on the floor while working on a machine. The Board finds, however, that the medical evidence of record is insufficient to establish that the accepted employment incident caused a neck injury.

Dr. Fisher's CA-16 form and reports provided a history of the February 15, 2007 employment incident. She noted that appellant sustained cervicalgia, numbness of the face and arm, trapezius/rhomboid, cervical and thoracic strains, unspecified neuralgia, neuritis and radiculitis and cervical radiculopathy. On the CA-16 form, Dr. Fisher opined that appellant's cervicalgia condition was work related. However, she failed to provide medical rationale explaining how or why the February 15, 2007 employment incident caused or contributed to the diagnosed neck condition.<sup>9</sup> In a May 10, 2007 report, Dr. Fisher reviewed the March 23, 2007 MRI scan. She opined that appellant's cervical spondylosis was not work related but that a flare up of pain symptoms from the spondylosis "could have" resulted from the February 15, 2007 employment incident which involved prolonged awkward neck positioning. Dr. Fisher further opined that the lateralizing disc bulges at two levels could generate pain and "could have" resulted from prolonged cervical spine extension. Her opinion that the accepted employment incident could have aggravated appellant's neck condition is speculative in nature. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.<sup>10</sup> For these reasons, the Board finds that Dr. Fisher's reports are insufficient to establish appellant's claim.<sup>11</sup>

Dr. Baldwin's March 13, 2007 report stated that appellant's cervical sprain was caused by the February 15, 2007 employment incident. However, he failed to provide any medical rationale explaining how or why the employment incident caused or contributed to the neck condition.<sup>12</sup> The Board finds that Dr. Baldwin's report is insufficient to establish appellant's claim.

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<sup>7</sup> *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>8</sup> *Charles E. Evans*, 48 ECAB 692 (1997).

<sup>9</sup> *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB \_\_\_\_ (Docket No. 05-715, issued October 6, 2005).

<sup>10</sup> *L.R. (E.R.)*, 58 ECAB \_\_\_\_ (Docket No. 06-1942, issued February 20, 2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>11</sup> The Board notes that the employing establishment issued a Form CA-16. A properly executed Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See Elaine M. Kreyborg*, 41 ECAB 256, 259 (1989); *Pamela A. Harmon*, 37 ECAB 263, 264-65 (1986). The Office did not address the issue in its decisions.

<sup>12</sup> *Elizabeth H. Kramm (Leonard O. Kramm)*, *supra* note 9.

Dr. Gershon's February 23, 2007 reports and Dr. Baldwin's March 2007 narrative reports noted that appellant sustained cervical, trapezius/rhomboid and thoracic strains, TIA and cervicalgia. In the February 23, 2007 report, Dr. Gershon also opined that appellant was disabled for work until he was evaluated by a specialist regarding his TIA condition. However, neither Dr. Gershon nor Dr. Baldwin addressed the issue of whether the accepted employment incident caused or contributed to the diagnosed conditions and disability. The Board finds that these reports are insufficient to establish appellant's claim. The February 21, 2007 medical center report by Dr. Gershon provided a history of the February 15, 2007 employment incident. This evidence failed to provide a diagnosis for appellant's neck condition. It also failed to provide medical rationale explaining how or why the February 15, 2007 employment incident caused or contributed to a neck condition.<sup>13</sup> The Board finds that the medical center record is insufficient to establish appellant's claim.

The reports of Ms. Stevenson and Ms. Miller, appellant's physical therapists, are of no probative medical value because a physical therapist is not considered a physician under the Act.<sup>14</sup>

Appellant did not submit sufficient medical evidence to establish a causal relationship between his neck condition and the accepted February 15, 2007 employment incident. The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained an injury in the performance of duty on February 15, 2007. Therefore, he has failed to meet his burden of proof.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a neck injury in the performance of duty on February 15, 2007.

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<sup>13</sup> *Id.*

<sup>14</sup> *Vickey C. Randall*, 51 ECAB 357, 360 (2000) (a physical therapist is not a physician under the Act).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 29 and April 18 and 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 1, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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