

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

R.H., Appellant

and

**U.S. POSTAL SERVICE, NASHVILLE POST
OFFICE, Nashville, MI, Employer**

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**Docket No. 08-880
Issued: December 5, 2008**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 4, 2008 appellant filed a timely appeal from a November 30, 2007 decision of the Office of Workers' Compensation Programs denying a period of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant established that she was disabled for work from April 15 to August 10, 2004 causally related to accepted neck and shoulder injuries.

FACTUAL HISTORY

This is the second appeal before the Board. By order issued May 17, 2006,¹ the Board set aside a September 19, 2005 decision of the Office denying appellant's claims for total disability compensation for the period April 15 to August 10, 2004. The Board remanded the case for

¹ Docket No. 06-284 (May 17, 2006). At the time of the prior appeal, the Board had jurisdiction only over File No. xxxxxx577 for bilateral shoulder tendinitis.

doubling of File No. xxxxxx577, accepted for bilateral shoulder tendinitis, with File No. xxxxxx996, accepted for cervical and thoracic spine strains. The injuries in both claims were sustained in a June 27, 2003 employment-related motor vehicle accident.²

On remand, the Office doubled File No. xxxxxx577 with File No. xxxxxx996, using xxxxxx996 as the master file number. It reviewed the combined medical record.³

In a June 27, 2003 emergency room report, a physician whose signature is illegible stated that appellant sustained a neck and back strain in a motor vehicle accident that day. Appellant struck her head on the windshield.

In a February 9, 2004 report, Dr. R. Troy Carlson, an attending Board-certified family practitioner, provided a history of injury and diagnosed musculoskeletal neck pain. On March 26, 2004 he diagnosed a C5-6 herniation with mild spondylosis and degenerative changes. An April 2, 2004 cervical magnetic resonance imaging (MRI) scan showed a C5-6 disc protrusion with right-sided anterior cord compression. Dr. Carlson held appellant off work beginning April 20, 2004 pending a neurologic evaluation. In a June 29, 2004 report, he stated that appellant had been “physically unable to work since April 15, 2004 due to herniated disc.” Dr. Carlson stated that the June 27, 2003 accident and carrying mail contributed to appellant’s shoulder and neck conditions.

Dr. F. Shawn Madden, an attending Board-certified physiatrist, submitted a March 23, 2004 report noting that appellant developed headaches and neck pain following the June 27, 2003 accident. He opined that “due to neck being thrown around in car accident; this causes disc herniations.” In a November 23, 2004 report, Dr. Madden opined that the June 27, 2003 accident caused a whiplash injury. He diagnosed a herniated C5-6 disc with radiculitis. Dr. Madden opined on March 23, 2005 that “the disc herniation was caused by the motor vehicle accident and should be considered” compensable. He noted in a May 31, 2005 report that a “motor vehicle accident could easily cause a disc herniation in the cervical spine.” Dr. Madden stated in a July 26, 2005 report that the June 27, 2003 “motor vehicle accident ... caused a cervical disc herniation” with radicular symptoms.

Dr. Vicente C. Gracias, an attending Board-certified neurosurgeon, opined on September 2, 2004 that the June 27, 2003 accident caused a “cervical strain or flexion/extension

² At the time of the accident, appellant was a 50-year-old rural letter carrier.

³ Appellant’s physicians referred her to several specialists who did not address causal relationship or the claimed period of disability. On April 15, 2004 appellant had a surgical consultation with Dr. John E. Stevenson, a Board-certified neurosurgeon. In a May 5, 2004 report, Dr. Kenneth S. Merriman, an attending Board-certified orthopedic surgeon, diagnosed a herniated C5-6 disc. He also diagnosed bilateral shoulder tendinitis due to repetitive reaching at work. Dr. Robert B. Handel, an attending osteopathic physician, found appellant unable to work as of August 13, 2004. Appellant underwent analgesic injections of the neck in November 2004 and the subacromial bursa in January 2006. Dr. Girish Junega, an attending Board-certified physiatrist, stated on April 27, 2006 that he could not address causal relationship as he had not reviewed the complete medical record. Appellant also submitted reports from Dr. Michael N. Callton, a chiropractor. As Dr. Callton did not diagnose a spinal subluxation by x-ray, he is not considered a physician for the purpose of this case and his opinion has no medical value. 5 U.S.C. § 8101(3), 20 C.F.R. § 10.311(a). See *Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

injury” based on appellant’s account of the incident. Dr. Gary L. Miller, an attending osteopathic physician Board-certified in neurology, submitted September 13, 2004 and February 2, 2005 reports diagnosing post-traumatic head and neck pain related to the June 27, 2003 accident.

By decision dated September 14, 2006, the Office denied appellant’s claim for total disability from April 15 to August 10, 2004. It found the medical evidence did not establish that she was disabled for work for the claimed period due to the accepted neck and shoulder injuries.

Appellant requested an oral hearing held on March 21, 2007. At the hearing, she asserted that the herniated C5-6 disc diagnosed by Dr. Carlson was caused or aggravated by the June 27, 2003 motor vehicle accident and by lifting and reaching after she returned to full duty on July 9, 2003. Appellant asserted that she was disabled for work due to neck pain from April 15 to August 10, 2004.⁴

In a July 24, 2007 decision, the Office hearing representative set aside the September 14, 2006 decision and remanded the case for further development. The hearing representative directed the Office to refer appellant to a second opinion specialist to determine if the June 27, 2003 accident caused or aggravated the diagnosed herniated C5-6 disc or otherwise disabled her for work for the claimed period.

On August 21, 2007 the Office referred appellant, the medical record and a statement of accepted facts to Dr. Perry W. Greene, Jr., a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Greene submitted a September 26, 2007 report reviewing the medical record and statement of accepted facts. On examination, he found a full range of motion throughout the spine and in both shoulders. Dr. Greene opined that the June 27, 2003 accident caused soft tissue injuries. In a November 12, 2007 supplemental report, he explained that appellant did not sustain a herniated disc in the June 27, 2003 accident as she did not have objective radiculitis. Dr. Greene stated that the herniated disc visible on the April 2, 2004 MRI scan was an asymptomatic, age-related finding common in appellant’s age group. He commented that, according to the record, there was probably no reason to take appellant off work in April 2004.

By decision dated November 30, 2007, the Office affirmed the September 14, 2006 decision, finding that appellant had not established total disability for work from April 15 to August 10, 2004. It accorded Dr. Greene the weight of the medical evidence.

⁴ In a May 2, 2007 letter, the employing establishment alleged that appellant was not disabled as she was allegedly observed by a “community member” fishing and rafting.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.⁶

To establish a causal relationship between a claimed period of disability claimed and the accepted employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.⁷ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸ Rationalized medical evidence is evidence which includes a physician's rationalized medical 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.⁹

ANALYSIS

The Office accepted that appellant sustained cervical and thoracic spine strains and bilateral shoulder tendinitis in a June 27, 2003 motor vehicle accident. Appellant claimed wage-loss compensation for the period April 15 to August 10, 2004 due to sequelae of the June 27, 2003 accident. By decision dated November 30, 2007, the Office denied compensation for the claimed period of disability.

Appellant submitted reports from Dr. Carlson, an attending Board-certified family practitioner, who diagnosed a herniated disc at C5-6 and held appellant off work beginning on April 20, 2004 pending a neurologic evaluation. However, Dr. Carlson did not opine that the herniated disc was caused or aggravated by the June 27, 2003 accident. Also, he did not indicate that the accepted neck and shoulder injuries disabled appellant for work for the claimed period. Dr. Carlson's opinion is therefore insufficient to meet appellant's burden of proof in establishing that the claimed period of disability was work related.

Appellant also submitted reports from Dr. Madden, an attending Board-certified physiatrist, who did not find appellant disabled for work for the claimed period. Although Dr. Madden stated in several reports that the June 27, 2003 accident caused the C5-6 disc herniation, he did not provide sufficient rationale to support his stated conclusion. He did not

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Amelia S. Jefferson*, 57 ECAB 183. (2005).

⁷ *Manuel Gill*, 52 ECAB 282 (2001).

⁸ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000).

explain how and why the June 27, 2003 accident caused or contributed to the diagnosed disc condition or why appellant became disabling for work beginning on April 15, 2004 after she had returned to full duty on July 9, 2003. This lack of medical rationale diminishes the probative value of Dr. Madden's opinion.¹⁰

Dr. Gracias, an attending Board-certified neurosurgeon and Dr. Miller, an attending Board-certified neurologist, opined that the June 27, 2003 accident caused the accepted cervical strain. Neither physician found appellant disabled for work from April 15 to August 10, 2004. Their reports are thus insufficient to meet appellant's burden of proof.

The Office found that the weight of the medical evidence was represented by Dr. Greene, a Board-certified orthopedic surgeon and second opinion physician, who reviewed the complete medical record and statement of accepted facts. Dr. Greene opined that the record showed no reason for Dr. Carlson to have held appellant off work beginning in April 2004. He also explained that the herniated disc demonstrated by the MRI scan was an asymptomatic finding common for appellant's age. Dr. Greene found no objective evidence of a traumatic disc herniation. The Board finds that his report is well rationalized and based on a complete factual and medical history. It is sufficient to represent the weight of the medical evidence in this case.¹¹

Appellant has failed to meet her burden of proof, as she submitted insufficient rationalized medical evidence establishing she was totally disabled for work from April 15 to August 10, 2004 due to the accepted injuries.

CONCLUSION

The Board finds that appellant has not established that she was disabled for work from April 15 to August 10, 2004 due to accepted neck and shoulder injuries.

¹⁰ See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports lacking rationale on causal relationship are entitled to little probative value).

¹¹ *Michael S. Mina*, 57 ECAB 379 (2006); *Solomon Polen*, 51 ECAB 341 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 30, 2007 is affirmed.

Issued: December 5, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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