



addressed that repetitive job duties, including lifting and turning while staging, sweeping and keying. Appellant explained that the continuous up-and-down and side-to-side head motion involved in keying of letter-sized mail placed stress on her neck. Her problems were allegedly exacerbated by poor seating at her workstation, which did not provide proper ergonomic support.

Appellant submitted reports from Dr. Mark A. Shucker, a Board-certified internist. On February 4, 2004 Dr. Shucker stated that he treated appellant in September 2003 for arthritis of the neck, and chronic neck pain and spasm. He indicated that working overtime, or performing tasks involving heavy lifting, would exacerbate her chronic condition. On May 13, 2005 Dr. Shucker stated that, for the past several years, appellant had been experiencing neck strain problems, including spasm and pain in the scapula area, sometimes radiating into the shoulder. He noted that appellant had flare-ups when she worked overtime.

On October 20, 2005 the employing establishment controverted the claim, contending that the medical evidence failed to explain how appellant's job duties accelerated her preexisting condition. The employing establishment denied that the position of computer forwarding system (CFS) clerk involved repetitive, awkward lifting and turning while performing sweeping duties, or that keying and sweeping duties involved up-and-down, side-to-side head movements.

The record contains a July 15, 2005 progress report from Stephanie Gilbert, a physical therapist, who stated that she had treated appellant on 17 occasions. Ms. Gilbert indicated that appellant had experienced a recent setback involving an increase in right shoulder pain, with radiating muscle spasm into the cervical region.

On November 3, 2005 the Office notified appellant that the evidence submitted was insufficient to establish her claim. The Office advised her to identify the specific employment duties she believed caused or contributed to her condition and provide a medical narrative from her treating physician, which contained a diagnosis and a rationalized opinion as to the cause of her condition.

The record contains a job description for "Mark up clerk -- CFS." General duties included inputting data from mail to be forwarded and applying a forwarding label. The job duties included computer work (keying), loading and unloading machines (sweeping), throwing parcels into sacks, placing sacks into cages, sorting and placing mail on conveyor belt in cart (staging) and finalizing mail to be sent.

An October 13, 2005 report of a magnetic resonance imaging (MRI) scan of the cervical spine provided impressions of mild disc bulging, and foraminal narrowing from C4-5 through C6-7, worse at C4-5, mild to moderate. On November 20, 2005 appellant stated that repetitive job activities exacerbated her C4 and C5 disc conditions. She claimed that she had not sustained any injury to her right shoulder, neck or thoracic areas prior to her employment with the employing establishment. Appellant identified employment-related activities she believed caused or contributed to her condition, including: lifting trays, packages and buckets of mail weighing from 15 to 50 pounds, while turning; lifting and latching cage doors; pushing, pulling and emptying mail cages and flat mail carts; repeatedly lifting full trays from a conveyor belt, which was above shoulder height for her (sweeping); carrying trays to a feeder belt; emptying

incoming cages and lifting buckets of magazines and trays of letter-sized mail (staging); and keying, which involved repeatedly moving her head up and down and side to side.

Appellant submitted reports from Dr. David A. Camarata, a Board-certified orthopedic surgeon. On September 29, 2005 Dr. Camarata provided an assessment of right shoulder pain and bursitis. He noted that a recent MRI scan reflected no obvious motor cuff pathology. Examination revealed range of motion from 40 degrees of extension to 100 degrees of forward flexion, abduction to 120 degrees, external rotation to 80 degrees and internal rotation to T8. Appellant had a positive Adson's maneuver on the right. Suspecting a possible herniated nucleus pulposus (HNP), he ordered a cervical MRI scan. On October 27, 2005 Dr. Camarata diagnosed HNP of the cervical spine, predominantly C4-5, degenerative joint disease of the cervical spine, right shoulder impingement syndrome and subacromial bursitis.

The record contains an October 18, 2005 statement from Roberta Zaldo, an employing establishment supervisor, who indicated that appellant periodically staged mail, but had not performed sweeping duties since she became her supervisor in April 2003. Ms. Zaldo noted that she had always tried to accommodate appellant's work restrictions.

In a decision dated December 8, 2005, the Office denied appellant's claim, on the grounds that the medical evidence did not establish that the identified employment factors caused her diagnosed condition.

On November 6, 2006 appellant, through her representative, requested reconsideration.

In a September 29, 2006 report, Dr. Camarata stated that he had reviewed a January 23, 2006 letter from appellant outlining her work activities, as well as pictures of appellant performing those duties. These included lifting, stooping, bending, carrying and stacking mail. Dr. Camarata diagnosed HNP of the cervical spine, predominantly of C4-5, with degenerative joint disease of the cervical spine and right shoulder recurrent subacromial bursitis. He opined that both conditions were exacerbated by appellant's work-related activities. Dr. Camarata stated that the C4-5 condition was temporarily aggravated by lifting objects at work, overhead activities and casing mail. He opined that the bursitis was a direct result of overhead activities, specifically impingement of the rotator cuff muscle in the undersurface of the acromion, activities above the shoulder, and by lifting activities. While MRI scans of the right shoulder were negative for rotator cuff pathology, Dr. Camarata stated that, symptomatically and clinically, appellant continued to present with recurrent subacromial bursitis. He recommended work restrictions which prohibited lifting, carrying, pushing, or pulling more than 15 pounds, overhead activities and excessive repetitive overhead activities.

The record contains pictures of appellant allegedly performing work duties, including working at machines, casing mail, reaching overhead, and pushing empty and full carts. In an undated statement, she reported movement counts for tasks performed on various machines. Appellant stated that, during a normal one-hour period while keying at the mech machine, she keyed 955 pieces of mail, moved her head from side to side 312 times, and moved her head up and down 152 times. In a similar period at the FFT machine, she keyed 153 pieces of mail, moved her head up and down 143 times, performed a full body twist 98 times, and performed a full body twist while lifting or lowering a tray 53 times.

Appellant submitted an undated report of her job history commencing November 8, 1997, when she began working for the employing establishment. She stated that her duties always included repetitive activities. In her position as a CFS clerk, in which she worked from January 2000 through January 2006, appellant was required to stage mail, copy, label, throw tubs of mail, and lift trays of mail overhead.

By decision dated February 7, 2007, the Office denied modification of the December 8, 2005 decision. The Office accepted that, for the previous five years, appellant had performed the work duties contained in the job description for mark-up clerk, including: inputting data into computers; loading machines with mail, magazines and packages; keying between 600 to 800 pieces of mail; sweeping (loading and unloading machines); magazine returns; and sacking mail. However, the Office found that the medical evidence of record failed to support that she sustained a medical condition causally related to the accepted work factors. The Office found that Dr. Camarata's opinion was based on an inaccurate factual history, in that her work activities did not, in fact, require overhead reaching.

On June 11, 2007 appellant's representative again requested reconsideration.

Appellant submitted a March 14, 2007 statement from Carol Lillick, a supervisor, for whom she worked from January 2000 through January 2006. Ms. Lillick indicated that appellant performed the full duties of a CFS clerk, which involved repetitive shoulder movements, lifting, twisting, reaching at awkward heights and angles, and reaching above the shoulders. In a report dated May 11, 2007, Dr. Camarata indicated that he had reviewed Ms. Lillick's March 14, 2007 statement, which further described appellant's job duties as a CFS clerk. He reiterated his opinion that appellant's work activities exacerbated her cervical spine degeneration and subacromial bursitis. Dr. Camarata explained that repetitive overhead activities will cause inflammation in the subacromial bursa.

By decision dated September 12, 2007, the Office denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant further merit review.

### **LEGAL PRECEDENT -- ISSUE 1**

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 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>2</sup> These are the essential

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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, 1145 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</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>4</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that this case is not in posture for decision regarding whether appellant sustained an injury in the performance of duty.

An employee who claims benefits under the Act has the burden of establishing the essential elements of his or her claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.<sup>5</sup> However, it is well established that proceedings under the Act are not adversarial in nature and, while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>6</sup>

Dr. Camarata's September 29, 2005 examination revealed range of motion from 40 degrees of extension to 100 degrees of forward flexion, abduction to 120 degrees, external

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<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Id.*

<sup>5</sup> See *Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); see also *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>6</sup> *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard*, *supra* note 5; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

rotation to 80 degrees and internal rotation to T8. Appellant had a positive Adson's maneuver on the right. On October 27, 2005 based on results of an MRI scan of the cervical spine and his examination of appellant, Dr. Camarata diagnosed HNP of the cervical spine, predominantly C4-5, degenerative joint disease of the cervical spine, right shoulder impingement syndrome and subacromial bursitis. On September 29, 2006 he stated that he had reviewed a letter from appellant outlining her work activities, as well as pictures of her performing those duties, which included lifting, stooping, bending, carrying and stacking mail. Dr. Camarata reiterated his diagnoses of HNP of the cervical spine, predominantly of C4-5, with degenerative joint disease of the cervical spine and right shoulder recurrent subacromial bursitis. He opined that both conditions were exacerbated by appellant's work-related activities. Dr. Camarata stated that the C4-5 condition was temporarily aggravated by lifting objects at work, overhead activities and casing mail. He opined that the bursitis was a direct result of overhead activities, specifically impingement of the rotator cuff muscle in the undersurface of the acromion, activities above the shoulder and by lifting activities. While MRI scans of the right shoulder were negative for rotator cuff pathology, he stated that, symptomatically and clinically, appellant continued to present with recurrent subacromial bursitis.

The Board notes that, while the reports of Dr. Camarata are not completely rationalized, they are consistent in supporting that appellant sustained employment-related cervical and shoulder conditions. This evidence is not contradicted by any substantial medical or factual evidence of record. The Office found that appellant's physician did not have a clear understanding of her work duties. However, the Board notes that the Office failed to provide her physician with a statement of accepted facts which delineated her job functions and restrictions over the course of her employment. While the reports are not sufficient to meet her burden of proof to establish her claim, they raise an uncontroverted inference between appellant's claimed conditions and the identified employment factors, and are sufficient to require the Office to further develop the medical evidence and the case record.<sup>7</sup>

On remand the Office should prepare a statement of accepted facts which includes a detailed employment history, job descriptions for each position held, specific functions performed by appellant in each position and the restrictions imposed by appellant's treating physicians. The Office should submit the statement of accepted facts to appellant's treating physician, or to a second opinion examiner, in order to obtain a rationalized opinion as to whether her current condition is causally related to factors of her employment, either directly or through aggravation, precipitation or acceleration.

### **CONCLUSION**

The Board finds that this case is not in posture for decision as to whether appellant sustained an injury in the performance of duty. In light of the Board's ruling on the first issue, the second issue is moot.

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<sup>7</sup> See *Virginia Richard*, *supra* note 5; see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 7, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: June 3, 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