

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

J.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Brooklyn, MI, Employer**

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**Docket No. 09-431
Issued: August 26, 2009**

Appearances:

*Alan J. Shapiro, Esq., 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 December 1, 2008 appellant, through counsel, filed a timely appeal from a January 23, 2008 decision of the Office of Workers' Compensation Programs and an October 6, 2008 decision of an Office hearing representative, denying her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that she sustained an injury in the performance of duty causally related to factors of her federal employment.

FACTUAL HISTORY

On May 27, 2006 appellant, then a 40-year-old rural carrier, filed an occupational disease claim alleging that she sustained upper and lower back pain and a herniated disc from bending, lifting and sitting for extended periods of time during her federal employment. She contended that her back pain first began in February 2006, radiating down her leg leading her to seek emergency medical treatment on April 14, 2006. Appellant described her employment duties as

including repetitive lifting tubs of papers, magazines and catalogs and mail trays, sorting and casing mail, lifting parcels up to 70 pounds, pushing tubs of mail outside and loading them into her vehicle, opening mailboxes and placing mail in slots, repetitive bending to pick handfuls of mail off the ground, walking parcels to houses, picking up parcels as requested by customers for mailing and loading them into the vehicle and unloading undelivered parcels, empty mail trays and tubs at the end of the route.

On June 21, 2006 the Office notified appellant of the deficiencies in her claim and requested that she provide additional information.

By decision dated September 7, 2006, the Office denied the claim on the grounds that the medical evidence did not establish that appellant's back condition resulted from the accepted employment factors.

On October 2, 2006 appellant, through her representative, requested a telephonic hearing before an Office hearing representative.

In a November 17, 2006 medical report, Dr. Cheryl Strzoda, Board-certified in family medicine, diagnosed C6 and S1 radiculopathy, cervical and foraminal stenosis, paresthasias bilaterally of the lower extremities and chronic low back and neck pain. She described appellant's job duties, including sitting in a mail truck for long intervals, lifting up to 80 pounds, excessive movements of the neck and turning and reaching to deliver mail. Dr. Strzoda opined that her employment likely caused and exacerbated her conditions. She stated that appellant's sitting for long periods of time in the mail vehicle prevented stretching of her lumbar musculature causing undue stress on the lumbar vertebrae leading to disc herniation and compression on the S1 nerve root. Dr. Strzoda opined that her cervical degeneration was caused by long-term stress on her lumbar spine from more than 15 years of working as a mail carrier, as well as the repetitive activities required while delivering mail.

By decision dated December 7, 2006, an Office hearing representative remanded the case for further development of the medical evidence. She noted that Dr. Strzoda was not a specialist in a relevant field and that her report was not fully accurate as to appellant's employment factors.

On January 24, 2007 the Office referred appellant, together with a statement of accepted facts, to Dr. Bruce D. Abrams, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a January 24, 2007 medical report, Dr. Abrams discussed appellant's medical and occupational history and reviewed several diagnostic reports. A physical examination revealed a normal range of motion in the lumbar and cervical regions with no evidence of atrophy or reflex, sensory or motor deficits. A magnetic resonance imaging (MRI) scan revealed a large herniated disc in the lumbar spine at L5-S1 on the right and degenerative changes in the cervical spine. Dr. Abrams opined that appellant's condition was not related to her employment and that she could return to her normal activities but should maintain good body mechanics.

In a medical report dated February 19, 2007, Dr. Strzoda disagreed with Dr. Abrams. She contended that Dr. Abrams did not provide an explanation to support his findings and opined that if appellant returned to her position her conditions would worsen.

By decision dated April 3, 2007, the Office denied appellant's claim on the grounds that Dr. Abrams' report carried the weight of the medical evidence. It found that Dr. Abrams was a specialist in the relevant field of orthopedic injuries and his report was based on a complete, accurate and consistent history.

On April 16, 2007 appellant requested an oral hearing before an Office hearing representative.

In an August 17, 2007 medical report, Dr. Allan G. Clague, a neurologist, opined that, as a direct result of appellant's employment duties, she developed overuse syndrome of the upper extremities, posterior thoracic area and neck regions, chronic neurogenic low back pain syndrome with an S1 radiculopathy on the right side secondary to a herniated intervertebral disc at the L5-S1 level, cervical and lumbosacral osteoarthritis and degenerative disc disease. He opined that the repetitive use of her upper extremities during her employment caused the overuse syndrome and also affected the neck muscles. Dr. Clague attributed appellant's chronic neurogenic low back pain to repetitive bending and twisting and the angle of her back while sitting as a driver. These movements caused weakness in the lumbar spine and breaking and stretching of the outer membranes of the intervertebral disc, which lead to a rupture and resulting injury to the vertebral column. The forward flexion on the lumbosacral spine from sitting in a car pushed the vertebral disc posteriorly which, combined with the repetitive bending, caused a gradual tearing of the annulus fibrosis with ultimate rupture and extrusion of the intervertebral disc of the nucleus pulposis. This also resulted in pressure on the S1 nerve root on the right side. Dr. Clague opined that appellant's constant twisting, rotating and flexion and extension of the lumbar spine caused changes to the facet joints of the vertebral bodies. He advised that she was totally and permanently disabled and was to avoid any repetitive use of her upper extremities.

By decision dated September 27, 2007, an Office hearing representative found a conflict of medical opinion arose between Drs. Strzoda, Clague and Abrams as to whether appellant's cervical or lumbosacral spine conditions were causally related to the accepted factors of employment. She directed the Office to refer appellant to an impartial medical examiner.

On December 21, 2007 the Office referred appellant to Dr. Emmanuel N. Obianwu, a Board-certified orthopedic surgeon, to resolve the conflict of medical opinion regarding whether her back and neck conditions were related to her employment factors.

In a December 21, 2007 medical report, Dr. Obianwu reviewed appellant's medical and occupational history. Physical examination revealed full flexion of the cervical spine with full extension, negative Spurling's maneuver and 75 percent normal lateral rotation of the cervical spine to either side. Tightness was not present in the muscles in the neck and there was no tenderness over the anterior aspect of the cervical spine. However, the passive lateral flexion of the cervical spine caused some discomfort at the base of the neck. Physical examination did not reveal sensory or reflex changes in the lower extremities and no paraspinous muscle spasms were noted in the lumbar spine. Deep palpation in the midline of the lumbar spine did not induce any discomfort and no tenderness was elicited in the entire lumbar spine. Dr. Obianwu reviewed MRI scan images of the lumbar and cervical spine dated May 2006 and diagnosed cervical spondylosis and large right paracentral disc herniation with possible impingement on right S1 nerve root. There was no clinical evidence of cervical or lumbar radiculopathy. Dr. Obianwu

opined that the changes in appellant's cervical and lumbar spines were age related and there was no evidence to suggest that her work activities played any significant role in the development of these changes. He explained that similar changes were seen in a significant portion of the general population and that such neck and back pain can be secondary to anxiety. The fact that appellant's symptoms were controlled by antidepressants further suggested that to some degree anxiety and other psychosocial factors were significant in the persistence of her back pain. Moreover, the multilevel involvement present in her case suggested a process that was ongoing over an extended period of time. Dr. Obianwu disagreed with Dr. Clague's opinion that the repetitive stress syndrome induced appellant's back problems, stating that the human body was not inert but was a dynamic and living tissue that often responded in a positive manner to repetitive physical stress. He maintained that terms like overuse or repetitive stress may explain symptoms but did not bear a direct causation to disease. Dr. Obianwu found that there was no association between appellant's work activities and her neck and lumbar spine conditions. Based on her medical history, the conditions had been ongoing for some time, dating back to as early as 2004 and her presentation was generally reflective of the aging process and not of a post-traumatic pathology. Dr. Obianwu pointed out that appellant did not recount "one single episode of a significant trauma ... as being responsible for the onset of her symptoms." He acknowledged the presence of changes in the MRI scan but stated that he did not find corroborating clinical findings. Dr. Obianwu concluded that based on "the rather ordinary clinical examination" appellant could return to work without restrictions. He noted that, while her employment duties would suggest certain onerous tasks, taken together, they did "not appear to constitute significant risk factors in themselves in the development of the degenerative changes" of the spine.

By decision dated January 23, 2008, the Office denied the claim on the grounds that Dr. Obianwu resolved the conflict of medical evidence. Dr. Obianwu found that appellant's cervical and lumbosacral spine conditions were not related to her federal employment. Thus, the weight of the medical evidence did not support the claim.

On February 8, 2008 appellant requested an oral hearing before an Office hearing representative. Appellant's representative argued that her treating and examining physicians supported her claim of work-related disability and that her opinions of Drs. Abrams and Obianwu were not supported by medical rationale.

An oral hearing took place on July 18, 2008. Appellant testified that Dr. Obianwu only examined her for approximately 10 minutes and that Dr. Clague's examination was more thorough. In a July 8, 2005 medical note, Dr. Strzoda noted that appellant's maximum weight requirement was 70 pounds. She reiterated that appellant's employment contributed to her current medical condition.

By decision dated October 6, 2008, an Office hearing representative affirmed the January 23, 2008 decision, finding that the weight of the medical evidence was represented by Dr. Obianwu.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of her claim by the weight of the evidence,² including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.³ As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁴ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁶

Section 8123(a) of the Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.⁷ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is properly referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background, must be given special weight.⁸

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *G.T.*, see *supra* note 3; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁵ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁶ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ 5 U.S.C. § 8123(a). See also *Raymond A. Fondots*, 53 ECAB 637 (2002).

⁸ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

ANALYSIS

The issue is whether appellant established that she sustained an injury causally related to her accepted employment factors. The Office accepted that her duties required repetitive movements while sorting, casing and delivering mail and sitting in a vehicle for an extended period of time. The Board finds that appellant has not met her burden of proof.

In a November 17, 2006 medical report, Dr. Strzoda, Board-certified in family medicine, opined that appellant's work included sitting in a mail truck for long intervals, lifting up to 80 pounds and excessive movements of the neck, caused her back and neck conditions. An Office hearing representative found this report sufficient to require further development of the claim. On remand, the Office referred appellant to Dr. Abrams, a Board-certified orthopedic surgeon, who concluded that her lumbar and cervical conditions were not related to her employment. Dr. Strzoda disagreed with the opinion of Dr. Abrams.

Appellant subsequently submitted a medical report from Dr. Clague, who opined that she sustained overuse syndrome of the upper extremities due to repetitive movements required by her employment. Dr. Clague attributed her musculoskeletal pain and cervical conditions to a progression of the overuse syndrome over a period of time. He stated that appellant's repetitive bending and twisting, combined with the flexion of her spine while seated as a driver, caused additional strain to the lumbar and cervical regions resulting in her degenerative disease.

On September 27, 2007 an Office hearing representative properly found a conflict of medical opinion arose between Drs. Strzoda, Clague and Abrams regarding whether appellant's back and neck conditions were causally related to her employment.⁹ The Office properly referred appellant to Dr. Obianwu, a Board-certified orthopedic surgeon, to resolve the conflict in medical evidence, pursuant to 5 U.S.C. § 8123(a).

In a December 21, 2007 medical report, Dr. Obianwu detailed a full examination and accurately described appellant's medical and employment history. He reviewed the results of diagnostic tests and opined that the changes in her cervical and lumbar spines were age related and noted that a significant part of the population had similar changes. Dr. Obianwu reported the fact that appellant's symptoms were controlled by antidepressants suggested that anxiety and psychosocial factors were factors in her back pain. He opined that the multilevel involvement present in her spine suggested degeneration over a period of time and there was no evidence to suggest the condition was related to her employment. Dr. Obianwu addressed Dr. Clague's diagnosis of overuse syndrome, stating that, while repetitive stress may explain certain symptoms, it did not bear a direct causation to the underlying disease. He pointed out that appellant's symptoms dated back to 2004 and were reflective of the aging process and not a post-traumatic pathology. Moreover Dr. Obianwu stated that appellant's work duties did not contribute to the degenerative changes. He concluded that her clinical examination was rather ordinary and that her conditions were related to the aging process and not to her federal employment.

⁹ See *Bryan O. Crane*, 56 ECAB 713 (2005).

The Board finds that Dr. Obianwu's medical report constitutes the special weight of the medical opinion. Dr. Obianwu is a specialist in the field of orthopedic surgery. His opinion is well-rationalized and based on a full medical examination and a complete and accurate factual and medical history.¹⁰ His opinion, finding that appellant's back and neck conditions are unrelated to her employment factors, is afforded the special weight of an impartial medical examiner.¹¹ The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury causally related to her federal employment.

CONCLUSION

The Board finds that appellant did not establish that she sustained an injury in the performance of duty causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the October 6 and January 23, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 26, 2009
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

¹⁰ See *B.K.*, 60 ECAB ____ (Docket No. 08-2002, issued June 16, 2009).

¹¹ See *id.*