

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

N.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lynchburg, VA, Employer**

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**Docket No. 08-2491
Issued: July 22, 2009**

Appearances:
Stephen D. Scavuzzo, 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 September 18, 2008 appellant, through her representative, filed a timely appeal from the June 24, 2008 merit decision of an Office of Workers' Compensation Programs' hearing representative, which denied compensation for a period of wage loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant's cervical spondylosis at C5-6 and C6-7 is causally related to her January 6, 2006 employment injury. On appeal, she addressed three medical reports which she contended stand un rebutted.

FACTUAL HISTORY

On January 6, 2006 appellant, then a 59-year-old manual clerk, sustained a traumatic injury in the performance of duty while "sticking" flats. The Office accepted her claim for sprain/strain shoulder/arm unspecified right and for cervicalgia. Appellant received compensation for temporary total disability and submitted claims for wage loss.

On March 1, 2006 Dr. Raymond V. Harron, appellant's neurosurgeon, reported that she initially presented for evaluation of neck pain, bilateral shoulder pain and bilateral arm pain. Appellant's symptoms were mostly on the right but now presented more on the left. She states, "[T]his has been going on since January 2005 [sic]. [Appellant] reports no accidents or injuries that could have caused the problem." On December 8, 2006 Dr. Harron completed a form report diagnosing a disabling cervical stenosis causing neck and arm pain. With an affirmative mark, he indicated that this was caused or aggravated by the January 6, 2006 incident at work.

On January 4, 2007 the Office asked appellant for a medical report explaining her disability for work, a report providing her current diagnosis and explaining how the diagnosis was related to the January 6, 2006 work injury. In order to receive disability compensation for any period after December 8, 2006, it requested an explanation from her physician as to why she was disabled from work.

On January 30, 2007 the Office again asked appellant to submit an explanation from her physician of why she was disabled for work. Any disability from work due to a condition other than the accepted right shoulder sprain or cervicgia required an explanation by her physician.

On February 23, 2007 Dr. Harron responded:

"[Appellant] suffers from neck and bilateral arm pain secondary to cervical spondylosis at C5-6 and C6-7. This became a disabling factor on January 6, 2006, from what I believe was her stacking flats at work. It is my opinion that her preexisting diagnosis of cervical spondylosis was aggravated by her work injury. She is to remain out of work until surgery."

In a decision dated April 18, 2007, the Office denied appellant's claim for wage-loss compensation from December 8, 2006 to March 31, 2007 on the grounds that the medical evidence was insufficient to support disability for work due to the accepted injury.

Appellant requested an oral hearing before an Office hearing representative, which was held telephonically on March 12, 2008. After the hearing, the Office received a September 7, 2007 note from Dr. Harron, who wanted to correct an error in an earlier report: "The correct date [of her injury] was January 2006." In a December 18, 2007 report, Dr. Harron stated, "[T]here was no direct accident or injury, but rather accumulated micro-trauma associated with her job that aggravated her injury. I collected her history on her initial March 1, 2006 visit that she reported no accidents or injuries."

In a decision dated June 24, 2008, the Office hearing representative affirmed the denial of compensation beginning December 8, 2006. The hearing representative found that the medical evidence demonstrated that the claimed disability was not due to injury of January 6, 2006.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.¹

¹ 5 U.S.C. § 8102(a).

Disability means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.²

A claimant seeking benefits under the Act has the burden of proof to establish the essential elements of her claim by the weight of the evidence,³ 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.⁴

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.⁵

ANALYSIS

The Office accepted appellant's traumatic injury claim for sprain/strain shoulder/arm unspecified right and for cervicalgia. It paid compensation for wage loss on this basis until December 8, 2006, when Dr. Harron, the neurosurgeon, diagnosed a disabling cervical spondylosis at C5-6 and C6-7. As this was not an accepted work-related medical condition, appellant's entitlement to continuing compensation for wage loss turns on the sufficiency of Dr. Harron's medical opinion that appellant's January 6, 2006 work activities aggravated her preexisting cervical spondylosis.

On December 8, 2006 Dr. Harron indicated with an affirmative mark that appellant's cervical stenosis at C5-6 and C6-7 was caused or aggravated by the January 6, 2006 incident at work. The Board has held that, when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.⁶ To discharge her burden of proof, appellant must submit an opinion from a physician who supports his conclusion with sound medical reasoning. Dr. Harron offered no medical reasoning in his December 8, 2006 report.

On February 23, 2007 Dr. Harron provided an opinion that appellant's preexisting cervical spondylosis at C5-6 and C6-7 was aggravated by stacking flats at work on January 6, 2006. But this statement, alone offers little information beyond that found in his December 8, 2006 form report. Dr. Harron did not address the medical reasons for attributing

² 20 C.F.R. § 10.5(f) (1999).

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁶ *E.g., Lillian M. Jones*, 34 ECAB 379 (1982).

appellant's cervical spondylosis, at least in part, to specific physical activities on January 6, 2006.

The Board finds that Dr. Harron's stated conclusion is of diminished probative or evidentiary value because he failed to support his opinion with sound medical reasoning. Medical rationale is critical to appellant's claim. Dr. Harron did not explain the nature of cervical spondylosis and why, to a reasonable degree of medical certainty, the specific physical activities appellant performed on January 6, 2006 materially affected her underlying condition. He did not refer to any clinical findings or diagnostic studies or other evidence to support an aggravation of her cervical condition. Dr. Harron must also reconcile his statement that stacking flats on January 6, 2006 aggravated appellant's cervical spondylosis with his December 18, 2007 statement that there was no direct accident or injury, but rather an accumulation of micro-trauma associated with her job that aggravated her injury.⁷ His medical reports of record are not sufficient to discharge her burden of proof to establish her entitlement to continuing compensation for wage loss beginning December 8, 2006.

With no rationalized medical opinion to support a causal connection between her cervical spondylosis and the work activities she performed on January 6, 2006, the Board finds that appellant has not met her burden of proof. The Board will therefore affirm the Office hearing representative's June 24, 2008 decision.

CONCLUSION

The Board finds that the medical opinion evidence is insufficient to establish that appellant's cervical spondylosis at C5-6 and C6-7 is causally related to her January 6, 2006 employment injury.

⁷ The hearing representative advised appellant that, if she wished to make the claim that her repetitive duties over time caused an injury, she could file such a claim.

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2009
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