

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

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**R.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Columbus, OH, Employer**

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**Docket No. 08-2403  
Issued: June 9, 2009**

*Appearances:*

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 3, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated August 15, 2008, which affirmed the denial of his occupational disease 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 met his burden of proof to establish that he developed a neck condition in the performance of duty.

**FACTUAL HISTORY**

On September 26, 2007 appellant, then a 54-year-old letter carrier, filed an occupational disease claim alleging that he developed a neck condition as a result of performing his work duties. He realized his condition was caused by his work on May 23, 2007. Appellant stopped work on May 8, 2007.

Appellant submitted a statement noting that he experienced symptoms of pain radiating into both legs and numbness in his arms. He indicated that his neck condition began when he was in the Air Force from 1970 to 1977. Appellant was involved in a motor vehicle accident and hit his head on the steering wheel and windshield. He asserted that his neck condition was aggravated by performing his work duties which included carrying a mailbag up and down steps. Appellant underwent a cervical fusion in June 2007 but continued to experience numbness in his wrist, elbows, hips and feet.

The employing establishment controverted the claim, noting that appellant had been off work since May 10, 2007 and had not provided any documentation to support his claim. The employer further noted that appellant indicated that his condition did not originate as a result of his employment and he failed to provide medical documentation to support that his condition was causally related to his work duties.

In a letter dated November 15, 2007, the Office advised appellant of the factual and medical evidence needed to establish his claim. It requested that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

In an undated statement, appellant asserted that his neck condition was aggravated by letter carrier duties that included carrying a mailbag weighing 20 to 40 pounds, for 8 to 12 hours per day. In a May 24, 2007 report, Dr. Gregory Z. Mavian, an osteopath, treated appellant for cervical dysfunction. He noted appellant's complaints of gait disturbance, left foot numbness and balance irregularities were present for a number of years but had progressed during the past month. Appellant reported no trauma to the neck, was vague about the onset of symptoms and attributed his condition to a bad knee. Dr. Mavian diagnosed progressive neurologic deficits, particularly gait disturbance. He noted magnetic resonance imaging (MRI) scan findings of severe cervical spinal cord compression, disc herniation and protrusion at C6-7 and, to a lesser extent, at C5-6. In reports dated May 30 to November 27, 2007, Dr. Ying H. Chen, an osteopath, treated appellant for cervical stenosis. He denied any specific injury to his neck but attributed his condition to years of lifting and carrying heavy loads of mail at work. Dr. Chen noted a negative Spurling's test, intact muscle strength throughout the upper extremities without atrophy, deep tendon reflexes were brisk and asymmetrical and gait was antalgic and ataxic. He diagnosed progressive worsening of chronic cervical myelopathy with increasing gait ataxia, paresthesia, hyperreflexia, spinal cord compression at C6-7 due to large central disc herniation and smaller disc herniation at C5-6 and recommended surgery. Dr. Chen noted that appellant was status post anterior cervical discectomy, partial corpectomy, interbody fusion and instrumentation at C5-6 and C6-7.<sup>1</sup> He diagnosed cervical spondylosis with stenosis and cervical myelopathy. Dr. Chen noted slow improvement of appellant's symptoms with persistent ataxia, stumbling, paresthesias and some cervical myalgia symptoms. In a November 14, 2007 duty status report, he diagnosed cervical spondylosis and noted that appellant was completely disabled.

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<sup>1</sup> The operative report for this surgical procedure is not in the record.

In a January 25, 2008 decision, the Office denied appellant's claim on the grounds that the medical evidence did not establish that his cervical condition was caused by his work duties.

In a letter dated February 10, 2008, appellant requested a telephonic hearing which was held on May 22, 2008.

In a March 25, 2008 report, Dr. Richard M. Ward, a Board-certified orthopedic surgeon, saw appellant in consultation for a disability evaluation for his right knee condition. He diagnosed right knee sprain, right knee internal derangement and right knee medial meniscus tear. Dr. Ward opined that appellant had 26 percent right leg impairment.

By decision dated August 15, 2008, the hearing representative affirmed the January 25, 2008 decision.

### **LEGAL PRECEDENT**

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

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<sup>2</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>3</sup> *Solomon Polen*, 51 ECAB 341 (2000).

## ANALYSIS

It is not disputed that appellant's duties as a letter carrier included lifting and carrying a mailbag. The issue is whether his work activities caused or aggravated his cervical condition. Appellant has not submitted sufficient medical evidence to establish that his cervical condition was due to specific employment factors. On November 15, 2007 the Office advised appellant of the medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from a physician addressing how specific employment factors may have caused or aggravated his cervical condition.

On May 24, 2007 Dr. Mavian treated appellant for cervical dysfunction and diagnosed progressive neurologic deficits, gait disturbance, severe cervical spinal cord compression, disc herniation and protrusion at C6-7 and C5-6. He noted that appellant reported no trauma to the neck and was vague about the onset of his symptoms. Dr. Mavian noted that appellant attributed his condition to a bad knee. However, he did not provide an opinion addressing how appellant's work as a letter carrier caused or aggravated his cervical condition. This report is insufficient to establish the claim as Dr. Mavian did not provide a history of injury or specifically address how appellant's employment activities aggravated his preexisting cervical condition.<sup>4</sup>

On May 30, 2007 Dr. Chen treated appellant for cervical stenosis. He diagnosed progressive worsening of chronic cervical myelopathy with increasing gait ataxia, paresthesia, hyperreflexia, spinal cord compression at C6-7 due to large central disc herniation and smaller disc herniation at C5-6. Appellant denied any specific injury and attributed his condition to years of working as a mail carrier and lifting and carrying heavy loads of mail. However, Dr. Chen merely noted appellant's work duties without providing an opinion regarding how his condition was work related. Dr. Chen failed to provide a rationalized opinion explaining how appellant's diagnosed cervical condition was caused or aggravated by particular factors of employment.<sup>5</sup> Additionally, he also did not address how the nonemployment factor of appellant's automobile accident in the 1970's might have affected the progression of his cervical condition. Consequently, the reports from Dr. Chen are insufficient to establish appellant's claim.

Appellant also submitted a March 25, 2008 report from Dr. Ward, who provided an impairment evaluation for a right knee condition.<sup>6</sup> However, Dr. Ward did not address appellant's claimed cervical condition. Therefore, this report is not relevant to the claim on appeal and is insufficient to establish appellant's claim.

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<sup>4</sup> *A.D.*, 58 ECAB \_\_\_\_ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>5</sup> *See Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>6</sup> The Board notes that the Office has not accepted that any medical condition is employment related. A schedule award can be paid only for a condition related to an employment injury. *See Veronica Williams*, 56 ECAB 367 (2005).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>7</sup> Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied his claim for compensation.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof in establishing that he developed an employment-related injury in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 15 and January 25, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 9, 2009  
Washington, DC

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

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

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

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<sup>7</sup> See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).