

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

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D.C., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Jamaica, NY, Employer )

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**Docket No. 09-638  
Issued: September 29, 2009**

*Appearances:*  
*Appellant, pro se*  
*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 January 6, 2009 appellant filed a timely appeal of the Office of Workers' Compensation Programs' hearing representative's merit decision dated December 8, 2008 finding that he had not established an injury on January 3, 2008 causally related to his federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish that he sustained an injury on January 3, 2008 as alleged.

**FACTUAL HISTORY**

On January 4, 2008 appellant, then a 55-year-old letter carrier, filed a traumatic injury claim alleging that on January 3, 2008 he developed numbness in his arm and hand in the performance of duty. The employing establishment disputed his claim on January 14, 2008, alleging that he had a previous diagnosis of carpal tunnel syndrome.

In a letter dated January 28, 2008, the Office requested additional factual and medical information from appellant regarding his claim. It allowed 30 days for a response. Appellant submitted a form report dated January 9, 2008 diagnosing a herniated disc. Dr. Michael Shapiro, a Board-certified orthopedic surgeon, completed a form report on February 22, 2008 and diagnosed cervicalgia, cervical herniated disc and cervical radiculitis. He found that appellant was totally disabled. A magnetic resonance imaging (MRI) scan dated February 26, 2008 found a herniated disc at C4-5 with degenerative disc disease.

By decision dated March 6, 2008, the Office denied appellant's claim on the grounds that there was not an adequate description of the employment incident.

Appellant requested an oral hearing on March 17, 2008 and submitted an authorization for examination and treatment, Form CA-16, dated January 7, 2008. It described his history of injury as "sorting mail, started feeling tingling in hand/arm/shoulder." Dr. Shapiro indicated with a checkmark "yes" that appellant's condition was caused or aggravated by his employment activity. He completed a treatment note on February 27, 2008 and listed appellant's chief symptom as neck pain. Dr. Shapiro diagnosed herniated cervical disc based on an MRI scan as well as cervicalgia and radiculopathy. Appellant submitted a form report dated March 5, 2008 from Dr. Shapiro which diagnosed cervical herniated disc, cervicalgia, radiculopathy. Dr. Shapiro noted his history of developing tingling in his right hand while putting up mail. He indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. On March 17, 2008 Dr. Shapiro diagnosed lumbago, herniated disc, radiculopathy and cervicalgia. He recommended physical therapy. Dr. Shapiro completed an Office note on the same date, repeated his diagnoses and stated that appellant had experienced symptoms for two months. He advised that appellant reported that his condition started while he was at work and that he had no previous neck problems.

Appellant testified at the July 15, 2008 oral hearing. He described his job duties including pulling magazines, carrying buckets, casing letters and lifting and using a pushcart. Appellant stated that he was working and developed a tingling in his hands. The next day, he carried magazines to his desk and developed tingling in his hands and arm. The Office hearing representative allowed appellant 30 days to submit additional evidence.

In a July 23, 2008 report, Dr. Shapiro diagnosed cervical radiculopathy, cervicalgia and herniated cervical disc. He stated, "[Appellant] injured his neck while at work. He was preparing mail and had tingling in the neck and down the arm." Dr. Shapiro advised that this was a single traumatic episode rather than a wear and tear injury. He further stated, "We discussed the nature of [appellant's] job as a letter carrier and what it entails on a daily basis."

By decision dated December 8, 2008, the hearing representative found that appellant had submitted sufficient evidence to establish a traumatic incident on January 3, 2008. However, appellant submitted insufficient medical opinion evidence to establish a causal relationship between his diagnosed cervical condition and his employment activities on January 3, 2008. The Office's March 6, 2008 decision was affirmed. On appeal, appellant disagreed with the Office's evaluation of the medical evidence.

## LEGAL PRECEDENT

The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.<sup>1</sup> In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>2</sup> Such opinion of the physician must be one of reasonable medical certainty and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and the employment.<sup>3</sup>

## ANALYSIS

Appellant established that he experienced a traumatic incident on January 3, 2008. He submitted medical evidence diagnosing a herniated cervical disc at C4-5, cervicgia and cervical radiculitis. The Board finds that appellant has not submitted medical opinion evidence sufficient to establish the causal relationship between his employment incident and his cervical condition.

Dr. Shapiro, a Board-certified orthopedic surgeon, diagnosed cervicgia, cervical herniated disc and cervical radiculitis. The medical evidence contains histories of injury on form reports including "sorting mail, started feeling tingling in hand/arm/shoulder" and "developing tingling in [appellant's] right hand while putting up mail." Dr. Shapiro initially indicated with a checkmark "yes" that appellant's condition was caused or aggravated by his employment activity. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether appellant's condition is related to the history given is of diminished probative value. Without any explanation or rationale for the conclusion reached, such a report is insufficient to establish causal relationship.<sup>4</sup> There is no medical reasoning on the form reports appellant submitted explaining how or why sorting and putting up mail on January 3, 2008 would cause or contribute to the diagnosed conditions. These reports are not sufficient to meet appellant's burden of proof.<sup>5</sup>

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<sup>1</sup> 20 C.F.R. § 10.5(ee).

<sup>2</sup> *Steven S. Saleh*, 55 ECAB 169, 171-72 (2003).

<sup>3</sup> *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

<sup>4</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

<sup>5</sup> The Board notes that the Office issued a Form CA-16. A properly executed Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. See *Elaine M. Kreyborg*, 41 ECAB 256, 259 (1989).

Dr. Shapiro completed a report dated July 23, 2008 diagnosing cervical radiculopathy, cervicgia and herniated cervical disc. He stated, “[Appellant] injured his neck while at work. He was preparing mail and had tingling in the neck and down the arm.” Dr. Shapiro stated that this was a single traumatic episode rather than a wear and tear injury. He further stated, “We discussed the nature of [appellant’s] job as a letter carrier and what it entails on a daily basis.” This report is also insufficient to meet appellant’s burden of proof as Dr. Shapiro failed to specifically address a history of the January 3, 2008 incident. He did not provide a detailed description of the employment duties and failed to offer any medical explanation describing how this activity would result in appellant’s cervical condition. Medical rationale is necessary as the MRI scan demonstrated degenerative conditions in appellant’s spine. Dr. Shapiro did not address how the employment activity on January 3, 2008 caused or contributed to the degenerative disc disease of the cervical region.

**CONCLUSION**

The Board finds that appellant has not submitted the necessary rationalized medical opinion evidence to establish a causal relationship between his herniated cervical disc and his employment activities of January 3, 2008.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 8, 2008 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: September 29, 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