

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

C.B., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Fort Washington, MD, Employer)

**Docket No. 09-2043
Issued: April 21, 2010**

Appearances:

*Alan J. Shapiro, 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 August 11, 2009 appellant, through his representative, filed a timely appeal from March 12 and July 21, 2009 merit decisions of the Office of Workers' Compensation Programs denying his traumatic injury 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 he sustained an injury on October 16, 2008 in the performance of duty, as alleged.

FACTUAL HISTORY

On November 5, 2008 appellant, then a 41-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 16, 2008 he experienced extreme soreness in his right arm muscles and tenderness in his right wrist after pulling down his route and loading a truck at work. The next day at work, he experienced increased pain and sought emergency

medical attention. Appellant was treated with pain medication. He stopped working on November 17, 2008 and returned to light duty on January 28, 2009.

In a November 21, 2008 medical report, Dr. Philip B. Bovell noted appellant's complaints of neck pain. Appellant reported that in June 2008 he experienced a sudden onset of pain on the right side of his cervical spine, centered in the C7 area, while sitting in a truck at work. He sought treatment from his treating physician but continued working. Appellant's pain gradually worsened and he experienced tingling and numbness down the right upper extremity into the fingers and thumb area. X-rays revealed degenerative joint disease. A July 2008 magnetic resonance imaging (MRI) scan further revealed C5 and C6 disc disease. Appellant stated that his upper extremity discomfort worsened around October 16, 2008 while at work, when he experienced increased pain, numbness, soreness and tingling resulting in a constant ache of the right upper extremity muscles. He denied any neck problems except with repeated use of the neck while sorting mail at work. Dr. Bovell diagnosed cervical radiculopathy and C5 and C6 disc syndrome. Appellant returned to Dr. Bovell on January 9, 2009 for a reevaluation of his chronic cervical pain. An electromyography (EMG) revealed cervical radiculopathy at the C6 level and cervical disc disease. Dr. Bovell reported appellant's complaints of continued tingling over the right upper extremity into the thumb area.

By letter dated January 29, 2009, the Office notified appellant of the deficiencies in his claim and requested that he provide additional factual and medical evidence.

In a December 29, 2008 duty status report, Dr. Bovell diagnosed cervical neuritis radiculopathy and C5 and C6 disc syndrome. He indicated that appellant injured his neck and extremities at work, which caused the diagnosed conditions. In a December 29, 2008 attending physician's report, Dr. Bovell stated that appellant injured himself at work. He diagnosed cervical neuritis or radiculopathy and cervical disc syndrome. Dr. Bovell indicated by checking a box "yes" that he believed appellant's condition was caused by an employment activity. He returned appellant to light duty on January 12, 2009.

By decision dated March 12, 2009, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an injury causally related to the employment incident.

On April 14, 2009 appellant filed a request for a review of the written record by an Office hearing representative.

Appellant subsequently submitted medical reports dated March 13 through June 12, 2009 from Dr. Bovell, who noted appellant's continuing complaints of pain, tingling and numbness over the upper extremity and radiating into the fingers, particularly while at work. In a March 31, 2009 report, Dr. Bovell diagnosed cervical radiculopathy, C5 and C6 disc syndrome, which were established by previous diagnostic tests. He stated that appellant had initially given a poor history of his condition and provided an approximate date of October 16, 2008 as the date of his initial presentation of pain instead of an exact date. Dr. Bovell opined that appellant's symptoms of tingling and numbness arose from an underlying compression problem that was preexisting in his neck. An MRI scan and EMG confirmed the protrusion and compression of the nerve in appellant's neck. Dr. Bovell opined that appellant experienced symptoms due to a

gradual developing disc problem which occurred while he was at work. However, he stated that appellant did not immediately seek treatment due to the mild nature of his symptoms. Dr. Bovell opined that the presentation of appellant's condition normally occurred in patients who are more involved with work than taking notice of their own health condition. On June 12, 2009 he opined that appellant's condition was definitely a result of the injury he sustained in 2008.

In December 1, 2008 and January 28, 2009 duty status reports, Dr. Bovell diagnosed cervical neuritis or radiculopathy and C5 and C6 disc disease. He indicated that the diagnosed conditions were due to a right extremity and upper body work-related injury.

By decision dated July 21, 2009, an Office hearing representative affirmed the March 12, 2009 decision on the grounds that appellant did not submit sufficient medical evidence to establish that he sustained an injury causally related to the October 16, 2008 employment incident.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,² including that he is an "employee" within the meaning of the Act³ and that he filed his claim within the applicable time limitation.⁴ The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

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, 57 (1968).

³ *See M.H.*, 59 ECAB ____ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

⁴ *R.C.*, 59 ECAB ____ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁵ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁷ *T.H.*, 59 ECAB ____ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

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.⁸

ANALYSIS

The Office accepted that on October 16, 2008 appellant experienced soreness and tenderness in his right arm and wrist after pulling down his route and loading his truck. The issue is whether appellant established that he sustained an injury causally related to this incident. The Board finds that appellant has not met his burden of proof.

Appellant submitted several reports and forms from Dr. Bovell dated November 21, 2008 through June 12, 2009, who diagnosed cervical radiculopathy and C5 and C6 disc disease. On November 21, 2008 Dr. Bovell reported appellant's claims that he first experienced an onset of cervical pain in June 2008 while sitting in a truck at work. Appellant experienced increased symptoms on October 16, 2008 while at work. The Board finds that this report is insufficient to establish appellant's claim as Dr. Bovell did not provide an opinion as to the cause of appellant's cervical condition. Dr. Bovell only stated that appellant experienced a worsening of his cervical symptoms on October 16, 2008 at work. He did not provide an unequivocal opinion that appellant's employment-related duties on that date, including pulling down his route and loading a truck, actually caused or exacerbated the diagnosed cervical condition. Neither the fact that a condition became apparent during a period of employment, nor the belief of an employee that a condition was caused or aggravated by employment conditions, is sufficient to establish causal relationship.⁹ As Dr. Bovell did not specifically address the cause of the C5 and C6 disc disease and cervical radiculopathy, this report is of diminished probative value.¹⁰

In a March 31, 2009 report, Dr. Bovell opined that appellant's symptoms of tingling and numbness arose from an underlying compression problem, which was preexisting in the neck. He stated that appellant experienced a gradual development of his disc disease, which occurred while he was at work, and that he did not seek immediate treatment due to the mild onset of symptoms. Dr. Bovell noted that this delay in seeking treatment normally occurs in patients who are more involved with their work than taking notice of their own health conditions. Further, on June 12, 2009 he stated that appellant's cervical condition was definitely a result of his 2008 injury. The Board finds these reports are similarly insufficient to establish appellant's traumatic injury claim as the doctor did not provide an unequivocal opinion explaining how the

⁸ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *See Ruby I. Fish*, 46 ECAB 276 (1996).

¹⁰ *See Robert Broome*, 55 ECAB 339 (2004).

October 16, 2008 employment incident caused or exacerbated appellant's cervical condition. It is unclear from the reports whether Dr. Bovell was relating appellant's underlying compression problem to his employment or whether the doctor found that appellant's employment only aggravated the preexisting condition. Moreover, he appeared to find that appellant's condition gradually developed due to his employment over a period of time rather than to his employment activities on October 16, 2008. Dr. Bovell did not describe appellant's employment activities on October 16, 2008 or provide an opinion that these specific activities caused the diagnosed cervical neck condition.¹¹ As such, the Board finds that these reports are insufficient to establish appellant's claim.¹²

In duty status forms dated December 1, 2008 through January 29, 2009, Dr. Bovell diagnosed cervical neuritis or radiculopathy and C5 and C6 disc disease. He indicated that the diagnosed conditions were related to a right extremity and upper body work-related injury. Dr. Bovell did not provide a rationalized medical opinion explaining the mechanism of appellant's work-related injury and how it caused the diagnosed cervical conditions. Therefore, these reports are of diminished probative value.¹³

Further, in a December 29, 2008 attending physician's report, Dr. Bovell indicated with a check mark that he believed the diagnosed conditions of cervical neuritis or radiculopathy and cervical disc syndrome were caused by an 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 the claimant's disability was related to the history is of diminished probative value. Dr. Bovell did not provide any explanation or rationale for the conclusion reached. This report is also insufficient to establish causal relationship.¹⁴

CONCLUSION

The Board finds that appellant did not establish that he sustained an injury on October 16, 2008 in the performance of duty.

¹¹ If appellant believes his condition was caused or exacerbated by performing his employment duties over a period longer than a single workday or shift he may file an occupational disease claim (Form CA-2).

¹² See *Thomas J. Scola*, 39 ECAB 1149 (1988).

¹³ See *Victor J. Woodhams*, *supra* note 8.

¹⁴ See *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

ORDER

IT IS HEREBY ORDERED THAT the July 21 and March 12, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 21, 2010
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