

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

V.G., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Lebanon, MO, Employer

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**Docket No. 09-2323
Issued: August 19, 2010**

Appearances:
Appellant, pro se
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 21, 2009 appellant filed a timely appeal of a July 28, 2009 decision of the Office of Workers' Compensation Programs denying her claim. 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 met her burden of proof to establish that she sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On October 10, 2007 appellant, then a 58-year-old rural mail carrier, filed an occupational disease claim alleging that she injured her shoulders, neck and upper back by reaching and stretching her arms in an uplifted position while delivering mail five days a week. She first realized that her work activities caused or aggravated her condition on May 19, 2007. Appellant stopped work on May 1, 2007 and returned on May 13, 2007. The employing establishment controverted the claim.

In an October 10, 2007 statement, appellant noted waking up in the middle of the night on May 1, 2007 with right shoulder pain. She went to the emergency room where diagnostic testing revealed three herniated discs at C5-6, C6-7 and C7-T1. After returning to work, appellant noted continued problems with her right shoulder, arm and hand numbness. In September 2007, she noticed that the muscles between the bones of her hands had shrunken. Appellant had surgery on October 1, 2007.

On November 1, 2007 the Office advised appellant of the factual and medical evidence necessary to establish her claim and allowed her 30 days to submit such evidence.

In a November 9, 2007 statement, appellant listed her activities outside of work, which included knitting and gardening. She also described her work duties. In a May 1, 2007 report, Dr. Michele Brother, a Board-certified internist, advised that appellant presented to the emergency room with right arm and shoulder pain. She advised that appellant was lying in bed Saturday evening when she rolled over and felt a pop and crunch in her neck.¹ Since that time, appellant had intermittent right shoulder, chest and arm pain with numbness especially on the medial side of her right arm. Dr. Brother advised that appellant presented to the emergency room when the pain became severe. She diagnosed C8 radiculopathy, right arm numbness, intractable pain and degenerative joint disease. On May 10, 2007 Dr. Curtis Evenson, a Board-certified anesthesiologist, noted appellant's report of waking up at the end of the prior month with severe pain. He diagnosed C7-T1 disc protrusion and C8 radiculopathy. Dr. Evenson recommended that she see a surgeon.

In a May 18, 2007 report, Dr. Todd Harbach, a Board-certified orthopedic surgeon, noted that appellant's job as a rural mail carrier involved shelving and sorting letters, constantly turning her head and using her arms to reach and grab. He diagnosed right C8 radiculopathy, intractable cervical pain, advanced degenerative changes at C6-7 greater than C7-T1, cervical spine pain and cervical spondylosis without myelopathy. Dr. Harbach advised that appellant's neck injury over the preceding three months and probably her eventual disc herniation were causally related to repetitive microtrauma at work.

In reports dated June 20, 2007, Dr. Chris Kunis, an internist, noted that appellant had posterior shoulder and neck pain radiating into her arm, elbow and right hand. He indicated that she questioned if this was due to her work activities. Dr. Kunis opined that there may be some sort of degenerative process that may be cumulative in nature in relation to appellant's work but that she did not seem like she had any specific injury related to work, either to her shoulder or actual trauma associated with the neck and shoulder region. He noted she had long-term bilateral shoulder tingling and discomfort in the cervical spine which was chronic in nature that was aggravated with some work activities such as gazing downward.

On June 21, 2007 Dr. Anthony Mork, a Board-certified orthopedic surgeon, stated that cervical spine x-rays showed bulging discs toward the central and foraminal canals at C7-T1 on the right, C8 nerve root radiculitis and slight C6-7 disc bulge biased to the right.

¹ The Saturday to which she refers is April 28, 2007.

In reports dated September 26, 2007, Dr. Harbach noted appellant's complaint of increased right hand atrophy. He found that she had right-sided C7-T1 herniated disc that caused right C8 radiculopathy, cervical pain and advanced degenerative changes at C6-7 worse than C5-6. Dr. Harbach indicated that appellant's work as a mail carrier involved lifting that made things much worse for her condition. On October 1, 2007 he noted that she had a six-month history of worsening neck pain as well as increased right arm weakness with muscle atrophy. Dr. Harbach diagnosed right cervical radiculopathy, cervical pain, cervical spondylosis without myelopathy and advanced degenerative disease at C6-7, C7-T1 and C5-6. Also on that date, he performed an anterior cervical decompression, discectomy and fusion at C5-6, C6-7 and C7-T1. Dr. Harbach also performed lordotic-shaped tricortical cancellous allograft and anterior cervical internal fixation of C5 to T1.

In a January 15, 2008 decision, the Office denied appellant's claim finding that the medical evidence was not sufficient to establish that the claimed medical condition resulted from the accepted work events. It noted that the May 1, 2007 emergency room report indicated that appellant was lying in bed when she felt a pop in her neck.

In a May 9, 2008 letter, appellant requested reconsideration. In a March 17, 2008 statement, she noted she had been a rural mail carrier since September 1990. Appellant described the duties involved in delivering her route. She indicated that she had no prior back or neck condition.

In a March 25, 2008 report, Dr. Harbach explained that sorting mail, driving and turning her head to deliver mail accelerated degenerative changes in appellant's neck more than would normally occur. He noted that cervical radiculopathy, protrusion of the cervical disc without myelopathy and cervical pain were conditions that contributed to or were aggravated and exacerbated by her physical activities. Dr. Harbach indicated that rolling in bed one night could be a cause of her condition but was minimal compared to the repetitiveness of her normal activities as a mail carrier.

In a July 21, 2008 decision, the Office denied modification of its January 15, 2008 decision finding that the additional evidence was insufficient to warrant modification.

On April 24, 2009 appellant requested reconsideration. She submitted a March 19, 2009 report from Dr. John Ellis, Board-certified in family medicine, who provided a detailed summary of the history of injury and medical records. Dr. Ellis noted that appellant's job required her to drive a vehicle and reach back with both arms to pick up and deliver mail. He noted that over the past 15 years she developed pain between her shoulder joints and at the base of her neck. Dr. Ellis stated that on April 30, 2007 appellant had sudden severe neck pain in bed and went to the emergency room. Appellant currently complained of pain in her neck, between her shoulders, upper back and right shoulder joint as well as right forearm numbness and atrophy at the base of her thumb and the space between her thumb and index finger. Dr. Ellis indicated that medical history consisted of tension headache symptoms in 1985 that differed from her pain from work duties. He advised that in the 1990s appellant had bilateral carpal tunnel syndrome with finger numbness in both hands for which she underwent surgery in 1999 and continued to have hand weakness. Dr. Ellis diagnosed repetitive strain of the neck, upper back and shoulder

girdles; deranged disc of the neck; spinal nerve root impingement on the right at C6, C7 and C8; tendinitis and internal derangement of both shoulders.

Dr. Ellis opined that appellant's injury arose out of her employment and that her work duties contributed, aggravated and caused her injury. He explained that her duty to reach back with each arm to deliver mail caused the muscles and tendons in her neck and shoulders to become hypertrophied and thickened, which caused her muscles to become tight. Dr. Ellis stated that increased muscle tightness caused increased pressure on appellant's cervical discs causing her disc to degenerate. He noted that her sudden onset of pain on April 30, 2007 was the result of weakening of the disc due to many years of working at the employing establishment and was not caused by rolling over in bed. Dr. Ellis further noted that nonwork activities, such as knitting and gardening, would not contribute to appellant's upper back and neck problems. He indicated that reaching caused some repetitive strains of the muscles and tendons into the shoulders, right worse than left. Dr. Ellis opined that appellant had many torn tendons in her right shoulder resulting in traumatic arthritis and tendinitis of the right shoulder and that nerve impingement from the neck caused significant right hand atrophy. He noted that she had continued bilateral carpal tunnel symptoms. Dr. Ellis determined that the combination of neck injury, right hand nerve and previous carpal tunnel syndrome caused appellant's hand muscles and tendons to become thickened causing triggering of the right thumb, index and middle fingers and the left thumb and middle finger. He also determined that she would not have had neck problems or acute rupturing of discs in her neck but for her work duties at the employing establishment.

In a July 28, 2009 decision, the Office denied modification of its July 21, 2008 decision finding the evidence insufficient to support causal relationship between appellant's neck condition and her work duties.

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 filed within the applicable time limitation; that an injury was sustained while 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 on a traumatic injury or an occupational disease.²

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) a 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 diagnosed condition is causally related to the employment factors identified by the claimant.³

² *J.E.*, 59 ECAB ____ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

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.⁴

ANALYSIS

The record reflects that appellant's employment activities consist of reaching and stretching of her arms in an uplifted position while delivering mail. Therefore, the issue is whether she has submitted sufficient medical evidence to establish that the factors of her federal employment injured her shoulders, neck and upper back. The Board finds that this case is not in posture for a decision.

The Office found that the medical evidence failed to show how the claimed conditions were causally related to appellant's employment duties. However, the Board finds that the medical evidence of record is sufficient to require further development of the case record.

In a March 19, 2009 report, Dr. Ellis noted that appellant's job required driving a vehicle and reaching back with her arms to pick up mail. He diagnosed repetitive strain of the neck, upper back and shoulder girdles; deranged disc of the neck; spinal nerve root impingement on the right at C6, C7 and C8; tendinitis and internal derangement of both shoulders. Dr. Ellis opined that appellant's work duties caused and aggravated her neck and back injuries, and he explained how reaching with her arm caused or aggravated her condition. In particular, he explained that the act of reaching back with both arms to deliver mail caused the muscles and tendons of her neck and shoulders to become hypertrophied and thickened, which caused muscle tightness. Dr. Ellis further explained that muscle tightness caused cervical disc degeneration from the pressure on those discs. He also reasoned that appellant first became aware of her condition in the middle of the night on April 30, 2007 because the sudden onset of pain was due to weakening of her discs that had accumulated from years of performing the identified employment activities.

Additionally, Dr. Harbach's reports also opined that appellant's employment duties as a mail carrier caused her back and neck conditions. For example, in a May 18, 2007 report, he noted that her work duties included shelving and sorting letters, constantly turning her head and using her arms to reach and grab. Dr. Harbach determined that appellant's neck injury was caused by this repetitive microtrauma during work. On September 26, 2007 he opined that appellant's job involved lifting that worsened her back and neck condition. In a March 25, 2008 report, Dr. Harbach concluded that sorting mail, driving and turning her head to deliver mail accelerated and aggravated the degenerative changes in appellant's neck and that her diagnosed conditions were aggravated by the physical activities of her job. Dr. Kunis' June 20, 2007 report

⁴ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

also provided some support for causal relationship as he opined that there may be some sort of degenerative process that may be cumulative in nature in relation to appellant's work activity. He also found that appellant's long-term bilateral shoulder tingling and discomfort of the cervical spine was chronic and was aggravated with some work activities.

Although Dr. Brother's May 1, 2007 report indicates that appellant's symptoms began after she rolled over in bed; she did not offer a particular opinion regarding whether this was the sole cause of appellant's symptoms and diagnosed conditions.

While the reports of Drs. Ellis, Harbach and Kunis are not sufficiently rationalized to meet appellant's burden of proof to establish her claim, they are sufficient to require the Office to further develop the medical evidence and the case record.⁵ It is well established that proceedings under the Act are not adversarial in nature and, while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁶

The Board will remand the case for further development of the medical evidence. On remand, the Office shall obtain a rationalized opinion from an appropriate Board-certified physician as to whether appellant's claimed condition is causally related to her factors of employment. Following this and such other development as is deemed necessary, it shall issue an appropriate merit decision.

CONCLUSION

The Board finds that this case is not in posture for a decision as to whether appellant sustained an occupational disease in the performance of duty.

⁵ See *P.K.*, 60 ECAB ____ (Docket No. 08-2551, issued June 2, 2009); see also *Horace Langhorne*, 29 ECAB 820 (1978).

⁶ *John Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated July 28, 2009 is set aside and the case is remanded for further development consistent with this decision.

Issued: August 19, 2010
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