

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

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**O.R., Appellant**

**and**

**U.S. POSTAL SERVICE, WESTSIDE POST  
OFFICE, Little Rock, AR, Employer**

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**Docket No. 10-273  
Issued: October 12, 2010**

*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 November 9, 2009 appellant filed a timely appeal from an August 18, 2009 decision of the Office of Workers' Compensation Programs that denied 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 has a cervical condition caused or aggravated by a March 20, 2007 employment injury.

On appeal, appellant asserts that the Office erred in considering a July 14, 2009 report from Dr. W. Scott Bowen, a Board-certified orthopedic surgeon, because it did not pertain to the instant claim.

## **FACTUAL HISTORY**

On September 30, 2008 appellant, then a 53-year-old letter carrier working modified duty for four hours daily,<sup>1</sup> filed an occupational disease claim alleging that positioning her head down while working caused muscle spasms that aggravated her neck condition. She missed intermittent periods from work until October 2008, when she stopped and did not return. The employing establishment stated that appellant returned to a modified position on June 27, 2008 and described her job duties.<sup>2</sup> In an October 17, 2008 statement, appellant noted that she wrote up accountable mail notices for one to three hours daily, which required her to hold her head down as she wrote. Further, flexing and extending her neck caused pain, stiffness and muscle spasms to the neck and shoulders. Appellant enclosed a March 31, 2008 report of a magnetic resonance imaging (MRI) scan of the cervical spine that demonstrated loss of cervical lordosis that could be related to muscle spasm, mild degenerative disc disease at C3 and C6 and a central disc osteophyte complex at C5-6 causing mild impingement.

In reports dated September 17, 2008, Dr. William Rutledge, a general practitioner, noted that appellant had tried boxing mail but could not do it and her complaint that frequent writing at work caused severe neck and shoulder pain with muscle spasms of the trapezius muscles. He reviewed the MRI scan findings and advised that physical examination demonstrated restricted cervical spine range of motion, bilateral cervical tenderness and tenseness of the right trapezius muscle. Dr. Rutledge diagnosed symptomatic cervical pain due to aggravation of cervical disc disease. He advised that appellant should be off work until September 23, 2008 when she could return to modified duties that did not require chronic flexion and extension of the neck.

In an October 28, 2008 letter, the employing establishment controverted the claim. Hilda Owens, a health and resource management specialist, noted that when appellant returned to work on June 21, 2008 she was provided a special chair. She stated that appellant processed from 5 to 10 accountable mail notices a day, which took from 1 to 2 minutes each, for a total of 5 to 20 minutes daily, spread over a 4-hour period. In a February 28, 2008 work capacity evaluation, Dr. Robert E. Holladay, a Board-certified orthopedic surgeon, advised that appellant could work four hours a day with a 10-pound weight restriction. In statements dated September 30, 2008, Percy Gilbert, Jr., customer service manager, and Veronica Mitchell, a customer service supervisor, advised that appellant had not been very productive since her return to work in June 2008. Appellant stated that she could not box mail and that her feet and legs hurt when she had to get up to answer the caller door. They described appellant's main job duties as occasional writing and answering the telephone.

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<sup>1</sup> Appellant has accepted conditions of contusion of the right ankle, old bucket-handle tear of the medial meniscus, bilateral chondromalacia patellae, bilateral carpal tunnel syndrome and rotator cuff tear of the right shoulder, adjudicated under Office file number xxxxxx301. She also has a claim for an employment-related emotional condition, adjudicated under Office file number xxxxxx256 that has been denied. Appellant has a current appeal before the Board on the emotional condition claim, Docket No. 10-693.

<sup>2</sup> The duties were described as boxing mail in the middle and upper sections, writing up accountable mail pieces, answering the caller door assisting customers and other duties within her physical restrictions.

By decision dated January 5, 2009, the Office denied the claim on the grounds that the medical evidence was insufficient to establish a relationship between appellant's claimed cervical condition and her employment activities.

On January 12, 2009 appellant requested a review of the written record and submitted statements from coworkers who observed her working. In an October 27, 2008 report, Dr. Rutledge provided physical examination findings, diagnosed bilateral carpal tunnel syndrome and bilateral shoulder pain secondary to tendinosis and rotator cuff injuries. He opined that appellant's job duties caused an exacerbation of these conditions and that she could not return to work until her hands and shoulders were "doing reasonably well."

In an August 20, 2008 treatment record, Dr. Harold H. Chakales, Board-certified in orthopedic surgery, noted appellant's complaint of persistent and chronic neck pain, radiating across the shoulders and into both arms. He advised that physical examination demonstrated restriction of neck and shoulder motion with pain in extreme motion. Dr. Chakales recommended sedentary duty, rather than a job as a letter carrier.

In an April 7, 2009 decision, an Office hearing representative affirmed the January 5, 2009 decision. He accepted appellant's job duties of writing up accountable mail, but found that the medical evidence was insufficient to establish that these duties caused her claimed cervical condition.

On June 29, 2009 appellant requested reconsideration, reiterating that writing and looking up to place mail in slots for one to three hours daily caused her condition. In reports dated March 19 and April 30, 2009, Dr. Rutledge noted her complaint of bilateral knee and ankle pain, ankle swelling and neck pain, radiating to the posterior shoulders, worsened with rotation of the head. He advised that this began when appellant returned to limited duties that required a lot of flexion and extension of the head while writing. Even though appellant had been off work for several months, she continued to have neck pain and was quite stressed. Physical examination findings included bilateral tenderness and diminished neck range of motion. Cervical compression and distraction test produced local pain. Dr. Rutledge diagnosed bilateral knee chondromalacia, chronic ankle strain, cervicgia due to aggravation of cervical disc disease and adjustment disorder. He advised that appellant was totally disabled due to advances in her arthritic problems. In reports dated June 25 and July 14, 2009, Dr. W. Scott Bowen, a Board-certified orthopedic surgeon, noted complaints of bilateral knee and right shoulder pain. He provided findings on physical examination and diagnosed bilateral patellofemoral chondromalacia, right shoulder rotator cuff tendinitis and mild adhesive capsulitis.

In an October 20, 2009 statement, Danita Small, an associate supervisor, advised that appellant's job included boxing mail at a level at which she was comfortable; however, she would often refuse, stating that her knees hurt and that she could not answer the caller door or push and pull a cart. She noted that appellant wrote no more than 5 to 10 accountable notices a day and that she had several discussions with appellant concerning her work performance.

Appellant would walk away from her duty station and go to the break room and sit. A description of the modified position accepted by appellant on March 24, 2008 was submitted.<sup>3</sup>

In a decision dated August 18, 2009, the Office denied modification of the prior decisions.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>4</sup> 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 an 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 asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.<sup>5</sup>

Office regulations define the term "occupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift."<sup>6</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) 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. The medical opinion 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>7</sup>

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>8</sup> Rationalized medical evidence is medical evidence, which includes a physician's rationalized medical opinion on the issue of whether

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<sup>3</sup> The modified letter carrier duties were described as boxing mail in the mid and upper sections and writing up accountable mail pieces for one to four hours intermittently, answering the caller door assisting customers for one to two hours intermittently, pushing a U-cart of mail for one to four hours intermittently and other duties within restrictions for one to four hours intermittently. Lifting, standing, walking, pulling, sitting and writing were restricted to one to four hours intermittently, with a 10-pound weight restriction.

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>6</sup> 20 C.F.R. § 10.5(ee).

<sup>7</sup> *Roy L. Humphrey*, *supra* note 5.

<sup>8</sup> *D.G.*, 59 ECAB \_\_\_\_ (Docket No. 08-1139, issued September 24, 2008).

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>9</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>10</sup>

Under the Act, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>11</sup> When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.<sup>12</sup> If the employment exposure causes a permanent condition, such as a heightened sensitivity to a wider field of allergens, the employee may be entitled to continuing compensation.<sup>13</sup>

### ANALYSIS

The Board finds that medical evidence of record does not establish that appellant sustained a cervical condition caused or aggravated by factors of her federal employment. Appellant returned to a modified position in June 2008 and thereafter claimed that her work duties, especially writing up accountable mail notices, caused an aggravation of her preexisting cervical condition.<sup>14</sup> She stopped work in October 2008.

In an August 20, 2008 treatment note, Dr. Chakales, an orthopedic surgeon, advised that appellant should have a sedentary job rather than her regular job as a letter carrier. He did not address the modified-duty job requirements or provide any review of her prior medical history. The modified position appellant began working in June 2008 was essentially sedentary and Dr. Chakales stated that she should not work as a letter carrier. He did not provide a diagnosis of any cervical condition. Dr. Chakales' report is insufficient to establish that her cervical condition was caused or aggravated by her postal duties.<sup>15</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> *Roy L. Humphrey, supra* note 5.

<sup>11</sup> *Raymond W. Behrens*, 50 ECAB 221, 222 (1999); *James L. Hearn*, 29 ECAB 278, 287 (1978).

<sup>12</sup> *Id.*

<sup>13</sup> *James C. Ross*, 45 ECAB 424, 429 (1994); *Gerald D. Alpaugh*, 31 ECAB 589, 596 (1980).

<sup>14</sup> A March 31, 2008 MRI scan of the cervical spine demonstrated loss of cervical lordosis that could be related to muscle spasm, mild degenerative disc disease at C3 and C6 and a central disc osteophyte complex noted at C5-6 causing mild impingement.

<sup>15</sup> The Board notes that Dr. Bowen's reports are not relevant to the instant claim.

In reports of September 17, 2008 to April 30, 2009, Dr. Rutledge, an attending general practitioner, noted appellant's complaint of neck pain that began after she returned to work with job duties that required "a lot of" flexion and extension of the head while writing. He advised that she could not work at a position that required chronic flexion and extension of the neck and that she was totally disabled due to advances in her arthritic condition. Dr. Rutledge did not provide any reviews of appellant's prior cervical treatment or an accurate description of the modified-duty work she performed. The employing establishment noted that appellant frequently refused to box mail and described her usual duties as answering the telephone and writing, at most, one hour a day intermittently. The statements from appellant's coworkers generally described observing her working in accountable mail and at the computer, but were not specific as to the time she spent performing any specific tasks or the nature of her assigned duties.

The Board finds that Dr. Rutledge's reports are insufficient to establish that appellant's cervical condition was caused or aggravated by the duties of her modified assignment. Dr. Rutledge did not address the amount of time appellant spent writing at work or any explanation regarding the mechanics of how her intermittent duties aggravated her preexisting cervical condition. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment. Such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>16</sup> It is well established medical conclusions based on an inaccurate or incomplete factual history are of diminished probative value.<sup>17</sup> Due to these deficiencies, the reports of Dr. Rutledge are not sufficient to establish appellant's claim.

### **CONCLUSION**

The Board finds that appellant has failed to establish that she sustained a cervical condition caused or aggravated by factors of her federal employment.

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<sup>16</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001).

<sup>17</sup> *M.W.*, 57 ECAB 710 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 18, 2009 decision of the Office of Workers Compensation Programs is affirmed.

Issued: October 12, 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