



pain with numbness and tingling radiating down both arms into his hands along with severe headaches.

On November 26, 2008 appellant informed Dr. Steven Levin, his pain specialist, that he suffered an injury at work on November 15, 2008 and was experiencing neck pain radiating into his arms with tingling. Dr. Levin recommended a spine surgery consultation.

On December 17, 2008 Dr. Thomas J. Arkins, the neurological consultant, related appellant's history of injury and complaints. A physical examination revealed moderate discomfort in the posterior cervical, suboccipital and interscapular areas with associated tenderness of the trapezial, suprascapular and paraspinous muscles. There was limited range of motion in the neck secondary to pain in flexion, extension and lateral rotation. Extremes of flexion and extension maintained for 20 to 30 seconds caused a slight increase in tingling in the hands. Dr. Arkins stated that appellant had a recent neck injury and was unable to work pending further workup.

Radiological tests showed mild degenerative changes in the cervical spine with mild narrowing of the disc spaces and endplate irregularity at C4-5, C5-6 and C6-7 with associated uncovertebral spondylosis and osteophyte formation. There was no evidence of cervical spine instability with flexion and extension views. There was no acute fracture or dislocation.

In a decision dated January 15, 2009, the Office denied appellant's claim for compensation. It found that the claimed event occurred as alleged. The Office found, however, that there was no medical evidence providing a history of the injury, a firm diagnosis and medical rationale as to why the doctor felt appellant's medical condition was caused or aggravated by the accepted work incident. It noted that Dr. Arkins reported a recent neck injury but failed to diagnose a specific injury.

On a form report, Dr. Arkins diagnosed "cervical injury." He indicated with a mark that this condition was caused or aggravated by an employment injury on November 15, 2008: "see December 17, 2008 report."

In a narrative report, Dr. Arkins restated that appellant was injured at work on November 15, 2008 based on his history of turning rapidly, producing progressive pain in the musculature around the cervical spine suggesting definitively that the cervical spine was injured, "at least a cervical strain injury."

In a decision dated May 20, 2009, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. It found that Dr. Arkins' opinion on causal relationship was insufficient because he provided merely a conclusion unsupported by medical rationale.

On September 4, 2009 Dr. Arkins again noted that appellant sustained a cervical spine injury on November 15, 2008: "There is no doubt that this injury is directly work related. He was working for the [p]ostal [s]ervice at the time and reacted to a loud crashing noise with rapid twisting of his neck, and sustained soft tissue injuries which have caused him persistent pain and limitation of range of motion and limited work capability."

In a decision dated April 19, 2010, the Office again reviewed the merits of appellant's claim and denied modification of its prior decision. It found that Dr. Arkins failed to provide objective medical reasoning to support his opinion that appellant's neck condition was a result of the rapid twisting reaction to a loud crashing noise.

On appeal, appellant provides a timeline with comments. He argues, among other things, that Dr. Arkins provided objective medical rationale to support his opinion.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.<sup>1</sup> An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.<sup>2</sup>

Causal relationship is a medical issue,<sup>3</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>4</sup> must be one of reasonable medical certainty,<sup>5</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>6</sup>

Although the claimant has the burden to establish the critical element of causal relationship through rationalized medical opinion evidence based on a proper factual and medical background, it is well established that proceedings under the Act are not adversarial; the Office shares responsibility in the development of the evidence to see that justice is done.<sup>7</sup>

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<sup>1</sup> 5 U.S.C. § 8102(a).

<sup>2</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>3</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>4</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>5</sup> *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>6</sup> *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>7</sup> *E.J.*, 61 ECAB \_\_\_\_ (Docket No. 09-1481, issued February 19, 2010).

## ANALYSIS

The Office accepts as factually established that appellant was in the course of his employment as a letter carrier on November 15, 2008 when he heard a loud crashing noise behind him and twisted his head quickly to the right in response. So appellant has met his burden to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged.

The question that remains is whether this incident caused an injury. Appellant sought reasonably prompt medical attention on November 26, 2008, when he informed his pain specialist that he suffered a work injury on November 15, 2008 and was experiencing radiating neck pain. Dr. Arkins, the neurological consultant, related an accurate history of injury and reported positive findings on physical examination, including moderate discomfort in the posterior cervical, suboccipital and interscapular areas with associated tenderness of the trapezial, suprascapular and paraspinous muscles. He also found limited range of motion in the neck secondary to pain in flexion, extension and lateral rotation. Dr. Arkins concluded that appellant had sustained a recent neck injury, which he later identified as "at least a cervical strain injury."

On September 4, 2009 Dr. Arkins was unequivocal when he stated that appellant's reaction to a loud crashing noise at work on November 15, 2008 -- a rapid twisting of his neck -- caused soft-tissue injuries resulting in pain, limitation of motion and limited work capacity.

The Board notes that, while Dr. Arkins' opinion is not completely rationalized, his reports consistently support that appellant sustained an employment-related neck injury on November 15, 2008. While his reports are not sufficient to discharge appellant's burden of proof to establish her entitlement to compensation benefits, they are sufficient to require the Office to further develop the medical evidence.<sup>8</sup>

The Board will set aside the Office's April 19, 2010 decision denying modification of the denial of appellant's claim for compensation. On remand, the Office shall obtain a well-reasoned medical opinion, based on a proper factual and medical history, on whether the November 15, 2008 work incident caused an injury to appellant's neck. After such further development as may be necessary, it shall issue an appropriate final decision on appellant's claim for compensation.

Appellant argued on appeal that Dr. Arkins provided objective medical rationale to support his opinion. The Office had denied appellant's claim on the grounds that the medical opinion evidence was insufficient to establish causal relationship. Dr. Arkins did support that appellant sustained a cervical spine injury on November 15, 2008 based on his history of turning rapidly, producing progressive pain in the musculature around the cervical spine. While he did not fully explain the physiological consequences of the rapid turning, his opinion is sufficiently supportive of appellant's claim to require the Office to further develop the medical opinion evidence on causal relationship.

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<sup>8</sup> *Id.*; *John J. Carlone*, 41 ECAB 354 (1989).

**CONCLUSION**

The Board finds that this case is not in posture for decision on whether appellant sustained a neck injury in the performance of duty on November 15, 2008.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 19, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: February 14, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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