

radiculopathy was employment related. He contended that his duties of repetitive twisting and reaching across the mail vehicle to serve boxes on the right side were the cause of his condition. Following a denial of his claim on June 1, 2009 appellant filed an appeal with the Board. On March 26, 2010 the Board issued an order remanding case for proper consideration of all the evidence of record.² The Board noted that the case record did not contain all of appellant's claims and requested that the Office double the current claim with his other claims.

The relevant medical evidence is as follows. In attending physician's reports (Form CA-20) dated December 10, 2007 and February 15, 2008, Dr. Paul D. Salzberg, a treating Board-certified family practitioner, diagnosed cervical herniated disc with radiculopathy and checked the box "yes" in response to the question of whether the condition was employment related. He explained on the December 10, 2007 form that his condition was a result of appellant's repetitive work duties of reaching, sorting mail and carrying mail. Dr. Salzberg, in an April 29, 2008 note, diagnosed a herniated C7 disc with nerve involvement or radiculopathy and that appellant was unable to lift or case with his arm. He related that repetitive motion of the neck and right arm aggravated this condition.

In an August 28, 2008 report, Dr. Saeed A. Bajwa, a treating Board-certified neurological surgeon, diagnosed right C7 radiculopathy. He stated that he reviewed appellant's work duties and found "his current symptoms are consistent with a repetitive work-related injury," particularly as there were no other reported injuries and due to appellant's long work history with the employing establishment.

Dr. Salzberg, in a November 19, 2008 report, diagnosed cervical radiculopathy and neck pain which he attributed to appellant's work duties.

In a May 4, 2009 report, Joseph Andusko, a physician's assistant, reported that appellant had been treated by Dr. Bajwa for right C7 radiculopathy with right triceps muscle weakness and atrophy. He reiterated Dr. Bajwa's opinion that this condition more likely than not had been caused by appellant's employment duties as there had been no trauma or prior injuries of the neck.

By decision dated June 23, 2010, the Office denied modification.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) medical evidence establishing the presence or existence of a condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the condition; and (3) medical evidence establishing that the employment factors identified by the employee were the proximate cause of the condition or illness, for which compensation is claimed or stated

² Docket No. 09-1653 (issued March 26, 2010).

differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.³

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁴ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between an employee's diagnosed conditions and the implicated employment factors.⁵ 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 conditions and the specific employment factors identified by the employee.

ANALYSIS

Appellant filed an occupational disease claim alleging that he sustained a C7 herniated disc with radiculopathy as a result of repetitive motion associated with the delivery of mail. The Office accepted and the evidence establishes that he performed the duties of a letter carrier. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed C7 herniated disc with radiculopathy and the identified employment factors. However, the Office found that the medical evidence did not establish a medical condition arising from these employment factors.

The Board finds that the record contains medical evidence indicating that there is a causal relationship between appellant's employment activities and his diagnosed back condition. In December 10, 2007 and February 15, 2008 CA-20 reports, Dr. Salzberg diagnosed cervical herniated disc with radiculopathy. He explained on the December 10, 2007 form that this condition was related to appellant's repetitive work duties of reaching, sorting mail and carrying mail. On April 29, 2008 Dr. Salzberg opined that appellant's C7 herniated disc with radiculopathy had been aggravated by the repetitive motion of his neck and right arm. In a November 19, 2008 report, he attributed appellant's cervical radiculopathy and neck pain to his work duties.

Similarly, Dr. Bajwa also attributed appellant's right C7 radiculopathy to his repetitive employment duties. On August 28, 2008 he noted that he had reviewed appellant's work duties and found that appellant's symptoms were consistent with an injury caused by repetitive work. Dr. Bajwa opined that, due to appellant's long work history with the employing establishment and lack of any other reported injury, appellant's repetitive work duties were the most probable cause of his right C7 radiculopathy.

³ *D.D.*, 57 ECAB 734 (2006); *Donna L. Mims*, 53 ECAB 730 (2002).

⁴ *David Apgar*, 57 ECAB 137 (2005); *I.R.*, Docket No. 09-1229 (issued February 24, 2010).

⁵ *G.G.*, 58 ECAB 389 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

The remaining evidence submitted in support of appellant's request consists of a May 4, 2009 report from Mr. Andusko, a physician's assistant. This report does not constitute competent medical evidence because Mr. Andusko is not a physician as defined in FECA.⁶

The Board finds that these reports, while not individuals sufficient to warrant further development, are sufficient to require further development of the case record by the Office.⁷ The reports from two different physicians, related appellant's condition to work duties which were specifically described as repetitive in nature. Proceedings under FECA are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁸ Additionally, the Board notes that in this case the record contains no evidence to contradict the repetitive motion of appellant's duties or any medical evidence to the contrary. The case will be remanded for the Office to refer appellant for a second opinion examination to determine causal relationship. Following this and such further development as the Office deems necessary, an appropriate decision should be issued

CONCLUSION

The Board finds this case is not in posture for decision as to whether or not appellant's C7 herniated disc with radiculopathy was sustained in the performance of duty causally related to factors of his employment.

⁶ A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician under section 8101(2) of FECA. Thus, the reports of a physician's assistant are entitled to no weight as a physician's assistant is not a "physician" as defined by section 8101(2) of FECA. See *J.M.*, 58 ECAB 303 (2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

⁷ *Felix Flescha*, 52 ECAB 268 (2001); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁸ *R.E.*, 59 ECAB 323 (2008); *Peter C. Belkind*, 56 ECAB 580 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 23, 2010 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: June 13, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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