

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

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J.E., Appellant )  
and ) Docket No. 10-2009  
U.S. POSTAL SERVICE, POST OFFICE, ) Issued: June 8, 2011  
London, KY, Employer )  
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*Appearances:*

*Alan J. Shapiro, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 27, 2010 appellant, through her attorney, filed a timely appeal from a June 22, 2010 merit decision of the Office of Workers' Compensation Programs' hearing representative denying her occupational disease claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 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 her right shoulder condition was causally related to factors of her employment.

**FACTUAL HISTORY**

On September 30, 2009 appellant, then a 47-year-old rural mail carrier, filed an occupational disease claim alleging that she sustained right shoulder impingement and a rotator

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

cuff tear as a result of repetitive motion of her arms, shoulders and hands at work.<sup>2</sup> She first became aware of her condition and realized it was caused by her employment on October 8, 2008.

In an October 5, 2009 letter, the Office advised appellant that the evidence submitted was insufficient to establish her claim and requested additional information. It asked her to describe the employment-related activities she believed caused her condition, how often and for how long she performed these activities, any activities she participated in outside of her federal employment, the development of her claimed condition and any previous orthopedic injuries. The Office also asked appellant to submit medical evidence in support of her claim.

In an October 9, 2009 statement, appellant noted that she had worked as a rural mail carrier since January 6, 1996. Her route consisted of approximately 570 active deliveries with up to 100 left and right hand turns. Appellant's duties included casing mail, which required folding newspapers and large envelopes and putting mail in the appropriate customer slot. She cased approximately 500 to 1,000 magazines and/or large envelopes and 150 to 400 letters a day. Appellant also retrieved parcels, letters and box holders, placed them in a buggy, which could weigh up to several hundred pounds, and arranged them in delivery sequence before loading them into her vehicle. On her delivery route, she sat on the right side passenger seat with a bundle of mail on her lap, reached into the tub on her lap and into box holders behind her and placed the mail into the appropriate mailbox. Appellant stated that she reached over her shoulder four to five hours a day, drove with her left hand and reached with her right hand when delivering mail. She reported having great stress and pain on her shoulders from driving her vehicle and making the appropriate turns.

Appellant provided several CA-7 forms for leave without pay for the periods September 27 to October 9, 2009 and October 10 to 23, 2009 with the corresponding time analysis forms. She also provided several work status reports by an unknown provider authorizing her to return to light duty and diagnosing thoracic outlet, carpal tunnel and cubital tunnel syndrome. Appellant submitted various handwritten notes from an unknown provider describing her conditions, including left shoulder rotator cuff tear and bilateral carpal tunnel syndrome.

In a September 28, 2009 medical note, Dr. Robert T. Grant, a Board-certified orthopedic surgeon, reported appellant's complaint of pain and popping in her right shoulder as a result of a workman's compensation injury. Upon physical examination, he observed crepitus in the subacromial space through range of motion and pain in the impingement position.

In an October 14, 2009 attending physician's report, Dr. Grant noted that he saw appellant for right shoulder impingement. Appellant experienced pain in the impingement position, but x-rays showed no bony abnormalities. Dr. Grant diagnosed subacromial

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<sup>2</sup> On September 30, 2009 appellant also filed an occupational disease claims for cubital tunnel syndrome and thoracic outlet syndrome. The Office accepted her claim (File No. xxxxxx493) for bilateral ulna nerve, bilateral carpal tunnel syndrome and bilateral thoracic outlet syndrome, so the only claim to consider on appeal is the right shoulder impingement condition. Appellant submitted medical evidence pertaining solely to these other claims, which will not be evaluated as part of this appeal.

impingement of the right shoulder and checked a box marked "yes" that her condition was caused or aggravated by her employment activities. He explained that appellant was having pain with mail delivery activities. Dr. Grant proscribed physical therapy from August 3 to September 28, 2009.

In an October 29, 2009 attending physician's report, Dr. Erdogan Atasoy, a Board-certified surgeon, observed that appellant reported upper extremity pain with numbness and tingling since December 2006. He diagnosed bilateral thoracic outlet syndrome and bilateral cubital tunnel. Dr. Atasoy also checked a box marked "yes" that appellant's conditions were caused or aggravated by her employment activities and explained that repetitive small muscle trauma resulted in inflammation and swelling with compression of nerves.

In a letter dated November 6, 2009, the employing establishment controverted appellant's claim. It included a copy of her position description and a job offer for a modified assignment as a duty clerk, which she accepted.

In a letter dated October 14, 2009, the postmaster contended that appellant planned to file her claim in advance. He was unaware of any work-related injuries until she completed a duty status report after her September 28, 2009 doctor's appointment. On November 10, 2009 appellant's supervisor stated that, after appellant's September 28, 2009 doctor's appointment, she informed him that she needed to be on limited duty. Prior to her claimed condition, he stated that she performed her duties as a rural carrier without restrictions or complaints of pain.

On November 18, 2009 the Office received appellant's response to the employing establishment's conversion letter with copies of evidence previously submitted. In a November 30, 2009 duty status report, Dr. Atasoy stated her history of injury included thoracic outlet syndrome, cubital tunnel and a 2006 left shoulder injury with development of upper extremity nerve compression. He noted that she tested positive for Tinel's sign, hyperabduction and costoclavicular compression and that her electromyogram/nerve conduction study revealed ulnar nerve neuropathy. Dr. Atasoy checked a box marked "yes" that he believed her condition was caused or aggravated by her employment activities, but did not provide an explanation.

In a decision dated January 15, 2010, the Office denied appellant's claim finding that the medical evidence was insufficient to establish that her right shoulder condition resulted from her mail carrier employment duties.

On January 29, 2010 appellant, through her attorney, requested a telephone hearing that was held on April 14, 2010. She reiterated that her right shoulder condition was caused by delivering mail and repetitively raising her arm over her shoulder at work for the past 15 years. Appellant had about 580 people on her route, which required her to deliver mail roughly 500 times a day and case mail at least two hours a day. She sat on the passenger side of her vehicle, drove with her left arm on the steering wheel and reached to put mail into the mailboxes with her right arm. Appellant also delivered packages about 20 to 25 times a day, which required her to exit her vehicle and carry the package to the house. She further explained that she did not participate in any other activities outside of her federal employment which required extensive use of her right arm. Appellant first noticed her right shoulder symptoms in 2008 and sought

treatment shortly thereafter. Her representative referenced a September 28, 2009 medical report from Dr. Grant, who found a shoulder impingement.

In a February 2, 2010 medical report, Dr. Atasoy stated that he treated appellant for thoracic outlet compression and opined that her condition was a result of her work as a mail carrier. He explained that her mail carrier duties produced muscle spasms that put compression on the neurovascular structures within the thoracic outlet space.

In April 29 and May 4, 2010 letters, appellant's supervisor again pointed out that appellant returned to full duty and performed her rural mail carrier duties for several months. He explained that she requested sick leave for a September 28, 2009 doctor's appointment but did not mention that the appointment related to a work-related injury. Appellant subsequently accepted a modified job assignment offer with restrictions and was released to full-duty status.

By decision dated June 22, 2010, an Office hearing representative affirmed the January 15, 2010 decision. She accepted that appellant's duties as a rural carrier required repetitive pulling, casing, reaching and delivering mail with her arms but found that the medical evidence of record failed to establish causal relationship.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act<sup>3</sup> has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative, and substantial evidence<sup>4</sup> including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.<sup>5</sup> In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or existence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>7</sup> 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

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>5</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

<sup>6</sup> *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000); *D.U.*, Docket No. 10-144 (issued July 27, 2010).

<sup>7</sup> *D.I.*, 59 ECAB 158 (2007); *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *W.D.*, Docket No. 09-658 (issued October 22, 2009).

specified employment factors or incident.<sup>8</sup> 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 employment factors identified by the employee.<sup>9</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that an employee's condition surfaced during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>10</sup> The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.<sup>11</sup>

## ANALYSIS

The Office accepted that appellant's duties as a rural mail carrier involved casing mail, reaching over her shoulder and reaching with her right arm to deliver mail. The Board finds that she failed to submit sufficient medical evidence to establish that her right shoulder condition was causally related to her employment activities.

In a September 28, 2009 report, Dr. Grant noted appellant's complaints of pain and popping in her right shoulder due to a workman's compensation injury. He observed that her right shoulder showed crepitus in the subacromial space and pain in the impingement position. In an October 14, 2009 physician's report, Dr. Grant diagnosed appellant with right shoulder subacromial impingement and checked a box marked "yes" that her condition was caused by her employment activities. He stated that she experienced pain with her mail delivery activities. The Board notes that Dr. Grant's reports are not based upon a full and accurate medical history or description of the duties appellant performed as a rural mail carrier. The medical evidence of record indicates that appellant had prior history of shoulder complaints in 2008 of unknown origin. Dr. Grant did not indicate an awareness of this prior history. He failed to describe any specific work duties or explain how the accepted employment factors would cause or aggravate appellant's shoulder condition. Rationalized medical opinion evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician.<sup>12</sup> Dr. Grant only generally referenced mail delivery activities, but he did not discuss

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<sup>8</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *B.B.*, 59 ECAB 234 (2007); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

<sup>10</sup> See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>11</sup> *Patricia Bolleter*, 40 ECAB 373 (1988).

<sup>12</sup> *Solomon Polen*, 51 ECAB 341 (2000); *J.J.*, Docket No. 09-27 (issued February 10, 2009).

appellant's specific duties, such as folding, pulling and reaching mail over her shoulder, nor explain how these specific activities caused or aggravated her right shoulder impingement.<sup>13</sup>

On October 29, 2009 Dr. Atasoy diagnosed thoracic outlet compression syndrome and opined that appellant's work as a mail carrier caused muscle spasms with compression on the neurovascular structures within the thoracic outlet space. His report is of limited probative value as he failed to relate a complete history of appellant's right shoulder condition, or an understanding of the specific details of her job duties. Therefore, Dr. Atasoy's report does not actually provide a probative medical opinion explaining how specific work duties caused the diagnosed right shoulder condition.

Appellant, therefore, failed to submit sufficient medical evidence which explained, with medical rationale, how her accepted employment factors caused her right shoulder condition.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that her right shoulder impingement was causally related to her employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 22, 2010 decision of the Office of Workers' Compensation Program is affirmed.

Issued: June 8, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>13</sup> C.B., Docket No. 09-2027 (issued May 12, 2010); A.C., Docket No. 08-1453 (issued November 18, 2008).