

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

S.L. Appellant)	
)	
and)	Docket No. 10-2170
)	Issued: June 10, 2011
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Cleveland, OH, Employer)	
)	

<i>Appearances:</i> Alan J. Shapiro, Esq., for the appellant Office of Solicitor, for the Director	<i>Case Submitted on the Record</i>
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DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 24, 2010 appellant, through her representative, filed a timely appeal from a July 21, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the 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 January 6, 2010 appellant, then a 52-year-old modified mail processing clerk, filed an occupational disease claim alleging that she sustained a herniated cervical intervertebral disc and

¹ 5 U.S.C. § 8101 *et seq.*

cervicalgia due to repetitive strain. She became aware of her condition on February 22, 2008 and its relationship to her employment on November 30, 2009. Appellant did not stop work.² The employing establishment controverted her claim on the grounds that she did not furnish medical evidence supporting a work-related injury.

In a statement dated January 4, 2010, appellant detailed that she was with the employing establishment for almost 22 years, primarily as a mail carrier and distribution clerk. Her various duties included casing, sorting and stamping mail, performing computer-oriented tasks and scanning with a three-pound handheld device for 40 hours each week. As use of the scanner bothered her neck, shoulders and arms, appellant eventually worked with restrictions. She was diagnosed with carpal tunnel syndrome in October 2007, having experienced pain and tingling in both hands. Appellant was later advised by her physician that these symptoms may have emanated from a neck problem.

The Office informed appellant on January 15, 2010 that additional evidence was needed to establish her claim. It gave her 30 days to submit medical reports describing the history of injury, examination findings, diagnosis and course of treatment as well as offering a physician's reasoned opinion as to how employment factors caused or aggravated the injury.

Appellant provided medical evidence that included a January 1, 1994 work status note from Dr. John Thompson, an internist, who excused her from work on January 3, 1994 due to torticollis. In a November 30, 2009 treatment record, Dr. Atanase Craciun, a Board-certified neurologist, diagnosed cervical pain, cervicalgia and a herniated cervical disc. He referred appellant for physical therapy. January 27, 2004 medical forms from Dr. Daniel A. Breitenbach, an internist, stated that appellant sustained right and left shoulder strains on December 10, 1999 and December 9, 2003, respectively. Dr. Breitenbach also listed appellant's work restrictions.

By decision dated February 16, 2010, the Office denied appellant's claim, finding the medical evidence insufficient to demonstrate that employment factors caused or contributed to her condition.

Appellant continued submitting evidence. In a December 13, 2003 narrative statement, she stated that she began casing mail in December 1999, which entailed repetitive reaching and grasping laterally and above her head. This led to shoulder and neck discomfort and eventually spasms by December 2003. Appellant also submitted additional medical evidence. In a February 17, 1998 emergency report from Dr. Peter King, a Board-certified emergency physician, she presented with right shoulder and posterior neck pain that was exacerbated by mail casing. She explained that this work activity involved constant back-and-forth arm movement. Dr. King noted her history of torticollis, trapezius and lower back pain and radiculitis. On palpation, he observed soreness and spasms along the margin of the right trapezius muscle and diagnosed chronic trapezius myositis.

An October 6, 2008 magnetic resonance imaging (MRI) scan report from Dr. Lisa Majeski, a diagnostic radiologist, revealed canal stenosis of the C5-6 and C6-7 vertebrae

² Appellant previously filed claims concerning shoulder and other injuries. These other claims are not before the Board on the present appeal.

resulting from diffuse disc bulging, end plate degenerative changes and facet hypertrophy. A January 7, 2010 MRI scan report from Dr. Manzoor Ahmed, a Board-certified diagnostic radiologist, exhibited cervical spondylosis, moderate disc osteophyte hypertrophic change and mild canal encroachment without gross spinal cord compression or foraminal encroachment.

In February 26 and May 10, 2010 duty status reports, Dr. Craciun remarked that appellant sustained bilateral wrist and neck symptoms on February 22, 2009.

Appellant requested a telephonic hearing, which was held on June 1, 2010. At the hearing, she testified that she manually stamped the contents of four to eight trays, which ranged between 800 to 1,000 pieces of mail, each shift since October 2009. Appellant recalled that she was stamping mail on November 30, 2009 when she was unable to move her neck due to pain. Prior to stamping, she routinely carried 35- to 75-pound mailbags and cased mail, both of which contributed to occasional neck problems.

Evidence submitted after the hearing included a November 30, 2009 report from Dr. Craciun, noting that appellant complained of bilateral arm numbness and tingling since March 2006. Appellant worked for the employing establishment for many years and experienced issues with her right shoulder and neck. An MRI scan in 2008 indicated moderate C6 and C7 deterioration and bulging. Dr. Craciun examined appellant and observed an ill-defined pinprick level at the C4-5 vertebrae. He diagnosed bilateral cervical radiculopathy and degenerative joint disease.

A November 30, 2009 cervical x-ray report by Dr. George Belhobek, a Board-certified diagnostic radiologist, showed C5-6 and C6-7 disc space narrowing with osteophyte formation, a finding consistent with degenerative disc disease. A January 7, 2010 three-phase bone scan report from Dr. Steve S. Huang, a Board-certified nuclear physician, exhibited likely degenerative changes at the C5-6 junction and C2 spinous process.

In a January 15, 2010 report, Dr. Craciun noted that January 7, 2010 MRI scan and bone scans demonstrated clear C5-6 and C6-7 degenerative changes, osteophytes and foraminal stenosis. On physical examination, he observed a mild, ill-defined C4-5 sensory pinprick level. Dr. Craciun assessed bilateral cervical radiculopathy and moderate cervical canal stenosis.³ He added in a January 15, 2010 duty status report that appellant could resume restricted duty effective January 15, 2010.

On July 21, 2010 an Office hearing representative affirmed the February 16, 2010 decision.

LEGAL PRECEDENT

An employee seeking benefits under the 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 timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged

³ Dr. Craciun subsequently restated his findings in a May 10, 2010 report.

and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁶ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence 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.⁷

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

ANALYSIS

The evidence supports that appellant regularly stamped mail in her recent position and previously carried mailbags and cased mail. The record also contains firm medical diagnoses of cervical radiculopathy, canal stenosis and degenerative joint disease. Nevertheless, appellant did not submit sufficient medical evidence demonstrating that the described employment factors caused or contributed to her neck condition.

In a November 30, 2009 report, Dr. Craciun related that appellant experienced neck problems while working for the employing establishment. After reviewing radiological findings and conducting a physical examination, he diagnosed bilateral cervical radiculopathy and degenerative joint disease. Dr. Craciun, however, failed to provide any medical rationale explaining how stamping, casing or carrying a mailbag pathophysiologically caused appellant's condition.⁹ He only mentioned that she sustained cervical injuries while she was federally

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *See S.P.*, 59 ECAB 184, 188 (2007).

⁷ *See R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁸ *I.J.*, 59 ECAB 408, 415 (2008); *Woodhams*, *supra* note 5, at 352.

⁹ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

employed. A medical opinion not fortified by medical rationale is of diminished probative value.¹⁰ Moreover, while Dr. Craciun appeared to attribute appellant's condition to her employment, he did not specify any of the contributing work factors.¹¹ The rest of his reports for the period January 15 to May 10, 2010 were of diminished probative value because they did not offer any opinion regarding the cause of injury.¹²

Dr. King stated in a February 17, 1998 report that appellant's posterior neck pain was aggravated by mail casing at work, which involved tedious arm movement. He also pointed out appellant's prior history of torticollis and radiculitis. Still, Dr. King did not fortify his opinion with medical rationale describing how this activity resulted in a neck injury.¹³ Finally, the various diagnostic reports and medical notes furnished by Drs. Ahmed, Belhobek, Breitenbach, Huang, Majeski and Thompson are of limited probative weight because none provide any opinion on causal relationship.

Appellant's counsel contends on appeal that the July 21, 2010 decision was contrary to fact and law. As noted, the medical evidence did not sufficiently explain how employment factors caused or aggravated her claimed cervical conditions. In the absence of well-reasoned medical opinion explaining this relationship, appellant failed to meet her burden.

CONCLUSION

The Board finds that appellant failed to establish that she sustained an occupational disease in the performance of duty.

¹⁰ *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (a medical opinion not fortified by medical rationale is of little probative value).

¹¹ *See John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to diagnosed medical condition).

¹² *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009). The Board notes that Dr. Craciun's duty status reports indicated that appellant's condition developed on February 22, 2009 during a single workday or shift rather than over a period of time. This reasoning is more consistent with a claim for traumatic injury than one for occupational disease. *See* 20 C.F.R. § 10.5(q) and (ee).

¹³ The Board notes that Dr. King's report preceded appellant's present claim by over a decade. *See Conard Hightower*, 54 ECAB 796 (2003) (contemporaneous evidence is entitled to greater probative value).

ORDER

IT IS HEREBY ORDERED THAT the July 21, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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