

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

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**J.S., Appellant** )

**and** )

**U.S. POSTAL SERVICE, POST OFFICE,** )  
**Dayton, OH, Employer** )

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**Docket No. 13-2022  
Issued: July 28, 2014**

*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  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 3, 2013 appellant, through his attorney, filed a timely appeal from the April 8, 2013 Office of Workers' Compensation Programs' (OWCP) decision, which affirmed the September 14, 2012 decision which found that he did not sustain an injury in the performance of duty. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) 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 his burden of proof in establishing that he sustained an injury causally related to factors of his federal employment.

**FACTUAL HISTORY**

On September 20, 2011 appellant, then a 58-year-old letter carrier, filed an occupational disease claim alleging that he sustained extreme pain in the left arm, back and shoulders in the

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

performance of duty. He alleged that his injury began on May 16, 2011 and that he first became aware of the injury on that date. Appellant stopped work on May 17, 2011.

By letter dated September 29, 2011, OWCP advised appellant that additional factual and medical evidence was needed. It explained that a physician's opinion was crucial to his claim and allotted him 30 days to submit the requested information.

In a May 21, 2011 discharge report, Dr. Naveena Sallapudi, a Board-certified internist, noted appellant's history and explained that he was admitted because of back and neck pain after a slip four months earlier. He advised that a magnetic resonance imaging (MRI) scan of the cervical spine revealed disc herniation at C4-5 with radiculopathy and at the C5 level. Dr. Sallapudi explained that appellant underwent fusion surgery on May 20, 2011 and had an anterior C4-5 discectomy and fusion. He diagnosed C4-5 disc herniation with radiculopathy and myelopathy.

In an October 11, 2011 statement, appellant explained that he was walking on his route on May 16, 2011 and carrying his satchel, which weighed 35 pounds, on his right shoulder. He was also carrying letters and flats in his left hand and arm, when he began to feel pain that became severe after about five hours. Appellant noted that he called the employing establishment and advised them about his condition but there was no one to finish his deliveries and he was told to deliver the remaining mail. He noted that when he returned, he advised his supervisor that his arm was in pain. Appellant explained that he performed this job activity for six to seven hours, five days a week.

In an October 26, 2011 report, Dr. Morris Brown, Board-certified in family medicine, noted that he was appellant's primary care physician since September 2006. He advised that appellant was injured at work on May 16, 2011 and that he saw him on June 21, 2011. Dr. Brown advised that appellant related that the neck pain was so severe and he was not able to work and required surgery on May 20, 2011. He indicated that the medical records revealed that appellant had previous neck, back and shoulder pain as a result of carrying his mailbag. Dr. Brown opined that "it is my opinion the patient's injury on May 16, 2011 is the result of his employment."

By decision dated December 19, 2011, OWCP denied appellant's claim. It found that the medical evidence did not demonstrate that the claimed medical condition was related to established work-related events.

On December 21, 2011 appellant's representative requested a telephonic hearing, which was held on March 20, 2012.

In a May 18, 2011 admission report, Dr. Sallapudi noted that appellant was having pain in the neck and left shoulder for at least four months, but worse in the last two to three days per his wife, who was at his bedside. He advised that appellant was a mail carrier and apparently "slipped in one of the ice storms we had this winter and ended up hitting a tree...." Dr. Sallapudi noted that appellant's symptoms were worse since that time. He examined appellant and diagnosed: atypical chest pain because of patient's risk factors, severe degenerative disc disease

with spinal cord flattening at C4-5 level and advised that he counseled appellant on smoking cessation.

In a January 10, 2012 report, Dr. Brown advised that he had been appellant's primary care physician since September 2006. He explained that appellant presented to the office on April 8, 2011 complaining of severe left shoulder, back and neck pain for the previous three months. Dr. Brown related that appellant indicated that his mailbag had become increasingly difficult to carry; he had fallen on ice while carrying the mail and his pain became worse. He noted that his examination revealed decreased cervical and left shoulder range of motion; decreased grip strength and C4-5 radiculopathy. Dr. Brown indicated that appellant was seen again on May 10, 2011 and advised that he could not carry his mailbag due to the severe left shoulder back and pain. He further noted that on May 16, 2011 appellant had left shoulder and neck pain that he attributed to lifting food for the employing establishment's food drive. Dr. Brown advised that appellant was treated with intramuscular injection and advised to rest his left arm. However, due to the severe pain, appellant presented to the hospital and underwent emergency C4-5 discectomy and fusion. Dr. Brown explained that he saw appellant on June 21, 2011 and he continued to have decreased range of motion of the neck and shoulder. He placed him off work until August 1, 2011. Dr. Brown indicated that appellant was referred for physical therapy and continued treatment with the neurosurgeon, who indicated that appellant could not return to work for 30 days. He opined that it "is my medical opinion the left shoulder pain and cervical radiculopathy are the direct result of carrying out the task of mail carrier."

OWCP also received hand written treatment notes for the period April 8 through July 21, 2011. The notes were illegible and it was not clear that they were signed by a physician. OWCP also received a May 6, 2011 report from Dr. Brown, who noted that appellant was involved in a food drive over the weekend carrying heavy objects and also worked as a mailman. Dr. Brown diagnosed left shoulder pain. OWCP also received an October 27, 2011 disability certificate.

By decision dated May 17, 2012, OWCP's hearing representative affirmed in part OWCP's December 19, 2011 decision. She noted that there was no diagnosis related to the shoulder or lower back and affirmed the decision as it related to the claimed left shoulder and lower back conditions. However, based upon Dr. Brown's report of January 10, 2012, the hearing representative remanded the claim as it related to the claimed cervical condition. She indicated that OWCP should prepare a statement of accepted facts discussing appellant's work duties, the fact that he had slipped and fallen several times since February 2011 and information about lifting while participating in a food drive at work. OWCP's medical adviser indicated that OWCP should either request an opinion from Dr. Brown regarding whether appellant's cervical radiculopathy was related to his work duties or request a second opinion examination.

By letter dated July 18, 2012, OWCP requested an updated opinion from Dr. Brown regarding appellant's cervical radiculopathy. A statement of accepted facts accompanied the letter.

By letter dated September 7, 2012, counsel requested an update. In treatment notes dated August 19, 2012, Dr. Brown diagnosed cervical displacement and lumbago. He indicated that appellant was unable to return to work.

By decision dated September 14, 2012, OWCP denied appellant's claim. It found that the medical evidence did not demonstrate that the claimed medical condition was related to established work-related events.

On September 19, 2012 counsel requested a telephonic hearing, which was held on January 16, 2013. In a letter dated February 15, 2013, he enclosed a copy of the January 10, 2012 report from Dr. Brown.

By decision dated April 8, 2013, OWCP's hearing representative affirmed the September 15, 2012 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, 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.<sup>3</sup> 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.<sup>4</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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 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>5</sup>

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<sup>2</sup> *Id.* at §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *Id.*

## ANALYSIS

The Board finds that this case is not in posture for decision. In this case, the evidence establishes that appellant has slipped and fallen several times since February 2011 and was involved in lifting while participating in a food drive at work.

The Board also finds that, although the medical evidence is insufficiently rationalized to establish that appellant sustained a work-related condition, the medical reports of record are generally supportive with regards to his work-related activities causing or aggravating his diagnosed conditions. The Board further notes that there is no contradictory evidence.

The record contains several reports from Dr. Brown. In his May 16, 2011 treatment note, Dr. Brown noted that appellant was involved in a food drive over the weekend carrying heavy objects and also worked as a mailman. He diagnosed left shoulder pain. In his October 26, 2011 report, Dr. Brown noted that he was appellant's primary care physician since September 2006. He advised that appellant was injured at work on May 16, 2011 and that he saw him on June 21, 2011. Dr. Brown advised that appellant related that the neck pain was so severe and he was not able to work and required surgery on May 20, 2011. He also indicated that the medical records revealed that appellant had previous neck, back and shoulder pain as a result of carrying his mailbag. Dr. Brown opined that "it is my opinion the patient's injury on May 16, 2011 is the result of his employment." He elaborated on appellant's condition in his January 10, 2012 report. Dr. Brown explained that appellant presented to the office on April 8, 2011 complaining of severe left shoulder, back and neck pain for the previous three months. He related that appellant indicated that his mailbag had become increasingly difficult to carry; he had fallen on ice while carrying the mail and his pain became worse. Dr. Brown provided findings which included decreased cervical and left shoulder range of motion; decreased grip strength and C4-5 radiculopathy. He noted seeing appellant again on May 10, 2011 and advising that he could not carry his mailbag due to the severe left shoulder back and pain. On May 16, 2011 appellant presented with left shoulder and neck pain from lifting food for the employing establishment's food drive. Dr. Brown opined that it "is my medical opinion the left shoulder pain and cervical radiculopathy are the direct result of carrying out the task of mail carrier." While none of these reports were completely rationalized, they were consistent in indicating that appellant sustained an employment-related cervical condition.

The Board also notes that in the May 17, 2012 decision, OWCP's hearing representative remanded the case for further development of the medical evidence. She indicated that OWCP should either request an opinion from Dr. Brown regarding whether appellant's cervical radiculopathy was related to his work duties or request a second opinion examination. As Dr. Brown, did not provide an opinion, OWCP should have requested a second opinion examination in these circumstances.

Proceedings under FECA are not adversarial in nature nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>6</sup> While

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<sup>6</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

Dr. Brown's reports do not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that his cervical condition was caused or aggravated by factors of his employment, these reports raise an inference of causal relationship sufficient to require further development of the case record by OWCP.<sup>7</sup>

On remand, OWCP should refer appellant, the case record and a statement of accepted facts to the appropriate specialist for an evaluation and a rationalized medical opinion regarding the cause of appellant's condition. After such further development of the case record as OWCP deems necessary, a *de novo* decision shall be issued.

On appeal, counsel made several arguments in support of his claim. However, in light of the Board's disposition to remand her claim, it is premature to address his arguments at this time.

**CONCLUSION**

The Board finds that this case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 8, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with this decision.<sup>8</sup>

Issued: July 28, 2014  
Washington, DC

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

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

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<sup>7</sup> See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>8</sup> Richard J. Daschbach, Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after May 16, 2014.