United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 15-82**
	)	**Issued: March 9, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Lemont, IL, Employer	)	

Appearances:
Capp P. Taylor, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 15, 2014 appellant, through his attorney, timely appealed the September 3, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on or about December 6, 2012.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

Appellant, a 58-year-old retired letter carrier, filed a timely occupational disease claim (Form CA-2) for cervical radiculopathy, which arose on or about December 6, 2012.[2] He described his letter carrier duties as requiring constant neck and upper body full-range repetitive motions. Appellant also stated that delivering bundles of mail on the street increased full-range neck motions. He began experiencing a stiff neck in November 2012, which progressively worsened over the next few weeks. Appellant developed pain in his right shoulder blade, burning, and constant pain in his right arm, as well as tingling and numbness in his right thumb and index finger. He claims he retired early because of his cervical condition.

Dr. John A. Panozzo, a Board-certified family practitioner, in his March 6, 2013 report, found appellant had severe nerve impingement at C4 and C6, with right-side radicular pain and weakness. He noted that appellant had been under his care since December 27, 2012, and was unable to perform his current job.[3]

On August 19, 2013 OWCP informed appellant of the five basic elements to establishing entitlement under FECA. Additionally, it advised that the medical evidence submitted thus far was insufficient. Appellant was afforded at least 30 days to provide, *inter alia*, a physician's opinion explaining how employment activities either caused, aggravated, or contributed to his severe nerve impingement at C4 and C6.[4]

OWCP subsequently received March and April, 2013 treatment notes from Dr. Asad A. Cheema, a Board-certified anesthesiologist with a subspecialty in pain medicine. Appellant had complained of right shoulder and arm pain. Dr. Cheema diagnosed cervicalgia, cervical degenerative disc disease, and right C6 radiculopathy. On March 25 and April 9, 2013 he administered C5-6 epidural steroid injections. Appellant returned for a follow-up on April 23, 2013 and was noted to be doing much better after his injection. Physical examination revealed increased cervical spine range of motion. Appellant received matrix therapy and was scheduled for a third injection in two weeks.

In an August 28, 2013 report, Dr. Panozzo noted that he had treated appellant for shoulder and neck pain on four occasions between December 6, 2012 and June 6, 2013. Test results revealed degenerative disc disease at C3-4 with right foraminal stenosis and right C4 nerve root impingement. There was also evidence of broad-based disc bulge at C5-6, left foraminal narrowing, and marked right foraminal stenosis with apparent impingement of the right C6 nerve root. Dr. Panozzo diagnosed cervical pain, right upper extremity pain/weakness, and right foraminal stenosis. Appellant's treatment included physical therapy. Dr. Panozzo also provided work restrictions that included limited repetitive neck movements, no heavy lifting in excess of 10 pounds, and no repetitive upper extremity movement. Regarding causal

[2] Appellant retired April 1, 2013. His Form CA-2 is dated June 16, 2013; however, the employing establishment did not receive the claim until August 14, 2013.

[3] The March 6, 2013 handwritten note contains additional information that is illegible.

[4] OWCP also requested a description on appellant's activities outside of his federal employment.

relationship, he explained that appellant's job required constant neck and upper body full-range repetitive movement four to six hours a day. Dr. Panozzo also explained that appellant worked in a cramped vehicle that limited his body movement, thus requiring him to use his neck to look from far left to far right.

Dr. M. Kamran Khan, a Board-certified neurosurgeon, submitted a September 16, 2013 report summarizing his treatment of appellant. He initially examined appellant on February 5, 2013, then saw him on four additional occasions through September 13, 2013. Appellant's symptoms included neck pain, right arm pain with numbness and tingling, right first and second digit paresthesias, and shooting pain in the right arm and scapula. Dr. Khan described appellant's right arm pain as lancinating, and noted the pain limited his activities. He also indicated appellant's pain was worse with position changes. Test results revealed multilevel degenerative disc disease with severe foraminal stenosis on the right at C5-6, which limited appellant's activities and ability to work. Dr. Khan believed the repetitive motions of a letter carrier could have been the cause of appellant's degenerative cervical spine and could be potentiating his symptomatology.[5] He diagnosed cervical radiculopathy, neck pain, and multilevel degenerative disc disease with severe foraminal stenosis on the right at C5-6. Appellant's course of treatment included physical therapy, pain medication (Tramadol), nonsteroidal anti-inflammatory drugs (Naproxen), and epidural steroid injections, all of which provided minimal relief.[6] Dr. Khan also noted appellant had a home exercise program. He explained that appellant's repetitive motions on the job exacerbated his cervical degenerative disc disease, leading to a progression of his symptoms.

In a decision dated October 4, 2013, OWCP denied appellant's claim on the basis that the medical evidence failed to establish a causal relationship between the diagnosed cervical condition and his accepted employment exposure.

Appellant requested a hearing, which was held on March 31, 2014. He testified regarding his 36-year career as a letter carrier. The first 22 years appellant walked his route, delivering mail from a shoulder bag. After that, he spent 14 years on a curbside route delivering mail from a long life vehicle (LLV). Appellant indicated that he made approximately 800 deliveries each day on his curbside route. He also testified about an incident in early April 2013 when he was at home cleaning a ceiling fan and felt a "little twinge of pain" in his neck. Additionally, appellant submitted a March 4, 2014 typewritten statement regarding his curbside LLV delivery duties. He described how he began his day with a five-minute vehicle inspection, followed by one to three hours of sorting/casing mail. Afterwards, appellant would place the cased mail into trays, which he then loaded on gurneys, along with parcels and other machine-sorted flats/letters. He indicated that he transported the stacked gurney to the LLV and unloaded the mail/parcels into his delivery vehicle. Appellant then spent four to six hours driving the LLV

[5] Dr. Khan described appellant's letter carrier duties as requiring repetitive motions and full range of motion of the neck and upper body for four to six hours a day. He also noted that appellant worked in a cramped vehicle that limited his body movements. As such, appellant was required to use his neck to look from far left to far right repeatedly while delivering the mail.

[6] Dr. Khan had referred appellant to Dr. Cheema.

and delivering mail curbside. He stated that each day he would have to twist and turn his neck "tens of thousands of times."

Posthearing, OWCP received the results of a January 29, 2013 cervical magnetic resonance imaging (MRI) scan. Dr. Thomas A. Predy, a Board-certified diagnostic radiologist, found marked right degenerative facet hypertrophy and some hypertrophy of the uncovertebral joint, which caused marked right foraminal stenosis and right C4 nerve root impingement in the foramen. At the C5-6 level, there was a fairly broad-based eccentric right posterolateral disc bulge with small adjacent endplate osteophytes, which caused marked right foraminal stenosis and apparent impingement of the right C6 nerve root. Dr. Predy reported left foraminal narrowing and that the results were technically limited due to problems with patient motion during the examination.

In a March 26, 2014 report, Dr. Khan, referred by Dr. Panozzo, first saw appellant on February 5, 2013, and noted a history of neck and right arm pain since November 2012. He indicated at the time appellant denied any kind of recent injury, motor vehicle accident or fall. Appellant reported that his right arm numbness and tingling had progressed over the last month or so. Dr. Khan had previously, in February 2013, diagnosed cervical radiculopathy, and recommended four weeks of physical therapy and cervical traction and had prescribed Tramadol, as needed, for pain.

Appellant returned for follow-up on March 4 and 13, 2013. Dr. Khan noted that appellant continued to have shooting pain in his right arm and suprascapular region. An MRI scan revealed multilevel degenerative disc disease with foraminal stenosis, particularly on the right side at C5-6. Dr. Khan recommended that appellant see Dr. Cheema for possible cervical epidural steroid injections because it appeared that the pathology was more foraminal and not central canal. Appellant was scheduled for follow-up in six weeks. Dr. Khan noted that appellant returned on April 24, 2013 after pain management treatment with Dr. Cheema. In the interim, appellant apparently had suffered a temporary aggravation of his symptomatology while cleaning fans in his home, but his symptoms had since returned to baseline and his diagnosis remained the same. Dr. Khan referenced that appellant had been seen in the neurosurgery clinic and that it appeared appellant was getting some mild relief from Dr. Cheema's epidural steroid injections. He diagnosed neuritis or radiculitis secondary to the stenosis. Regarding causal relationship, Dr. Khan noted that he reviewed appellant's March 4, 2014 statement, and it was his belief that the repetitive movements and twisting required to perform his job duties aggravated an underlying cervical disc disease causing the foraminal stenosis with neuritis or radiculitis.[7]

OWCP also received a March 31, 2014 report from Dr. Panozzo, along with his progress notes dated December 6, 2012, January 15, March 6, and June 6, 2013. In his March 31, 2014 report, Dr. Panozzo noted that appellant was a longtime patient whom he treated for a neck condition beginning December 6, 2012.[8] At the time, appellant had experienced neck and right

[7] According to Dr. Khan, appellant did not appear to be a surgical candidate.

[8] The December 6, 2012 progress notes indicated that appellant complained of right shoulder pain, which began six days prior. There was no known injury. The progress notes identified appellant as a mailman who used his arm a lot. Appellant was also noted to have experienced pain with computer use.

shoulder pain for approximately six days without any known specific event or trauma occurring. He returned on January 15, 2013 after going to physical therapy and reported that his therapist advised that perhaps the problem was coming from the neck. Dr. Panozzo stated that appellant described burning upper arm pain and tingling in his thumb and first finger. Appellant also reported pain in the right shoulder blade and in the cervical spine area. Dr. Panozzo noted that extension of the right arm increased appellant's shoulder pain, and there was pain on palpation of the cervical spine at C6-7 just below the right shoulder blade. He provided a tentative diagnosis of cervical pain with radiculopathy, and recommended some diagnostic work.

Dr. Panozzo's March 31, 2014 report also included a description of appellant's January 29, 2013 cervical MRI scan results. He noted that when he saw appellant on June 6, 2013, he again presented with complaints of cervical pain and right upper extremity radiculopathy and weakness. Dr. Panozzo found appellant's complaints to be consistent with the cervical MRI scan findings. He also noted that he had referred appellant to Dr. Khan, a neurosurgeon, because it was evident appellant's condition would most likely require surgery. Dr. Panozzo's final diagnosis was consistent with Dr. Predy's interpretation of the January 29, 2013 cervical MRI scan.

Having reviewed appellant's March 4, 2014 statement, Dr. Panozzo indicated that since December 2012 appellant would have been incapable of performing the described job duties. He stated that the nearly continuous neck and upper extremity movements required of the job, which included lifting, carrying, reaching, and twisting, caused appellant's condition or at least permanently aggravated an existing degenerative condition.

By decision dated May 9, 2014, the Branch of Hearings and Review affirmed OWCP's October 4, 2013 decision. A hearing representative similarly found that appellant had failed to establish a causal relationship between his diagnosed cervical condition and the implicated employment factors.[9]

On June 2, 2014 counsel requested reconsideration. He resubmitted appellant's March 4, 2014 statement, along with a May 19, 2014 report from Dr. Cheema. In his report, Dr. Cheema noted that he began treating appellant on March 21, 2013 for complaints of neck, right shoulder, and arm pain. In addition to pain, which was primarily located in the C6 area, appellant also experienced weakness in the right hand. Dr. Cheema indicated that appellant noticed the pain around Thanksgiving 2012, and that it progressively worsened. Physical examination revealed decreased range of motion in the cervical spine, particularly at the C6 dermatomal. Dr. Cheema was of the impression appellant suffered from cervical degenerative disc disease with right C6 radiculopathy. Beginning March 25, 2013, he administered a series of epidural steroid injections that provided appellant some relief, but not complete relief. Dr. Cheema stated that he referred appellant back to Dr. Panozzo and advised that, if his condition worsened, appellant should either return for follow-up with him or return to see his neurosurgeon, Dr. Khan.

Dr. Cheema reviewed appellant's March 4, 2014 statement. He explained that appellant probably had some underlying cervical degenerative disc disease, and his constant upper

[9] The hearing representative accepted as factual appellant's description of his letter carrier duties, noting that the employing establishment had not disputed appellant's assertions concerning his former work activities.

extremity usage, as well as turning and twisting of his neck, aggravated the cervical degenerative disc disease to the point of producing the foraminal stenosis, which in turn caused radicular symptoms and the need for injections. Dr. Cheema further commented that appellant reached maximum medical improvement and was incapable of returning to work as a letter carrier given the described physical requirements.

In a September 3, 2014 decision, OWCP reviewed the merits of the claim, but denied modification of the hearing representative's May 9, 2014 decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[10]

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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 diagnosed condition is causally related to the identified employment factors.[11]

Where there is medical evidence of a preexisting condition involving the same part of the body as the claimed employment injury, the issue of causal relationship invariably requires inquiry into whether there was employment-related aggravation, acceleration, or precipitation of the underlying condition.[12] Accordingly, the physician must provide a rationalized medical opinion which differentiates between the effects of the work-related injury or disease and the preexisting condition.[13] Such evidence will permit the proper kind of acceptance, such as whether the employment-related aggravation was temporary or permanent.[14]

[10] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

[11] *Victor J. Woodhams*, *supra* note 10.

[12] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[13] *Id.*

[14] *Id.*

ANALYSIS

Appellant's diagnosed conditions include multilevel cervical degenerative disc disease, right C5-6 foraminal stenosis, and right-side cervical radiculopathy. Dr. Panozzo, Dr. Khan, and Dr. Cheema each reviewed appellant's March 4, 2014 statement regarding his letter carrier duties, and attributed his cervical condition at least in part to his employment. However, the Board finds that none of these physicians provided a rationalized medical opinion regarding causal relationship.

Dr. Khan initially surmised that the repetitive motions of a letter carrier could be the cause of appellant's degenerative cervical spine and could be potentiating his symptomatology. However, in that same September 16, 2013 report, he also explained that appellant's repetitive motions on the job exacerbated his cervical degenerative disc disease, leading to a progression of his symptoms. Dr. Khan was uncertain at the time whether appellant's letter carrier duties caused his cervical degenerative disc disease or merely exacerbated an underlying condition. His initial assessment was speculative at best.

In his latest report dated March 26, 2014, Dr. Khan stated that repetitive movements and twisting aggravated an underlying cervical degenerative disc disease causing appellant's foraminal stenosis with neuritis or radiculitis. With respect to this latter opinion, he failed to explain how appellant's letter carrier duties aggravated his underlying cervical degenerative disc disease. Dr. Khan also did not explain how he was able to distinguish the effects of the work-related aggravation from the underlying cervical degenerative disc disease. A physician's opinion on causal relationship must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.[15] Consequently, the Board finds that Dr. Khan's reports are insufficient to establish a causal relationship between appellant's cervical condition and his letter carrier duties.

In his March 31, 2014 report, Dr. Panozzo diagnosed cervical degenerative disc disease with right degenerative facet hypertrophy at C3-4 and right foraminal stenosis and right C4 nerve root impingement. He also diagnosed right C5-6 posterolateral disc bulge with osteophytes, right foraminal stenosis impinging the right C6 nerve root, and left foraminal narrowing producing bilateral radiculopathy -- right more than left.[16] As noted, Dr. Panozzo reviewed appellant's March 4, 2014 statement, and indicated that the nearly continuous neck and upper extremity movements required of the job caused appellant's condition or at least permanently aggravated the already degenerative condition. It is evident that he was uncertain whether appellant's letter carrier duties directly caused his cervical degenerative disc disease or was merely an aggravating factor. Not only is the opinion speculative, but Dr. Panozzo also failed to explain how appellant's nearly continuous neck and upper extremity movements either caused or

[15] *Victor J. Woodhams*, *supra* note 10.

[16] Dr. Panozzo's final diagnosis essentially mimicked Dr. Predy's reading of appellant's January 29, 2013 cervical MRI scan.

contributed to his current cervical condition. Absent an explanation, Dr. Panozzo's March 31, 2014 opinion is insufficient to establish causal relationship.[17]

Dr. Cheema's May 19, 2014 report is similarly flawed. He stated that appellant probably had some underlying cervical degenerative disc disease. Dr. Cheema further commented that appellant's constant upper extremity usage, as well as turning and twisting of his neck aggravated the cervical degenerative disc disease to the point of producing the foraminal stenosis, which in return caused radicular symptoms. However, he did not adequately explain how appellant's specific job duties aggravated the underlying condition, nor did he indicate how he was able to distinguish the effects of the work-related aggravation from the underlying cervical degenerative disc disease. Consequently, Dr. Cheema's May 19, 2014 opinion is insufficient to satisfy appellant's burden of establishing a causal relationship between his cervical condition and his accepted employment exposure.

Based on the foregoing analysis, the Board finds that the medical evidence of record fails to establish a causal relationship between appellant's current cervical condition and his accepted employment exposure as a letter carrier. Accordingly, OWCP properly denied appellant's occupational disease claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision.[18]

CONCLUSION

The medical evidence fails to establish that appellant's claimed cervical condition is employment related. Consequently, appellant has not proved that he sustained an injury in the performance of duty on or about December 6, 2012.

[17] *Victor J. Woodhams*, *supra* note 10.

[18] *See* 5 U.S.C. § 8128(a); 20 C.F.R. §§ 10.605-10.607.

ORDER

IT IS HEREBY ORDERED THAT the September 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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