

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

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A.C., Appellant )

and )

**U.S. POSTAL SERVICE, PROCESSING &  
DISTRIBUTION CENTER, Pittsburgh, PA,  
Employer** )

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**Docket No. 16-1432  
Issued: December 8, 2016**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 30, 2016 appellant filed a timely appeal of a January 21, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 to consider the merits of the case.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish the expansion of his claim to include cervical degenerative disc disease as causally related to his accepted employment injuries.

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

## **FACTUAL HISTORY**

On June 4, 2015 appellant, then a 54-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that he developed pain in his shoulder, arm, and neck beginning on May 11, 2015. He attributed his conditions to throwing 10,000 pieces of mail a day, five to six days a week. In his statement, appellant noted that his shoulder pain began on April 23 and 24, 2015 while throwing mail. By the night of April 24, 2015, his shoulder pain kept him awake at night. Appellant did not work for a week due to the death of his mother, but returned to work on May 6, 2015 and experienced increased shoulder discomfort. He attributed his shoulder condition to the repetitive movement of his arm and shoulder.

Dr. Shawn Naseem, a Board-certified internist, completed a note on May 11, 2015 and provided work restrictions. In a note dated May 19, 2015, Dr. David P. Fowler, a Board-certified orthopedic surgeon, provided work restrictions including no overhead work or lateral movement of the right shoulder.

On May 28, 2015 appellant underwent an arthrogram magnetic resonance imaging (MRI) scan which demonstrated congenital retroversion of the scapular glenoid with compensatory hypertrophy of the posterior labrum, a chronic superior labrum anterior to posterior (SLAP) tear, tear of the biceps tendon, advanced acromioclavicular osteoarthritis with a hypertrophied and bulbous distal clavicle, and mild muscle atrophy.

Dr. Naseem completed a report on June 3, 2015 describing appellant's increasing shoulder pain over the past three weeks. He noted that appellant cased mail using his right arm repetitively throughout the day. Dr. Naseem described this activity as sorting through mail and placing letters and parcels into bins and slots. He indicated that the weight of the objects sorted ranged from letters to heavier packages. Dr. Naseem found a positive Hawkins test with pain on posterior rotation. He examined appellant's x-rays which demonstrated dysplastic and retroverted scapular glenoid, rotator cuff calcific tendinopathy, supraspinatus outlet stenosis, and advanced acromioclavicular osteoarthritis. Dr. Naseem also noted that appellant's MRI scan showed a SLAP tear, a large labral cyst, biceps tear, advanced osteoarthritis, and significant muscle atrophy. He opined that appellant's years of repetitive motion of using his right shoulder in his occupation as a mail caser was responsible for these conditions.

On June 2, 2015 Dr. Fowler opined that the labral tear had been present for a long time and recommended a cortisone shot. He diagnosed a chronic labral tear which led to a labral cyst. Dr. Fowler attributed this condition to work and overuse. He recommended surgery.

Dr. Frank B. Artuso, a Board-certified physiatrist, examined appellant on June 4, 2015. He noted appellant's reports of increasing pain in the right shoulder and right forearm. Dr. Artuso found that appellant lost strength if he attempted to reach above his waist and had difficulty rotating his head to the right. He reviewed an electromyogram (EMG) and found changes in the C5 and C6 innervated musculature consistent with motor radiculopathy.

Appellant accepted a light-duty position at the employing establishment on June 11, 2015. He underwent a cervical MRI scan on June 16, 2015. This scan showed multilevel degenerative changes of the cervical spine most severe at C6-7 as well as severe right

foraminal narrowing at C4-5, and moderate-to-severe left foraminal narrowing at C3-4, with bilateral foraminal narrowing at C5-6.

By decision dated July 23, 2015, OWCP accepted appellant's occupational disease claim for shoulder and upper arm sprain as well as superior glenoid labrum lesion on the right.

In a note dated May 19, 2015, Dr. Fowler reported that appellant had two separate work injuries, a calf condition from climbing stairs at work, and a repetitive use claim. He noted that appellant cased more than 10,000 pieces of mail a day and worked five to six days a week. Dr. Fowler reported that appellant had performed the same job for 30 years. On examination he found marked tenderness in the subacromial space of the shoulder with difficulty lifting an empty can. Dr. Fowler reviewed appellant's shoulder x-ray which revealed calcific rotator cuff tendinitis and postulated that appellant could have a rotator cuff tear.

On July 10, 2015 Dr. Joon Yung Lee, a Board-certified orthopedic surgeon, found that appellant had symptoms consistent with C5 palsy including deltoid weakness and biceps weakness. He noted that appellant's EMG confirmed that appellant had C5 and C6 nerve root compression. Dr. Lee found that appellant had congenital spinal stenosis of the cervical spine with cord compression and foraminal stenosis. He noted that appellant had significant muscle weakness of the right arm which correlated with his MRI scan findings. Dr. Lee recommended a C3-6 laminectomy with possible right-sided foraminotomies at C4-5 and C5-6 with posterior spinal fusion at C3-7.

Dr. Fowler examined appellant on July 16, 2015 and reviewed Dr. Lee's opinion that appellant's shoulder weakness was from his neck which was not related to work. He noted that appellant had weakness in his deltoid and biceps as well as wasting in the posterior shoulder musculature attributable to the paralabral cyst. Dr. Fowler referred appellant for a neurosurgical spine consultation.

In a July 21, 2015 note, Dr. Stephen J. Rabuck, an orthopedic surgeon, reported appellant's history of right shoulder pain and weakness. He related that appellant attributed his condition to work as he performed repetitive lifting activities. Dr. Rabuck recommended addressing appellant's cervical spine issues first.

Dr. Eugene Bonaroti, a Board-certified neurosurgeon, completed reports on July 20, and August 24, 2015 describing appellant's work duties of sorting mail and opining that appellant's right upper extremity deficits were a combination of shoulder pathology and several nerve root impingements. He opined that appellant's pain was due to his shoulder pathologies and that he had weakness and atrophy of his biceps and deltoid of this right upper extremity due to cervical stenosis. Dr. Bonaroti noted that appellant had EMG and MRI scan evidence of nerve root compression with weakness and atrophy and recommended surgery to preserve and improve his neurologic function. He noted that appellant's right shoulder pathology was work related and opined, "I do believe that the stress of his job had contributed to degeneration of the cervical spine, leading to cervical nerve root impingement." Dr. Bonaroti recommended an anterior cervical discectomy, fusion, and plating at C4-5 and C5-6.

In a September 14, 2015 letter, OWCP noted appellant's request for cervical spine fusion, but denied this request, pending review by an OWCP medical adviser, as to whether it was related to the accepted conditions and the requested procedures.

Dr. Bonaroti completed a note on September 16, 2015 and diagnosed degenerative disease of the cervical spine. He opined that this condition was "aggravated mechanically by the fact that the patient [has] constantly look[ed] down 8 hours a day, 6 days a week for the last 30 years." Dr. Bonaroti recommended that appellant undergo surgery as soon as medically safe to avoid permanent nerve root injury.

OWCP's medical adviser reviewed appellant's records on September 25, 2015. He found that OWCP should expand appellant's claim to include the additional conditions of acromial joint subluxation with degenerative changes. The medical adviser also agreed that appellant's right shoulder demonstrated chronic repetitive injury as evidence by calcific tendinopathy. He noted, however, that appellant did not have a rotator cuff tear which would necessitate surgery that the minor tear of the biceps tendon was of a degenerative nature which was not currently causing symptoms, and that the labrum tear had responded very well to injection. The medical adviser found that shoulder surgery was not necessary as appellant's pain had resolved following steroid injection.

With regard to appellant's request for cervical surgery, OWCP's medical adviser disagreed with Dr. Bonaroti's opinion that the stress of appellant's job created anatomic abnormalities in the cervical spine. He opined that the change in the anatomy of the cervical spine was of a chronic degenerative nature which resulted in atrophy of the biceps musculature. The medical adviser found that the atrophy was not a result of appellant's shoulder pathology. He agreed that appellant had advanced cervical spine disease, but concluded that appellant's repetitive shoulder use could not have caused spinal stenosis and other degenerative changes of the cervical spine. The medical adviser determined that there was no basis to expand the accepted conditions to include a cervical spine disorder.

OWCP's medical adviser reviewed additional medical evidence on October 12, 2015 including Dr. Bonaroti's August 24 and September 16, 2015 reports. He again asserted that appellant's cervical spine disorder was not due to his work duties disagreeing with Dr. Bonaroti's assertion that looking down at work contributed to appellant's cervical conditions. The medical adviser opined that the condition of multilevel degenerative disc disease was based upon natural history and degenerative change and would have occurred regardless of appellant's occupation. He further determined that surgery was indicated due to appellant's degenerative disease and not on the basis for a work-related condition. The medical adviser attributed appellant's biceps atrophy to cervical spine nerve root compression. He also recommended that appellant undergo a second cortisone injection prior to shoulder surgery, but opined that, if there was limited motion and ongoing pain the right shoulder surgery, it should be authorized regardless of whether or not cervical spine surgery is performed. The medical adviser concluded that appellant's cervical spine degenerative condition justified surgery, but that this condition was not related to appellant's work and was not an accepted condition. He opined that an additional steroid injection should be made before right shoulder surgery was authorized.

By decision dated October 21, 2015, OWCP updated appellant's accepted conditions to include subluxation of the right acromioclavicular joint.

Dr. Fowler completed a note on September 15, 2015 and opined that appellant's cervical stenosis surgery was work related. He hypothesized that appellant's shoulder pain would decrease with the cervical spine surgery. Dr. Fowler attributed appellant's cervical condition to overuse and opined that it was work related.

By decision dated January 21, 2016, OWCP denied appellant's claim for additional medical conditions as a result of his accepted occupational disease. It noted that appellant's June 4, 2015 claim was accepted for sprain of the shoulder and upper arm, superior glenoid labrum lesion on the right, and subluxation of the right acromioclavicular joint. OWCP found that the medical evidence did not establish that his cervical degenerative disc disease was due to his accepted employment duties.

### **LEGAL PRECEDENT**

Appellant bears the burden of proof to establish that a condition not accepted or approved by OWCP is causally related to an employment injury.<sup>2</sup> Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>3</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant<sup>4</sup> and must be one of reasonable medical certainty,<sup>5</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup>

### **ANALYSIS**

The Board finds that appellant has not submitted the necessary rationalized medical opinion evidence to establish that he developed cervical degenerative disc disease causally related to his accepted employment injuries.

Appellant filed an occupational disease claim which OWCP accepted for sprain of the right shoulder, superior glenoid labrum lesion, and subluxation of the right acromioclavicular joint. He also attributed his cervical degenerative disc disease to his employment duties. Appellant's physicians, Drs. Fowler and Bonaroti, attributed appellant's cervical condition to his work. Dr. Bonaroti attributed appellant's cervical condition to the stress of his job and also opined that his cervical condition was aggravated mechanically by the fact that appellant had constantly looked down 8 hours a day, 6 days a week for the past 30 years. Dr. Fowler attributed

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<sup>2</sup> See *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>3</sup> *John J. Montoya*, 54 ECAB 306 (2003).

<sup>4</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>5</sup> *Supra* note 3.

<sup>6</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

appellant's cervical condition to overuse and opined that it was work related. However, Dr. Lee found that appellant had congenital spinal stenosis rather than a work-related injury. The Board finds that these reports are insufficiently detailed and well reasoned to meet appellant's burden of proof to establish an occupational disease for cervical degenerative disc disease.<sup>7</sup> Appellant's physicians do not agree as to the cause of his cervical condition, with Dr. Lee opining that this condition was in fact congenital. Drs. Fowler and Bonaroti did not provide consistent histories of injury and attributed appellant's condition to various components of his job including stress, overuse, and looking down. Appellant has not implicated these specific factors of his position in his occupational disease claim. Furthermore, there is no detailed and well-reasoned medical opinion evidence attributing appellant's cervical condition to his accepted employment duty of casing mail.

The Board further notes that OWCP's medical adviser did not support a causal relationship between appellant's diagnosed cervical degenerative disc disease and his employment. The medical adviser repeatedly and consistently opined that appellant's diagnosed condition of multilevel cervical degenerative disc disease was based upon his natural history and degenerative changes and would have occurred regardless of appellant's occupation.

As there is no agreement between appellant's physicians as to the cause of his degenerative cervical disc disease, and as none of appellant's physicians offered a clear and detailed opinion as to the contribution from appellant's employment, appellant has failed to submit the necessary medical opinion evidence to establish his occupational disease claim for cervical degenerative disc disease.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish the expansion of his claim to include cervical degenerative disc disease as causally related to his accepted employment injuries.

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<sup>7</sup> *Supra* note 3.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 21, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2016  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board