

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

B.N., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Huntington Beach, CA, Employer**

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**Docket No. 17-0787
Issued: July 6, 2018**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 28, 2017 appellant filed a timely appeal from a January 23, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant met his burden of proof to establish an injury causally related to the accepted factors of his federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² On appeal appellant submitted new evidence. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1); *see Steven S. Saleh*, 55 ECAB 169 (2003).

FACTUAL HISTORY

On September 26, 2016 appellant, then a 37-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained cervical degenerative disc disease while in the performance of duty. He explained that his duties as a mail carrier required that he bend his neck downward to read the mail address for an extended period of time, for more than eight hours a day, for more than two and half years, all while carrying a heavy mail satchel on his shoulder. Appellant explained work activities placed his neck and shoulder in an awkward position for an extended amount of time and caused him neck pain and stiffness. He indicated that he first became aware of the injury on March 1, 2016 and its relation to his work on July 9, 2016. Appellant did not stop work.

In a letter dated September 2, 2016, appellant indicated that six months prior, he started to experience symptoms of severe pain in the neck and shoulders. When the symptoms worsened, he saw his physician. Appellant advised that he was given pain medication and he was monitored for approximately three months, but it worsened. He indicated that he was referred to Dr. James T. Tran, a Board-certified neurosurgeon, who ordered a computerized tomography (CT) scan of his neck. Appellant was diagnosed with cervical degenerative disc disease. He alleged that his condition was caused by the activities of his job, as a mail carrier, which required that he bend his neck downward to read mail addresses and carrying a heavy mail satchel on one shoulder placing his neck in an awkward position for an extended period of time (eight hours a day). Appellant indicated that he was in his job for more than 11 years. He noted that nonsurgical therapy was recommended such as acupuncture, with surgery recommended if the other options failed.

A July 10, 2016 magnetic resonance imaging (MRI) scan of the cervical spine, read by Dr. John Kim, a Board-certified diagnostic radiologist, revealed straightening of the cervical spine with multilevel degenerative disc disease, facet and uncovertebral hypertrophy with elements of congenital spinal stenosis resulting in high-grade central canal stenosis at multiple levels, with the worst at C5-6 and C6-7.

In a September 24, 2016 duty status report, Dr. Tran indicated that appellant had pain with range of motion of the neck and the cervical spine MRI scan revealed spinal cord compression. He noted that appellant had to carry mail satchels weighing 35 pounds on a daily basis. Dr. Tran indicated that appellant had to bend his neck to look at letters and postage on a frequent basis at work. He diagnosed cervical spinal stenosis. Dr. Tran indicated that appellant was unable to return to work.

In an October 8, 2016 attending physician's report, Dr. Tran advised that appellant was carrying a mail satchel weighing 35 pounds per day and had to look down at letters, and postage. He checked the box marked "no" with regard to a preexisting history of injury or disease or physical impairment. Dr. Tran provided findings to include: four out of five muscle strength in the shoulder abductors, pain on range of motion of neck rotation, and extension. He diagnosed cervical spine stenosis with spinal cord compression. Dr. Tran checked the box marked "yes" indicating that the diagnosed condition was caused or aggravated by an employment activity and noted that appellant was carrying mail for the employing establishment and had to carry satchels weighing 35 pounds. He determined that appellant was totally disabled from work from June 23

to December 23, 2017. Dr. Tran noted that appellant was previously partially disabled from March 23 to June 23, 2016.

In an October 10, 2016 report, Dr. Tran noted appellant's history of injury and treatment, provided findings and diagnosed cervical disc displacement, cervical disc degeneration, osseous stenosis of neural foramina canal or cervical region, connective tissue stenosis of neural canal of the cervical region, and intervertebral disc stenosis of neural canal of the cervical region.

By development letter dated December 15, 2016, OWCP informed appellant of the type of evidence needed to support his claim and afforded him 30 days to respond. It particularly requested that appellant have his physician provide an opinion, supported by a medical rationale, as to how work activities caused or aggravated his claimed condition.

In a December 17, 2016 report, Dr. Tran noted that appellant presented with neck pain with posterior discomfort radiating to the occipital scalp and shoulders. He indicated that the pain was severe, constant, and a 7 on a pain level from 1 to 10. Dr. Tran advised that the initial onset was 9 to 10 months prior and the "precipitating event seems to have been occupationally-related repetitive neck movements." He indicated that appellant's medical history was negative for prior neck injury. Dr. Tran determined that appellant had crepitus, headache, neck stiffness, and upper extremity paresthesia. His examination findings included: decreased range of motion noted in neck rotation; pain with range of motion in the bilateral shoulder abduction; muscle strength, 5/5 bilateral shoulder abductors; and 5/5 bilateral biceps and 4/5 bilateral triceps. Dr. Tran diagnosed neck pain and explained that appellant continued to have painful cervical radiculopathy with myelopathy, from cervical spinal disc bulges, stenosis, spinal cord compression at C6-7 on the left side, C5-6, C4-5, and C3-4. He also diagnosed cervicalgia.

By decision dated January 23, 2017, OWCP denied appellant's claim. It found that the medical evidence of record did not contain a well-reasoned medical opinion relating the diagnosed cervical spine conditions to the alleged work factors. OWCP denied the claim on the fifth basic element, causal relationship because the requirements had not been met for establishing that he sustained an injury causally related to the accepted work event(s).

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning 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 or specific condition for which compensation is claimed is 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

³ *Supra* note 1.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

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.⁶

ANALYSIS

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

Appellant alleged that he developed a neck condition including cervical degenerative disc disease due to daily activities as part of his work as a mail carrier. OWCP accepted that he had to bend his neck to read mail while carrying a heavy satchel on one shoulder over the course of more than 11 years at work as part of his mail carrier duties.

However, with regard to the medical evidence, the Board has duly considered the matter and finds that the case is not in posture for a decision and must be remanded to OWCP. In the case of *William A. Couch*,⁷ the Board held that when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

By decision January 23, 2017, OWCP denied appellant's claim. It specifically noted that, by letter dated December 14, 2016, additional information was requested and that no further evidence was received. However, the record reflects that appellant submitted a December 17, 2016 report from Dr. Tran.

The Board finds that OWCP, in its January 13, 2017 decision, specifically found that no additional evidence was received in response to its December 15, 2016 development letter. However, as noted above, the report of Dr. Tran was received by OWCP on January 20, 2017, prior to the January 23, 2017 decision and the report clearly was not considered in the decision. For this reason, the case will be remanded to OWCP to enable it to properly consider all the

⁶ *Id.*

⁷ 41 ECAB 548 (1990).

evidence submitted at the time of the January 23, 2017 decision. Following such further development as OWCP deems necessary, it shall issue an appropriate decision on the claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: July 6, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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