

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND R. AULETTO and U.S. POSTAL SERVICE,
POST OFFICE, Eatontown, NJ

*Docket No. 98-2220; Submitted on the Record;
Issued February 24, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty causally related to factors of his federal employment.

The Board has duly reviewed the case record in the present appeal and finds that the case is not in posture for decision and must be remanded for further development of the evidence.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 filed within the applicable time limitation of the Act, 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.³

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

¹ 5 U.S.C. § 8101.

² *Joe Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

diagnosed condition is causally related to the employment factors identified by 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.⁴

In this case, on August 19, 1996 appellant, then a 42-year-old mailhandler, filed an occupational disease claim, alleging that activities at work, especially the constant pushing and pulling, caused him to develop severe pain in his neck area, extending down into his right arm and hand.⁵ The Office denied appellant's claim on November 26, 1996 finding that the evidence of record failed to establish that an occupational disease was sustained in the manner alleged. On September 11, 1997 appellant, through counsel, requested reconsideration of the November 26, 1996 decision. By decision dated November 26, 1997, after a merit review, the Office found that the evidence submitted was insufficient to warrant modification of the prior decision. On January 23, 1998 appellant, through counsel, requested reconsideration of the November 26, 1997 decision. By decision dated April 13, 1998, after a merit review, the Office found that the evidence submitted was insufficient to warrant modification of the prior decision.

The pertinent medical evidence submitted in support of appellant's claim for a cervical condition consists of three medical reports from Dr. John E. Fitzpatrick, dated March 22, 1993, January 26, 1994 and March 23, 1998, a May 24, 1993 medical report from Dr. Michael F. Lospinuso, a May 21, 1997 report from Dr. Bernard A. Rawlins and a July 9, 1997 medical report from Dr. Nasser Ani.⁶ In his initial medical report of record, Dr. Fitzpatrick, a Board-certified neurologist and treating physician, stated that appellant was under his care for treatment of severe pain and cervical radiculopathy from cervical arthritis. He added that appellant was, at that time, disabled from working, but that following cervical surgery, he should be able to return to his presurgical level of functioning. Dr. Lospinuso, a Board-certified orthopedic surgeon, submitted a report dated May 24, 1993, in which he stated that appellant was, at that time, under his care, status post anterior cervical discectomy and fusion. With respect to the cause of appellant's condition, Dr. Lospinuso stated that he felt "as though [appellant] has a condition, which was preexisting but has been aggravated by his work

⁴ *Id.*

⁵ The record also contains a claim for occupationally-related carpal tunnel syndrome, filed on September 15, 1997 and a claim for a traumatic thoracic strain, filed on September 14, 1995. On appeal, however, appellant's counsel specifically stated that he wished to appeal only the Office of Workers' Compensation Programs' April 13, 1998 decision denying appellant's claim for an occupationally-related cervical condition. Accordingly, the Board will only address the Office decisions and record evidence relevant to appellant's August 19, 1996 cervical claim.

⁶ The record contains numerous additional medical reports, progress notes and medical test results, especially from Drs. Fitzpatrick and Ani. The reports discussed, however, are those in which the physicians address the cause of appellant's cervical condition and the relationship, if any, between appellant's diagnosed conditions and his employment.

condition.” In a January 26, 1994 report, Dr. Fitzpatrick stated that appellant had been under his care for cervical radiculopathy for about a year and had undergone surgical decompression of his spine due to this condition. He stated that he had reviewed medical reports from appellant’s job, which documented instances of neck pain experienced by appellant at work. Dr. Fitzpatrick concluded that his “current impression of the patient is that he has cervical radiculopathy secondary to cervical degenerative spine disease, likely aggravated by his work at the post office.” In a report dated May 21, 1997, Dr. Rawlins, a Board-certified orthopedic surgeon and new treating physician, stated that appellant presented complaining of neck and right shoulder pain of four months’ duration. He noted appellant’s statement that, after his first surgery in 1992, he was doing very well, but on August 16, 1996 while at work lifting and pulling mail equipment he experienced excruciating pain, which he did not experience prior to this particular event. Dr. Rawlins diagnosed herniated nucleus pulposus at C4-5, but did not otherwise discuss the cause of this condition. In a report dated July 9, 1997, Dr. Ani, a Board-certified orthopedic surgeon and treating physician since 1994, noted appellant’s history of symptoms and treatment, and listed his impression as “disk ridging at C4-5 to the right with right arm radiculopathy and degeneration at C4-5 and right carpal tunnel syndrome. Dr. Ani recommended further surgical treatment and stated, with respect to the cause of appellant’s condition, “that the nature of his work aggravated the degenerative process, especially at C4-5, and precipitated his symptoms and caused his right carpal tunnel syndrome, as well. I feel in that sense these injuries are work related.” Finally, the record contains a report dated March 23, 1998, in which Dr. Fitzpatrick stated that appellant continued to have daily pain on the right side of his neck, radiating into the right temporal and supraorbital region and into his right shoulder, arm and hand. He listed his impressions as one of chronic neck pain and chronic radicular symptoms in the right arm, which did not respond well to conservative treatment and for which surgery seemed to be the only opinion. Dr. Fitzpatrick further stated that “a lot of the activities he does at work exacerbate the pain, especially bending and lifting.”

The Board finds that appellant has submitted evidence sufficient to establish a *prima facie* case and to require further development of the evidence. In the instant case, appellant submitted a May 24, 1993 report from Dr. Lospinuso who stated that appellant’s cervical condition “was preexisting but has been aggravated by his work condition.” Dr. Fitzpatrick stated that appellant had “cervical radiculopathy secondary to cervical degenerative spine disease, likely aggravated by his work at the post office,” and later stated that “a lot of the activities he does at work exacerbate the pain, especially bending and lifting.” Finally, in a recent report dated July 9, 1997, Dr. Ani listed his cervical diagnosis as “disk ridging at C4-5 to the right with right arm radiculopathy and degeneration at C4-5,” and opined that the “nature of [appellant’s] work aggravated the degenerative process, especially at C4-5, and precipitated his symptoms” and concluded that “in that sense these injuries are work related.”

The Board finds that given the absence of any opposing medical evidence, the total evidence of record, and in particular the January 26, 1994 and March 23, 1998 reports of Dr. Fitzpatrick and the July 9, 1997 report from Dr. Ani, while lacking sufficient rationale to carry appellant’s burden of proof, are sufficient to require further development of the record by the Office.⁷ On remand, the Office should prepare a statement of accepted facts, which includes

⁷ *Rebel L. Cantrell*, 44 ECAB 660 (1993); *John J. Carlone*, 41 ECAB 354 (1989).

the date of appellant's last exposure to the factors of employment and the medical evidence of record and refer appellant for a second opinion evaluation as to whether he has a cervical condition causally related to factors of his employment. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated April 13, 1998 and November 26, 1997 are hereby set aside and the case remanded for further development consistent with this decision of the Board.

Dated, Washington, D.C.
February 24, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member