

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

DIANE J. ZACCARO, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New York, NY, Employer**

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**Docket No. 04-1395
Issued: September 16, 2004**

Appearances:
Diane J. Zaccaro, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On May 3, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 31, 2004 denying her claim that she sustained employment-related back, shoulder or cervical injuries. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a back, shoulder or cervical injury in the performance of duty.

FACTUAL HISTORY

On May 6, 2002 appellant, then a 48-year-old carrier technician, filed an occupational disease claim alleging that she sustained back, shoulder and cervical injuries, due to lifting mailbags and carrying mail on her shoulders and back. She first became aware of her illness in April 2001 and first realized it was employment related in April 2002. Appellant did not stop work at the time she filed her claim.

Appellant submitted an April 27, 2002 report in which Dr. Milton A. Meyer, an attending chiropractor, stated: "It is my determination, that the ongoing injuries for which I have been treating [appellant] were sustained during the years she performed regular duty, and that she should be designated a limit [sic] duty employee." She also submitted numerous reports, produced between 2002 and 2004, in which Dr. Meyer indicated that she continued to have back, shoulder and neck pain and should remain under various work restrictions.

By letter dated June 28, 2002, the Office advised appellant regarding the standards under which the reports of chiropractors may be considered medical evidence. It also informed appellant that medical reports must contain medical rationale to have probative value.

By decision dated February 24, 2003, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence in support thereof. The Office found that the reports of Dr. Meyer did not constitute medical evidence as they did not contain a diagnosis of a subluxation as demonstrated by x-rays to exist.

On February 27, 2003 appellant requested reconsideration and submitted a July 12, 2002 report in which Dr. Meyer stated that upon examination on December 2, 1998 appellant complained of mid and low back pain after carrying and lifting mailbags at work. She also submitted a December 2, 1998 report in which Dr. Meyer reported the findings of x-rays taken on that date, which he described as follows: "Views of the thoracic and lumbopelvic spine were taken. Vertebrae appear normal in size, shape and density. No evidence of bone, joint or soft tissue pathology is noticed; pelvis and acetabulum are unremarkable. Degenerative joint disease changes are noticed in the thoracic spine." In this report, Dr. Meyer diagnosed "thoracolumbar vertebrogenic neuralgia [sic] with pain, myositis and altered postural mechanics." He indicated that examination and radiographic findings demonstrated vertebral subluxation of T8-9 and L4-5 and listed several "ICD9 codes," which he identified as thoracolumbar segmental dysfunction, lumbosacral segmental dysfunction, thoracic or lumbosacral neuritis or radiculitis, thoracic strain/sprain and lumbar strain/sprain. Dr. Meyer stated that appellant's condition developed slowly over a long period and indicated that it would take time and treatment to correct the vertebral subluxations. He noted: "It is my opinion, based on these findings that the prolonged and [repetitious] work of carrying bags of mail and lifting bags created extreme stresses on [appellant's] spine. This resulted in muscles being strained and vertebral subluxations."

By decision dated March 31, 2004, the Office affirmed its February 24, 2003 decision. The Office noted that while Dr. Meyer mentioned subluxations in his July 12, 2002 report, this apparent diagnosis was not consistent with the findings contained in the report. It therefore found that the reports of Dr. Meyer did not constitute medical evidence.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of 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 timely filed within the applicable time limitation period of the Act, that an injury was sustained in the

¹ 5 U.S.C. § 8101 *et seq.*

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 compensation claim regardless of whether the claim is predicated upon a traumatic injury or an 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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship 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

ANALYSIS

In the present case, appellant claimed that she sustained back, cervical and upper shoulder injuries due to lifting mailbags and carrying mail on her shoulders and back. She submitted several reports of Dr. Meyer, an attending chiropractor. Under section 8101(2) of the Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.⁵ The Office's regulation at 20 C.F.R. § 10.5(bb) have defined a subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.⁶ Although Dr. Meyer consulted x-rays in 1998, none of his reports contains a clear opinion that appellant sustained a subluxation as demonstrated by x-rays to exist.

In a report dated December 2, 1998, Dr. Meyer reported the findings of x-rays taken on that date. He diagnosed "thoracolumbar vertebrogenic neuralgia [sic] with pain, myositis and altered postural mechanics," indicated that examination and radiographic findings demonstrated

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁵ 5 U.S.C. § 8101(2). *See Jack B. Wood*, 40 ECAB 95, 109 (1988).

⁶ 20 C.F.R. § 10.5(bb); *see also Bruce Chameroy*, 42 ECAB 121, 126 (1990).

vertebral subluxations at T8-9 and L4-5 and listed several “ICD9 codes,” including thoracolumbar segmental dysfunction and lumbosacral segmental dysfunction. However, Dr. Meyer’s apparent diagnosis of thoracic and lumbar subluxations must be considered vague and equivocal in that it is at odds with the findings he indicated were observed on diagnostic testing. He indicated that views of the thoracic and lumbar spine were taken, that the vertebrae appeared normal in size, shape and density and that there was no evidence of bone, joint or soft tissue pathology. As noted above, a subluxation is defined under the Act as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae. The findings on diagnostic testing would appear to contradict the diagnosis of any subluxation in the present case. Dr. Meyer did not provide any further comments which would explain this apparent contradiction. Although he indicated that degenerative joint disease changes were noticed in the thoracic spine, he did not provide any detailed description of such changes or explain how this observation comported with his statement that the vertebrae of the thoracic spine appeared normal in size, shape and density and showed no evidence of bone, joint or soft tissue pathology.⁷

The record contains other reports of Dr. Meyer, but none of them contains a clear, unambiguous opinion that appellant sustained a subluxation as demonstrated by x-rays to exist. His reports, therefore, cannot be considered as medical evidence and the Office properly denied appellant’s claim that she sustained an employment-related injury.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a back, cervical or shoulder injury in the performance of duty.

⁷ Even if Dr. Meyer’s opinion was considered as medical evidence, its relevance to the main issue of the present case remains unclear. Dr. Meyer referred to appellant’s condition in 1998 and appellant indicated in her claim form that she did not become aware of her alleged condition until April 2001.

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 16, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member