

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

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**F.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Santa Ana, CA, Employer**

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**Docket No. 07-1363  
Issued: July 11, 2008**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 25, 2007 appellant filed a timely appeal from a January 18, 2007 decision of an Office of Workers' Compensation Programs' hearing representative who affirmed the denial of her claim of an employment-related injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this claim.

**ISSUE**

The issue is whether appellant's cervical condition was aggravated by factors of her federal employment.

**FACTUAL HISTORY**

On February 21, 1998 appellant, then a 51-year-old special delivery messenger, filed an occupational disease claim contending that her employment had aggravated her cervical strain condition, accepted by the Office in File No. 13-0995422. She alleged that constant harassment

at work had aggravated chronic cervical muscle spasms, which were a residual of her September 23, 1992 cervical strain.<sup>1</sup> The employing establishment controverted her claim.

In a January 19, 1998 report, Dr. Richard L. Mulvania, an attending Board-certified orthopedic surgeon, diagnosed cervical strain syndrome or injured cervical disc C4-5 with radiculopathy to both shoulders. He listed her progress as guarded and released her to light duty. Dr. Mulvania noted that the origin of appellant's current distress was a nonemployment-related automobile accident on February 18, 1997, which aggravated a prior work injury of 1992. In a September 2, 1998 report, he noted that he initially saw appellant on May 14, 1997 at which time she complained of pain to her neck, low back and both shoulders. Dr. Mulvania stated that appellant had been involved in an automobile accident on February 18, 1997. However, appellant related her cervical condition to a work-related automobile accident of September 23, 1992. She advised Dr. Mulvania that she had filed stress claims for harassment. Dr. Mulvania diagnosed cervical spondylosis with radicular pain to her right upper extremity, indicating that it was initially sustained on September 23, 1992 but aggravated by the February 18, 1997 automobile accident and stress. He released appellant to light-duty work. In a November 30, 1998 report, Dr. Mulvania advised that cervical spasms can be aggravated by stress. He stated:

"I believe that [appellant's] injury has been continually aggravated since September 23, 1992 by many stressful incidents; being subjected to sexual post card in 1993, sent to deliver to pornography shops 1993 [to] 1995, her attempted removal from work by false accusations on August 20, 1993 and the subsequent stress from the June 22, 1994, EEOC [Equal Employment Opportunity Commission] hearing until this was resolved by the Office of Federal Operations EEOC on June 24, 1996. The March 1, 1994 to September 1998 loss of seniority and subsequent loss of two bid jobs and time off due to an unlawful change, would also be a stressful/continual aggravation of a cervical spasm injury. During this time [appellant] continued to be seen for the chronic cervical spasms.

"The February 18, 1997 accident aggravated the original September 23, 1992 injury. However, had [appellant] not sustained the original injury or not had the continuing stress aggravation, her February 18, 1997, accident would probably not have resulted in her current, permanent disability. Because she did sustain the 1992 injury and it was aggravated by the continuing stress, the injury is now permanent and will, in my opinion, eventually require surgery."

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<sup>1</sup> The Office accepted that appellant sustained injury on September 23, 1992 in an employment-related motor vehicle accident. She subsequently had two claims for emotional conditions, filed April 15, 1994 and August 31, 1995, accepted in File Nos. 13-1049690 and 13-1103729. Both emotional conditions were found to have resolved.

On March 8, 1999 appellant was referred to Dr. Thomas Dorsey, a Board-certified orthopedic surgeon, for a second opinion. In a March 15, 1999 report, Dr. Dorsey reviewed appellant's history of injury and medical treatment and provided findings on physical examination. He diagnosed mild cervical spondylosis, stating:

“[Appellant] shows mild cervical spondylosis. These changes in the cervical spine are consistent with her patient age of 52. There is no basis on which to believe that she has any ongoing condition which is related to work factors. There is no evidence of material change in the cervical spine as a result of physical factors or stress factors related to work.

In an April 21, 1999 decision, the Office denied appellant's claim, finding the weight of medical opinion represented by Dr. Dorsey.

On May 6, 1999 appellant requested an oral hearing, which was held on October 20, 1999. In a November 16, 1999 report, Dr. Irwin I. Rosenfeld, a Board-certified psychiatrist, reviewed appellant's medical records, noting that she had sustained numerous physical injuries at work compounded by a nonindustrial motor vehicle accident on February 18, 1997, all contributing to chronic pain and muscle spasms in her neck. He noted that appellant also experienced stresses at work, including several incidents of sexual and age discrimination, attempts to cause loss of her seniority and prevention of her returning to work even though she had proper medical clearance. Dr. Rosenfeld stated:

“It is well known that stress very frequently causes muscle tension, which can cause or increase spasms of the muscles and the neck and shoulders areas are probably more prone to falling prey to these symptoms than other regions of the body. Therefore, the underlying spasms and strain in the cervical neck muscles due to physical injuries are likely exacerbated by nonphysical stressors as noted above.”

In a January 5, 2000 decision, an Office hearing representative found a conflict in medical opinion between Dr. Mulvania and Dr. Dorsey as to whether appellant's cervical condition was aggravated by factors of her employment. The case was remanded for further development.

The Office referred appellant to Dr. Jaswinder S. Grover, a Board-certified orthopedic surgeon, selected as the impartial medical specialist.<sup>2</sup> In a September 16, 2004 report, Dr. Grover reviewed appellant's history of injury and medical treatment and noted that she complained of neck pain, right shoulder blade pain and suboccipital headaches. He noted that appellant attributed her cervical symptoms to the 1992 automobile accident, which was accepted for a sprain/strain. Following the injury, she underwent treatment for a period of two years,

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<sup>2</sup> Appellant was initially referred for an impartial examination by Dr. David T. Martyn, a Board-certified orthopedic surgeon. However, Dr. Martyn was unable to clarify his opinion on causal relationship prior to his death in November, 2001. Appellant was then referred to Dr. Mark Ishimaru, a Board-certified orthopedic surgeon. However, Dr. Ishimaru advised the Office that it would take in excess of 20 hours to review the medical record and that he would not make any conclusions until he reviewed all of appellant's x-rays. His opinion on causal relationship was found equivocal.

including physical therapy and chiropractic treatment and the case was closed in 1995. Since 1995, however, appellant had undergone various treatment modalities for her cervical symptoms. Dr. Grover noted that she denied radicular symptoms into the upper extremities. He also recorded a history of a 2002 industrial injury to appellant's low back causing persistent pain radiating into her buttocks and lower extremities. On physical examination, Dr. Grover noted that appellant was moderately overweight and exhibited mild paracervical tenderness on the right side with some discomfort on rotation. Spurling's sign was negative and axial compression tests were negative. No clear motor or sensory deficits were identified. He reviewed the report of an April 4, 2002 magnetic resonance imaging scan of the cervical spine, which revealed moderate degeneration of the left facet at C3-4 with moderate encroachment and bone spurring at C4-5, C5-6 and C6-7, primarily on the left side. Dr. Grover discussed the medical reports of record and found that there was "no evidence to indicate that work-related stress would have caused any substantial or significant objective change in her physical condition as it relates to the cervical spine..." He advised that appellant sustained a cervical sprain/strain in 1992, which was treated appropriately and stated that the progression of her cervical symptoms was not contributed to by work-related stress. Dr. Grover found that appellant had moderate degenerative changes in the cervical spine, which did not warrant interventional treatment or surgical consideration that her chronic pain was based on the underlying degenerative changes. He stated:

"As it relates to the medical conflict at hand, [appellant] had a cervical strain/sprain which was originally treated appropriately. In my opinion, there is no evidence to suggest any clear objective relationship between work-related stress and a progression of her cervical symptomatology. Indeed, a certain amount of work-related stress is appreciated by all employees in a variety of professions including postal workers. There is no objective evidence to suggest that such stress has resulted in any significant or substantial objective changes in the cervical spine to warrant any specific treatment as it relates to this."

In a February 27, 2006 decision, the Office denied appellant's claim, finding that the opinion of Dr. Grover constituted the weight of medical opinion.

Appellant requested a hearing before an Office hearing representative and submitted additional evidence. In an October 10, 2006 note, Dr. John S. Thalgott, a Board-certified orthopedic surgeon, stated that appellant told him that her work-related motor vehicle accident of February 18, 1997 aggravated her neck and cervical pain from her first injury on September 23, 1992 and that he believed that her history supported this fact. In a report dated June 6, 2006, Dr. Thalgott listed his impression as chronic cervical degenerative disc disease and chronic cervical radiculopathy which was 14 years in duration.

In a May 11, 2004 report, Dr. Nancy Vu, a Board-certified psychiatrist, opined that the significant amount of emotional stress and physical injury from appellant's employment caused chronic muscle tension in her cervical spine. She noted objective findings of multiple cervical disc bulges as reported in diagnostic tests of the cervical spine. The fact that appellant was poorly responsive to various treatment modalities was due to an ongoing depression as previously diagnosed on September 4, 1995 by Dr. Rosenfeld. Her current symptoms included significant anxiety with chronic migraine and tension headache.

At the hearing held on October 27, 2006, appellant contended that Dr. Grover did not adequately review the medical record and that he saw her for no more than 10 minutes.

In a January 18, 2007 decision, an Office hearing representative affirmed the February 27, 2006 decision.

### **LEGAL PRECEDENT**

An employee has the burden of establishing that a specific condition for which compensation is claimed is causally related to his or her federal employment.<sup>3</sup> Under the Federal Employees' Compensation Act, where employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for periods of disability related to the aggravation. When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased, even if the employee is disqualified from continuing in employment because of the effect work factors may have on the underlying condition.<sup>4</sup> A claimant must establish by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment, either directly or by precipitation, aggravation or acceleration.<sup>5</sup> The fact that a disease or condition manifests itself during a period of employment is not sufficient to establish causal relationship.<sup>6</sup>

Section 8123(a) of the Act provides, in pertinent part, "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."<sup>7</sup> Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>8</sup>

### **ANALYSIS**

The Office accepted that appellant sustained a cervical strain following a September 23, 1992 motor vehicle accident. In 1998, she filed a claim contending that factors of her federal employment had aggravated her cervical condition. Dr. Mulvania, an attending physician, advised that she had cervical spondylosis with radicular pain into her right upper extremity. He related that he first treated appellant on May 14, 1997 following a February 18, 1997 nonemployment-related automobile accident. However, at the time, appellant attributed her cervical condition to the accident in 1992. Dr. Mulvania also noted that she claimed stress at

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<sup>3</sup> See *William F. Gay*, 50 ECAB 276 (1999).

<sup>4</sup> See *Raymond W. Behrens*, 50 ECAB 221 (1999).

<sup>5</sup> *Phillip L. Barnes*, 55 ECAB 426 (2004).

<sup>6</sup> See *Paul Foster*, 56 ECAB 208 (2004).

<sup>7</sup> 5 U.S.C. § 8123(a); see also *LaDonna M. Andrews*, 55 ECAB 301 (2004).

<sup>8</sup> *Id.*; see also *Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

work and had filed claims of harassment. He found that she was capable of light-duty work. On November 30, 1998 Dr. Mulvania noted that appellant initially sustained injury to her cervical spine on September 23, 1992, which was aggravated by the February 18, 1997 accident and stress at work.

Dr. Dorsey, a second opinion physician, examined appellant and diagnosed mild cervical spondylosis. He found that the changes to her cervical spine were consistent with her age and stated that her ongoing cervical complaints were not related to factors of her federal employment. Dr. Dorsey noted that there was no evidence of any material change to the cervical spine as a result of physical factors or stress at work.

Due to the conflict between Dr. Mulvania and Dr. Dorsey, the Office referred appellant to Dr. Grover, selected as the impartial medical specialist. On September 16, 2004 Dr. Grover reviewed appellant's history of injury and medical treatment, including the reports giving rise to the conflict in medical opinion. On examination of appellant's cervical spine, he noted some mild paracervical tenderness on the right side and discomfort on rotation. Dr. Grover advised that Spurling's sign and axial compression tests were negative and could not identify any clear motor or sensory deficit. On review of diagnostic tests, he found that there was moderate degenerative disc disease at multiple levels of the cervical spine with encroachment and spurring noted at C4 through C7. Dr. Grover stated that appellant had sustained a cervical sprain/strain in the 1992 motor vehicle accident and underwent appropriate medical treatment, which was closed in 1995. He found that the progression of her cervical symptoms was related to her underlying degenerative disease process, which was not contributed to by work-related stress. Dr. Grover advised that the stresses at work would not cause a change to the physical condition of her cervical spine. He concluded that the moderate degenerative changes of her spine contributed to her chronic pain but did not warrant surgical intervention. The Board finds that the impartial medical opinion of Dr. Grover is well rationalized and based on an accurate review of the factual and medical history in this case. Accordingly, it is entitled to special weight.<sup>9</sup>

The remaining evidence submitted by appellant subsequent to Dr. Grover's report is insufficient to outweigh the special weight accorded to his opinion as the impartial medical examiner.<sup>10</sup> Dr. Thalgott's brief medical notes merely recited appellant's contention that her cervical complaints were related to the 1992 automobile accident. He did not address how appellant's cervical condition on or after 1998 was due to stress in her federal employment. Dr. Vu related that diagnostic testing showed multiple discs bulging in appellant's cervical spine and that she had been poorly responsive to various treatment modalities due to ongoing depression, as first diagnosed by Dr. Rosenfeld. She did not specifically explain how appellant's cervical degenerative disease was aggravated by stress arising in appellant's federal employment.

The Office properly found that the weight of the medical evidence was represented by Dr. Grover, who determined that appellant's cervical condition was not aggravated by work-related stress. It properly denied her claim for compensation.

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<sup>9</sup> See *Elizabeth Pauley-Wisniewska*, 49 ECAB 341 (1998).

<sup>10</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained an aggravation of her cervical condition due to factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 18, 2007 is affirmed.

Issued: July 11, 2008  
Washington, DC

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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