

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

V.B., Appellant)	
)	
and)	Docket No. 08-329
)	Issued: July 8, 2008
U.S. POSTAL SERVICE, POST OFFICE, Santa Monica, CA, Employer)	
)	

<i>Appearances:</i> <i>Alan J. Shapiro, Esq., for the appellant</i> <i>Office of Solicitor, for the Director</i>	<i>Case Submitted on the Record</i>
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DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 13, 2007 appellant, through counsel, filed a timely appeal from an October 18, 2007 decision by a hearing representative of the Office of Workers' Compensation Programs affirming a February 28, 2007 decision which denied her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained occupational injuries causally related to her employment duties as a lobby director.

FACTUAL HISTORY

On November 30, 2006 appellant, then a 50-year-old letter carrier, filed an occupational disease claim alleging that on approximately January 1, 2005 she first realized that she had a

herniated cervical disc and spinal cord edema. On November 10, 2006 she realized it was due to her light-duty job as a lobby director.¹

On August 4, 2006 Dr. Serge Obukhoff, a treating Board-certified neurological surgeon, noted that appellant sustained neck and left shoulder injuries due to a November 28, 2003 employment injury. Appellant had been employed as a letter carrier for the prior five years. A physical examination revealed no upper extremity sensory deficit, subjective complaints of tingling in both the hands, 5/5 bilateral upper extremity muscle strength and neck extension exacerbated some neck pain syndrome. Dr. Obukhoff related that he “found no apparent signs of nerve root irritation” in the neck. He diagnosed neck pain syndrome with bilateral upper extremity pain, C3-4, C4-5 and C5-6 cervical disc herniations and myelopathy and spinal cord compression by herniated disc with spinal cord edema. Dr. Obukhoff attributed appellant’s spinal cord compression, myelopathy and disc herniation to her falling on the ground with a heavy bag on November 28, 2003. In a November 30, 2006 letter, the employing establishment controverted the claim as appellant had an existing claim number 13-2093804 which had been accepted for a neck strain.

On December 1, 2006 the Office received appellant’s statement detailing the duties she believed caused or aggravated her condition and reports dated August 4, October 6 and November 29, 2006 by Dr. Obukhoff. Appellant attributed her condition to her duties of continuous walking, standing, dealing with nixies, sorting mail, lifting tubs weighing between 5 and 25 pounds of vacation pick up mail, P.O. Box mail and packages, and express mail delivery. She related that in January 2005 she began to have headaches, neck, spasms and numbness in both her hands and arms.

On October 6, 2006 Dr. Obukhoff diagnosed severe cervical canal stenosis due to C3-4, C4-5 and C5-6 disc herniations with myelopathy, radiculopathy and spinal cord compression. Based upon appellant’s history, he concluded that “the problem started after rather significant fall she sustained in 2003 and since that time, her symptoms have been progressing.” On November 29, 2006 Dr. Obukhoff indicated that appellant was totally disabled beginning October 10, 2006. A physical and neurologic examination revealed poor balance, diminished shoulder and cervical sensation, normal interosseus muscle strength and small hands muscles, 0+ bilateral upper extremity reflexes, 4/5 bilateral upper extremity muscles and grossly positive nerve traction test “with very severe pain radiating to her neck and difficulties looking up.” A magnetic resonance imaging scan revealed “critical canal stenosis from C3 through C6 with disc herniation of about 5 m[illi]m[eters] to 6 m[illi]m[eters] with rather narrow cervical canal,” a depressed cervical spinal cord at C3-4, C4-5 and C5-6 and spinal cord edema at the cervical levels of compression. Dr. Obukhoff stated, based upon appellant’s history, “the problem started

¹ This was assigned claim number 1302163465. The record also contains evidence for 13-2093804. Under this claim, the Office accepted that appellant sustained a neck strain due to her accepted November 28, 2003 employment injury which was expanded to include cervical degenerative intervertebral disc, bilateral brachial neuritis or radiculitis, and myelopathy. The Office authorized C4-6 cervical fusion surgery, which was performed on July 10, 2007. On March 1, 2007 it recommended that claim numbers 13-2093084 and 13-216345 be doubled with the former as the master file number. By letter dated July 17, 2007, appellant was placed on the periodic rolls for temporary total disability under claim number 13-2093804.

after rather significant fall she sustained in 2003 and since that time, her symptoms have been progressing.”

By letter dated December 15, 2006, the Office informed appellant that the evidence submitted was insufficient to establish her claim. It noted that the medical evidence she submitted attributed her condition to her November 28, 2003 employment injury. Appellant was requested to detail information regarding the activities she believed contributed to her condition and a comprehensive medical report with a diagnosis, results of examinations and tests and a doctor’s opinion with medical reasons on the cause of her condition. She was asked to provide a medical report addressing how her lobby director duties or other identified factors caused or aggravated her condition.

On December 29, 2006 Dr. Obukhoff diagnosed severe cervical canal stenosis due to C3-4, C4-5 and C5-6 disc herniations with myelopathy, radiculopathy and spinal cord compression. He stated that appellant was totally disabled. Dr. Obukhoff recommended an anterior cervical discectomy with fusion and spinal cord disc decompression surgery. He reported that appellant had “difficulties keeping her balance while walking” and complained of “very severe neck pain syndrome with radiation down to both legs.”

By decision dated February 28, 2007, the Office denied appellant’s claim, on the grounds that the medical evidence did not establish that her claimed cervical condition was causally related to the identified employment factors. It found that appellant failed to provide adequate medical opinion on the issue of causal relationship.

In a March 6, 2007 letter, appellant’s attorney requested an oral hearing before an Office hearing representative, which was held on July 30, 2007.

On January 19, 2007 Dr. Obukhoff noted an employment injury date of November 28, 2003 and diagnosed multiple level cervical disc disease, cervical radiculopathy, cervical discogenic myelopathy and cervical sprain. He recommended anterior cervical partial corpectomy with fusion and spinal cord decompression. Dr. Obukhoff concluded that appellant was currently totally disabled. On April 6, 2007 he opined that appellant was disabled from performing limited-duty work due to the decompression of her spinal cord as a result of the disc herniations. Dr. Obukhoff stated that “[p]atients with this condition are not safe to do any kind of work due to poor balance and da[n]ger of completely damaging the spinal cord if they fall.”

On April 3, 2007 Dr. G.B. Ha’Eri noted that appellant was seen on March 24, 2007 regarding her November 28, 2003 employment injury.² He noted her employment injury of November 28, 2003 and the medical treatment received. Dr. Ha’Eri diagnosed cervical strain, bilateral upper extremity radiculopathy and cervical discopathy. He opined that appellant’s injury and employment duties as a flexible mail carrier aggravated her preexisting cervical disc

² On March 1, 2007 the Office referred appellant for a second opinion evaluation with Dr. Ha’Eri under file number 13-2093804. It requested that Dr. Ha’Eri address whether appellant continued to have residuals of her accepted November 28, 2003 employment injury and whether she sustained a temporary or permanent aggravation of an underlying condition as a result of this injury. Dr. Ha’Eri was also requested to provide appellant’s physical restrictions due to this injury and whether she required any surgery or other medical treatment.

degeneration. Dr. Ha'Eri opined that an anterior cervical discectomy and C3 to C6 fusion surgery was warranted due to a permanent aggravation of appellant's cervical spine condition. He opined that appellant was currently disabled from working and that her return to work was dependent on the result of the proposed surgery.

By decision dated October 18, 2007, the Office hearing representative affirmed the denial of her claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his claim, including the fact that an injury was sustained in the performance of duty as alleged⁴ and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵

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 the 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 diagnosed condition is causally related to the employment factors identified by the claimant.⁶ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to that claimant's diagnosed condition. To be of probative value, 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.⁷ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.⁸

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202 (2001). When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury. *See also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (Occupational disease or Illness and Traumatic injury defined).

⁵ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁶ *Michael R. Shaffer*, 55 ECAB 386 (2004); *see also Solomon Polen*, 51 ECAB 341 (2000).

⁷ *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

⁸ *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 5 at 218.

ANALYSIS

Appellant submitted insufficient medical evidence to establish that her herniated cervical disc and spinal cord edema were caused or aggravated by her light-duty work as a lobby director. The medical evidence of record fails to provide any explanation of how her lobby director work duties caused or contributed to her diagnosed cervical conditions. The Office informed appellant of the evidence needed to establish her claim in its letter of December 15, 2006. Appellant was also informed that the medical evidence she submitted attributed her condition to her November 28, 2003 employment injury.

The medical evidence of record does not contain probative medical opinion on the issue presented. Appellant submitted reports of Drs. Ha'Eri and Obukhoff in support of her claim that her cervical condition was caused or aggravated by her duties as a lobby director. However, neither Dr. Obukhoff, a treating Board-certified neurological surgeon, nor Dr. Ha'Eri, the second opinion Board-certified orthopedic surgeon, addressed appellant's light-duty work activities as a lobby director or whether these duties caused or aggravated her cervical condition. Dr. Obukhoff reported on April 6, 2007 that appellant was disabled from performing limited-duty work but stated his rationale in terms of a future injury.⁹ His opinion was also couched in general terms and nonspecific to appellant's assigned duties as a lobby director as it referenced individuals with similar medical conditions to appellant's conditions. As such, it is of diminished probative value and insufficient to establish appellant's claim. Both physicians attributed appellant's cervical condition to her accepted November 28, 2003 employment injury. While Dr. Ha'Eri attributed appellant's employment duties as a contributing factor in permanently aggravating her preexisting cervical disc degeneration, the duties he referenced were those appellant performed as a letter carrier. There is no medical opinion in the record containing a diagnosis or a clear explanation of the relationship between any diagnosed back condition and the employment factors appellant identified from her light-duty work as a lobby director. Furthermore, the Board notes that the Office expanded the acceptance of appellant's November 28, 2003 employment injury claim to include a permanent aggravation of cervical discography and bilateral upper extremity radiculopathy and authorized C4-6 cervical fusion surgery. In the absence of probative medical evidence on causal relationship, the Board finds that appellant did not meet her burden of proof in establishing her occupational disease claim.

CONCLUSION

The Board finds that appellant has not established that her herniated cervical disc and spinal cord edema were caused or aggravated by her light-duty work as a lobby director.

⁹ See *Calvin E. King*, 51 ECAB 394 (2000).

ORDER

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

Issued: July 8, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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