

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

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**M.O., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Atascadero, CA, Employer**

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**Docket No. 09-171  
Issued: July 14, 2009**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 22, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated October 1, 2008 in which an Office hearing representative affirmed the denial of her claim for compensation. Under 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 met her burden of proof to establish that she sustained an injury causally related to factors of her federal employment.

**FACTUAL HISTORY**

On January 29, 2008 appellant, then a 53-year-old clerk, filed an occupational disease claim alleging that her cervical spine osteophytes and central canal stenosis was caused or aggravated by her employment duties. She was required to lift, throw and carry heavy parcels and bundles of mail trays and work 10 hours "NPS" for the prior years for six days a week. Appellant first became aware of her condition on September 10, 2007 and that it was caused or

aggravated by her employment on September 17, 2007. She related that approximately 10 years prior she sustained a muscle sprain on the right side of her neck. Appellant was recently off work for three months recovering from a July 2, 2007 foot surgery. During the time she was off, she started to experience her neck and upper back symptoms. The employing establishment controverted the claim.

A September 14, 2007 magnetic resonance imaging (MRI) scan of the thoracic spine reported a mild central canal stenosis, mild to moderate right neural foraminal narrowing and moderate left neural foraminal narrowing at C7-T1. A September 28, 2007 electromyogram (EMG) reported a mild C8 or T1 radiculopathy on the left but no evidence of cubital and/or carpal tunnel syndrome.

In an October 30, 2007 report, Dr. Phillip Kissel, a Board-certified neurosurgeon, examined appellant for neck pain and resolving left upper extremity weakness. Appellant reported no significant neck problem until she underwent bunion surgery on August 15, 2007. She indicated that, following the removal of the lower extremity cast, she felt that there was coincidental onset of neck pain. Dr. Kissel noted appellant's medical treatment and that she had not worked since July 2, 2007. He also noted that she had a neck flare with right upper extremity weakness 10 years ago that resolved. Dr. Kissel provided findings on examination and his review of the diagnostic testing. An impression of C6-7 autofusion and C5-6 and C7-T1 moderate spondylostenosis with resolved left upper extremity radiculopathy was provided. Dr. Kissel recommended that appellant continue conservative management and temporary disability as outlined by Dr. Allan Moelleken, an orthopedic surgeon.

Appellant also included an October 15, 2007 statement from The Spine Center regarding a cervical injection; an October 19, 2007 note which excused her from work for one month and a November 20, 2007 return to work report from Dr. James B. Carr, an orthopedic surgeon. In a January 30, 2008 duty status report, an unidentified healthcare provider noted a diagnosis of cervical radiculopathy and advised that appellant could resume work January 30, 2008 with restrictions on lifting.

In a February 1, 2008 letter, the employing establishment controverted the claim on the grounds that appellant's neck problems arose when she was not working. In a February 3, 2008 letter, Postmaster Jack Bishop advised that she was a part-time flexible sales service associate and distribution clerk whose job consisted of carrying, lifting and grasping mail; pushing and rolling equipment into the building; placing flats onto and off rolling equipment and into containers and carrier cases; working at the window performing sales associate duties; and performing some administrative work. He indicated that appellant never reported neck problems before she stopped working for her bunion surgery.

By letter dated March 6, 2008, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional factual and medical evidence, including a comprehensive medical report from a treating physician, which provided an opinion, with medical reasons, on the cause of her cervical spine, neck condition and its relationship to her federal employment.

In a March 17, 2008 statement, appellant indicated that she first sought treatment for her neck on August 7, 2007 from Dr. Hixson, a chiropractor; however, his treatment did not help. Dr. Hixson sent her for x-rays on September 10, 2007 and on September 17, 2007 she saw Dr. Moelleken, who prescribed physical therapy and two epidural in action. Appellant indicated that she did not sustain any new injury between the date of injury and the date she reported it. She reiterated that she was at home recuperating from her foot surgery when her neck and back became an issue. Appellant had previously seen Dr. Hixson for back adjustments for two years “depending on my workload. If I pulled a muscle or my back went out of alignment I would make an appointment with Dr. Hixson.” She also indicated that the two foot trays she worked on weighed 20 pounds when full as opposed to the 5 to 10 pounds she originally thought. No new medical evidence was submitted.

By decision dated April 17, 2008, the Office denied appellant’s claim on the grounds that she had not established a causal relationship between her cervical spine condition and her employment activities.

On April 22, 2006 appellant, through her attorney, requested a telephonic hearing, which was held on August 11, 2008. At the hearing, she was given 30 days to submit a written response to Postmaster Bishop’s description of her job duties and to provide medical records containing a physician’s medical explanation of how and why her cervical stenosis and osteophytes were causally related to her employment. No additional evidence was received.

By decision dated October 1, 2008, an Office hearing representative affirmed the April 17, 2008 decision finding that the factual and medical evidence was insufficient establish appellant’s claim.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> 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 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.<sup>2</sup>

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.<sup>3</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004); *see also Solomon Polen*, 51 ECAB 341, 343 (2000).

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 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.<sup>4</sup>

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.<sup>5</sup>

### ANALYSIS

The medical evidence submitted by appellant is insufficient to establish that her cervical spine condition was caused or aggravated by factors of her federal employment. Therefore, appellant has failed to meet her burden of proof to establish her occupational disease claim.<sup>6</sup>

The September 2007 MRI scan report of appellant's thoracic spine, listed a diagnosis of stenosis and foraminal narrowing at C7. The September 2007 EMG report did not contain an opinion regarding the cause of the diagnosed mild C8 or T1 radiculopathy. Dr. Kissel provided an impression of C6-7 autofusion and C5-6 and C7-T1 moderate spondylosenosis with resolved left upper extremity radiculopathy without offering any opinion on causation. Other reports of record, including Dr. Carr's November 20, 2007 return to work report, did not address the cause of appellant's condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>7</sup> In a January 30, 2008 report, an unidentified healthcare provider diagnosed cervical radiculopathy, but failed to offer an opinion on causation. However, this report cannot be considered competent medical evidence as the record does not show that the report was signed by a physician.<sup>8</sup> Consequently, these reports are insufficient to meet appellant's burden of proof.

Appellant expressed her belief that her neck condition resulted from her federal duties. However, the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>9</sup> Neither, the fact that the

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<sup>4</sup> *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

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

<sup>6</sup> While the employing establishment appears to be contesting certain of appellant's actual job duties, the Board notes that no dispute exists as to whether she had performed the duties claimed on her CA-2 form. Thus, the evidence establishes that appellant performed these duties.

<sup>7</sup> *Willie Miller*, 53 ECAB 697 (2002).

<sup>8</sup> *See* 5 U.S.C. § 8101(2). *See K.W.*, 59 ECAB \_\_\_\_ (Docket No. 07-1669, issued December 13, 2007) (medical form reports with illegible signatures did not constitute competent medical evidence).

<sup>9</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.<sup>10</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by conditions of employment is not determinative.

As there is no probative, rationalized medical evidence addressing how appellant's claimed cervical conditions was caused or aggravated by her employment, she has not met her burden of proof to establish that she sustained an occupational disease in the performance of duty causally related to factors of employment.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 1, 2008 is affirmed.

Issued: July 14, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>10</sup> *Id.*