

U.S. Department of Labor
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation, under Title 5, U.S. Code 8101 et seq., of Seymour M. Hyman, claimant; employed by the U.S. Postal Service. Case: 06-2087011. The hearing was held on October 26, 2004 in Atlanta, Georgia.

The issue is whether the claimant has established that on May 17, 2003 he sustained an injury in the performance of duty.

On May 21, 2003 the claimant, employed as a letter carrier by the U.S. Postal Service in North Miami Beach, Florida, filed Form CA-1, notice of traumatic injury, indicating that on May 17, 2003 he sustained a strained neck as a result of delivering mail to apartment mail boxes with continual turning of his head to-read.

On May 20, 2003 the claimant saw Paul Chaplin, M.D., an orthopedic surgeon, who stated that the claimant follows up for chronic cervical sprain with degenerative disc disease after motor vehicle accident on the job on November 18, 1992 with persistent complaints of neck pain. He noted that the claimant was attempting casing of mail on Saturday, May 17, 2003 on the job and had acute onset of increased pain and stiffness in the cervical region. Dr. Chaplin provided an assessment of chronic cervical sprain and status post motor vehicle accident on the job 11/18/92 with preexisting degenerative disc disease at C4 through C7 and exacerbation of symptoms 5/17/03 on the job with attempts at prolonged and repetitive neck extension after three hours of casing. Dr. Chaplin completed Form CA-17 indicating work restrictions of sedentary work with no casing or carrying mail satchel.

Follow up reports were received from Dr. Chaplin. The record includes an offer of modified assignment (limited duty) which the claimant accepted. However, the claimant also submitted claims for time lost from work when work within his restrictions was not available.

On December 15, 2003 the Office issued a decision denying the claim for compensation on the basis that the requirements had not been met for establishing that the claimant sustained an injury as defined by the FECA.

The claimant requested an oral hearing, which was held on October 26, 2004 in Atlanta, Georgia. At the hearing the claimant was represented by Paul Felser, attorney at law.

The claimant stated that on November 18, 1992 he was delivering his route when someone ran into the back of his vehicle causing his head to snap back hitting his seat. The claimant showed to the present examiner a reconsideration decision from the Office, under case file 06-558782, reversing its denial of the November 18, 1992 injury claim and accepting the claim for aggravation of degenerative disc disease.

The claimant stated that he had ongoing problems with his neck following the 1992 accident. He indicated that he was restricted to an eight-hour day with no overtime. The claimant noted that he was able to case mail intermittently for about an hour or an hour and a half.

The claimant stated that on May 17, 2003 his supervisor, who was new, gave him several apartment buildings to deliver which required him to "case" mail over his limit. The claimant explained that by using the term "casing" he does not mean casing mail at the post office. He indicated that instead he was referring to placing or "casing" mail into apartment mailboxes. The claimant noted that the set up is similar to the post office as the apartment boxes have mail slots arranged in rows and stacked on top of one another, much like the letter cases at the post office. He indicated that the motion is the same too; holding mail in one hand and using the other hand to repetitively put the mail into the boxes. The claimant explained that this is why he described his deliveries to the apartment mail boxes as "casing" mail.

The claimant stated that the first apartment complex he delivered was the Cricket Club which has eight or nine sections of mailboxes with 220 different families. He noted that he never delivered mail to this complex before and was therefore not familiar with the residences. The claimant stated that as a result of this unfamiliarity, he spent a lot of time moving his head up, down and sideways and twisting and turning to find the proper name and apartment number. The claimant also noted that the top four rows of the boxes were over his head, requiring him to reach up.

The claimant stated that after two of casing at the apartment complex his neck started to bother him. He indicated that he called in and told his supervisor that his neck was hurting, that he would finish the building he was doing, but he couldn't do the other two building she wanted him to deliver. The claimant noted that it took him over three hours to complete his delivery at the apartment complex.

The claimant stated that he usually delivered express mail and filled in on other routes. He indicated that he never had to delivery mail to an apartment complex which required three hours to deliver.

The claimant stated that after delivering mail to the Cricket Club he stopped work because his neck was really hurting. He indicated that he went to see Dr. Chaplin shortly thereafter. The claimant noted that Dr. Chaplin gave him additional restrictions of no casing and not to carry a satchel.

The claimant stated that he was on continuation of pay for 45 days, until July 1, 2003. He indicated that he then returned to work, but was sent home if there wasn't any work within his restrictions available. He noted that he worked intermittently and accumulated over 160 hours of leave without pay. The claimant stated that after five and a half months of intermittent work, things started to get busy and he began to work 40 hours a week again.

The claimant indicated that he still has the same restrictions but has been working 40 hours a week. He noted that his doctor has indicated that his condition is now stable.

Additional reports have been received from Dr. Chaplin, who, in a report dated December 2, 2003, states:

[The claimant] has a history of exacerbation of his degenerative disc disease of the cervical spine, which was aggravated by a motor vehicle accident on the job on 11/18/92.

This exacerbation occurred while delivering mail onto multiple mailboxes at the Cricket Club on 05/17/03 in a repetitive range of motion of the cervical spine that day, which exacerbated his previous symptoms. The patient is still having cervical symptoms at an increased level compared to prior to the 05/17/03 level. He has had exacerbation of his cervical degenerative disc disease and cervical arthritis. He has been on limited duty work avoiding casing and carrying of the satchel, and he did not return to baseline symptomatology as he was prior to 05/17/03 at the present time. Technically, the injury of 05/17/03 was done while delivering mail to multiple mailboxes at the Cricket Club in a similar fashion as casing may exacerbate his symptoms. It has been recommended he avoid casing, which he has done.

Dr. Chaplin provides an assessment of chronic cervical sprain with exacerbation of degenerative disc and joint disease on the job on 11/18/92 secondary to motor vehicle accident and 05/17/03 secondary to repetitive delivery and repetitive neck extension. He indicates that the claimant "has reached maximum medical improvement on 06/04/93 with permanent and partial impairment of 3% to 4% of the total body secondary to motor vehicle accident on the job on 11/18/92" and he "also has reached maximum medical improvement today on 12/02/03 for the injury on the job on 05/17/03 with an additional 1% total body secondary to the repetitive cervical extension and repetitive delivery on the job on 05/17/03. Dr. Chaplin states that the claimant should continue with home stretching program, heat, Celebrex, limited duty with no casing, not to carry a satchel, and maximum 8 hours a day, and may return as needed.

I find that the claimant has provided sufficient additional evidence to require further development of the record by the Office.

An employee seeking benefits under the Federal Employee's Compensation Act has the burden of establishing the essential elements of his or her claim.¹ In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is whether the employee actually experienced the employment incident at the time, place and in the manner alleged.² The second component is whether the employment incident caused a personal injury and that generally can be established only by medical evidence. To establish a causal relationship between the claimed condition, as well as any attendant disability claimed, and the employment incident or event, the employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.³

The claimant has now provided a specific description of employment activities he performed on May 17, 2003, and, absent any evidence to the contrary, his description is accepted as factual.

Dr. Chaplin states that the claimant sustained an exacerbation of his cervical degenerative disc disease secondary to his employment activities on May 17, 2003. He opines that the claimant reached maximum medical improvement on December 2, 2003 from the May 17, 2003 injury; however, he also states that the injury caused a 1% permanent partial total body impairment. This is in addition to 3% to 4% total body impairment secondary to the on the job motor vehicle accident on November 18, 1992. Dr. Chaplin does not provide a rationalized medical explanation as to how the work activities performed on May 17, 2003 caused a permanent impairment or aggravation of the claimant's preexisting condition. It is also not clear whether the claimant's continuing work restrictions are due the preexisting condition or residuals of the work injury. However, as Dr. Chaplin does support causal relationship based on an accurate factual background, his reports are sufficient to require further development of the medical evidence by the Office.

On remand, the Office should obtain the accepted November 18, 1992 injury claim, case file 06-558782, from the Federal Records Center. That and the present case should be doubled and a comprehensive Statement of Accepted Facts prepared, with a description of the November 18, 1992 work injury and the employment activities performed by the claimant on May 17, 2003. The claimant, together with the Statement of Accepted Facts and medical evidence of record, should be referred to a board-certified orthopedic surgeon for a second opinion examination.

The selected specialist should first be requested to provide a reasoned opinion as whether the November 18, 1992 work injury caused a temporary or permanent aggravation of the claimant's preexisting cervical degenerative disc disease.

¹ Elaine Pendleton, 40 ECAB 1143 (1989).

² John J. Carlone, 41 ECAB 354 (1989).

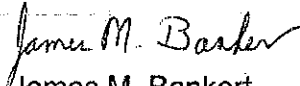
³ John A. Ceresoli Sr., 40 ECAB (1988).

The specialist should then provide a reasoned medical opinion as to whether the work activities performed by the claimant on May 17, 2003 aggravated his cervical degenerative disc disease. If yes, the specialist should indicate whether the aggravation was temporary or permanent in nature. If temporary, the specialist when the residuals due solely to the work injury resolved. If permanent, the specialist should explain, based on objective findings, how the work injury permanently worsened the preexisting condition. Finally, the specialist should indicate if the claimant has work restrictions, and, if so, whether the restrictions are based solely on the preexisting condition or an aggravation of the condition caused by the work injuries.

After this and any further development deemed necessary, the Office should issue a de novo decision as to the nature and extent of any injury and disability sustained by the claimant as a result of work activities performed on May 17, 2003.

The decision dated December 15, 2003 is hereby set aside and the case remanded to the District Office for further development as set forth above.

DATED: JAN 10 2005
WASHINGTON, D.C.


James M. Bankert
Hearing Representative
For
Director, Office of Workers'
Compensation Programs