

U S. DEPARTMENT OF LABOR

RECEIVED JUN 20 2006
EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

JUN 16 2006

Date of Injury: 05/08/1998
Employee: LARRY N. RUST

LARRY N RUST
865 JAMES ELKIN RD
BOWLING GREEN, KY 42101

Dear Mr. RUST:

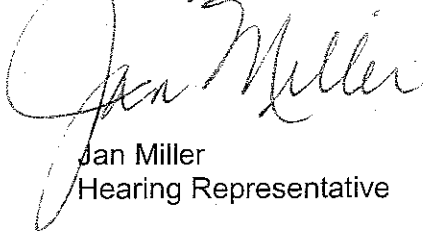
This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of hearings and Review.

A hearing was held on 02/24/2006. As a result of such hearing, it has been determined that the decision issued by the District Office should be vacated and the case remanded to the district office for further action as explained in the enclosed copy of the Hearing Representative's Decision.

Future correspondence should be addressed to: U.S. Department of Labor, Office of Workers' Compensation Programs:

US DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6 JAC
LONDON, KY 40742-8300

Sincerely,



Jan Miller
Hearing Representative

US POSTAL SERVICE
PITTSBURGH PERFORMANCE CLUSTER
SHARED SERV CNTR-1 MARQUIS PLAZA
5315 CAMPBELLS RUN ROAD
PITTSBURGH, PA 15277

Paul Felser
Attorney at Law
P.O. Box 10267
Savannah, GA 31401

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 LARRY N. RUST, Claimant; Employed by the U. S. Postal Service, Pittsburgh, PA. Case No. 06-2138697. Oral hearing was conducted on February 24, 2006 in Atlanta, GA.

The issue for determination is whether the medical evidence establishes a causal relationship between the claimed medical condition and the identified factors of employment.

The claimant, Larry Rust, born October 5, 1949, was retired from the Postal Service in Bowling Green, Kentucky when he completed form CA-2, Notice of Occupational Disease on April 17, 2005. The claimant alleged that the heavy lifting of mail following the holiday rush in December 1997 and January 1998, caused pain in his neck and a ruptured cervical disc. The claimant also indicated that he was suffering from a recurrence of his original injury in 1999. On the CA-2 form, the employing agency confirmed that the claimant retired on February 28, 2005.

The employing agency challenged the claim for the reason that the claim was not filed within 3 years after becoming aware that his condition was related to his employment.

In response to the Office's request for additional information, the claimant described the lifting, twisting, and handling of trays of cased mail and parcels, as well as casing overhead daily for 4 hours a day, as the employment-related activities that he believed contributed to his condition. The claimant maintained that his only outside hobby was deer hunting for about 2 weeks each year and occasional target practicing. The claimant

further wrote in a statement dated May 27, 2005 that the pains in his neck and arms started in January 1998 and were aggravated by prolonged sitting, standing, driving, working overhead, lifting, stooping, bending, turning, and twisting activities associated with his job as a City Letter Carrier. The claimant noted that he had surgery on his elbow in 1990 and cervical surgery in 1999.

No medical evidence was submitted with the claim.

In a decision dated June 10, 2005¹, the Office denied the claim for the reason that the evidence failed to establish that the claimant sustained a work-related injury, as claimed.

The claimant disagreed with the Office's denial decision and through his attorney, requested an oral hearing that was held on February 24, 2006.

On the day of the hearing, the claimant appeared with his attorney, Paul Felser. The claimant's wife, Nancy Rust, was also present.

Both the claimant and his attorney pointed out the claim form should have reflected that the claimed employment factors identified as the cause of the claimant's condition began in November, 1999, not May 8, 1998, as shown.

The claimant's attorney acknowledged that the claimant had a pre-existing cervical condition that was not disabling until the claimant sustained a significant work-related injury on May 8, 1999. The claimant's attorney argued that the work injury caused a permanent aggravation of the claimant's pre-existing condition. The claimant's attorney also noted that the claimant returned to work, with restrictions, but had to perform his regular duties as the employing agency did not accommodate his restrictions. As a result, the claimant suffered further worsening of the condition. The attorney also pointed out that the claimant underwent cervical surgery on June 11, 1999 and was unable to bend or flex his neck when he returned to work.

¹ The denial decision was amended and reissued on June 27, 2005 after it was discovered that the first decision included evidence submitted in support of another unrelated claim

During his testimony, the claimant also referred to the agency's failure to accommodate his restrictions. The claimant described his inability to perform the job activities after he was released to return to work. The claimant maintained that before the 1999 work injury, he had no restrictions or limitations and was able to perform his job adequately. The claimant testified that he returned to work after the surgery but had to stop working again after he underwent a triple bypass procedure. The claimant testified that after he returned to work in February 2000, he was required to twist, turn, lift, and reach overhead and eventually had to stop working on July 1, 2004. The claimant confirmed that he was granted disability retirement. The claimant described his lifting and standing limitations, his difficulty sleeping, and his need for a hard chair when he sat. The claimant insisted that prior to 1999, he was able to do house and yard work without any difficulty. The claimant further insisted that he sustained no other injuries after 1999.

Post hearing, a copy of the claimant's response to the Office's request for additional information, statements from the claimant about his previous work-related injury, and a copy of the agency's January 21, 2005 letter to the claimant regarding his medical restrictions were submitted by the claimant's attorney.

Medical evidence submitted after the hearing included reports dated July 19 and September 20, 2004 and February 17 and March 22, 2006 from Dr. Phillip Singer, an orthopedist; a duty status report form; a cervical spine MRI; a consultation report dated January 14, 1998; progress notes from May 17, 1999 and July 1, 2004; a C5-6 myelogram; and a CT scan of the cervical spine dated June 16, 1999.

I have carefully evaluated all the evidence of record; to include the claimant's testimony, the attorney's arguments, and the additional medical evidence submitted after the hearing. I find that this case is not in posture for a decision at this time.

An employee seeking benefits under the Federal Employees' Compensation Act (FECA) has the burden of establishing the essential elements of his or 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

The fundamental prerequisite to compensation under the Federal Employees' Compensation Act (FECA) is that there be a causal connection, established by reliable, probative, and substantial evidence, between the employment and a personal injury sustained in the performance of duty or disease proximately caused by the employment. The claimant's own assertion of an employment relationship is not proof of fact.

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 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.⁴

Medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that 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

² Joe D. Cameron, 41 ECAB 153 (1989); Elaine Pendleton, 40 ECAB 1143, 1145 (1989).

³ Thomas L. Hogan, 47 ECAB 323 (1996).

⁴ Luis M. Villanueva, 54 ECAB ____ (Docket No. 03-977, issued 7/1/03)

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

In the instant case, the evidence of record confirms that the claimant suffered from chronic cervical spine degenerative disease and sustained a previous work-related injury, while in the performance of his duties on May 8, 1999. The Office accepted this claim for cervical intervertebral displacement under case file 06-727574.

The medical evidence from the claimant's 1999 work injury case file were reviewed and revealed that the claimant continued to complain of bilateral shoulder, upper extremity, and neck pain until the cervical fusion surgery was performed on June 11, 1999. According to Dr. Singer, the claimant progressed well after the surgery but his degeneration progressively worsened. In his report of July 19, 2004, Dr. Singer referred to the radiographic documentation of a large spondylosis at C3-4 and C4-5. On September 20, Dr. Singer further detailed the residual discomfort that the claimant experienced in his cervical spine, along with headaches and pain and weakness in his upper extremities. On December 1, Dr. Singer wrote that the claimant was suffering from a "multitude of problems" but primarily due to significant degenerative disc disease in his cervical spine. Dr. Singer recommended that the claimant stop working because he was unable to tolerate the lifting, stooping, twisting, bending and prolonged sitting and standing associated with his job. Dr. Singer described the claimant's treatment after May 1999, his increasing symptoms, and the X-ray findings of the disc condition at C5-6 and C6-7. Dr. Singer again noted that the surgery provided moderate improvement until 2004 when his symptoms increased. Dr. Singer diagnosed status post cervical fusion at C5-6 and C6-7 with adjacent level degeneration at C4-5. Dr. Singer reported that the claimant's condition was easily exacerbated by job duties that required repetitive hyperextension and hyper flexion and rotation of the cervical spine. Dr. Singer concluded that although the claimant had a pre-existing condition prior to May 8, 1999, his condition was asymptomatic from February 1998 to May 1999.

⁵ Steven S. Saleh, 55 ECAB ___ (Docket No. 03-2232, issued 12/12/03).

In his subsequent report of March 22, 2006, Dr. Singer detailed the claimant's work duties after his return to work in 1999 and he concluded that these activities aggravated and placed stress on the claimant's cervical spine. Dr. Singer diagnosed cervical disc disease and concluded that the claimant's work activities worsened his disease and caused permanent degenerative disc disease and significant dysfunction. Dr. Singer also concluded that the claimant's employment activities aggravated his chronic condition. Dr. Singer opined that the claimant was unable to work and would remain disabled with no change possible.

After review and consideration of the evidence, I find that there is sufficient medical evidence to compel the Office towards further development of the medical evidence. In the final report submitted by Dr. Singer, the physician attempts to provide a more concrete discussion of the connection between the claimant's work activities and his pre-existing condition, as prompted by the attorney. However, there is insufficient discussion of whether the permanent aggravation was solely due to the accepted work related condition. Further, the medical evidence does not fully address whether the claimant's absence from work from November 1999 to February 2000 due to his heart attack, had any impact on his cervical condition.

Despite these omissions, the medical documentation cannot be completely discounted. While the reports are insufficiently rationalized to meet the claimant's burden of proof in establishing causal relationship, they contain an accurate history of injury (consistent with the claimant's statements) to warrant further development of the medical evidence by the Office. Further, there is no opposing medical evidence or any indication that there is no connection between the claimant's employment activities beginning in November 1999 and the claimed aggravation of his pre-existing cervical condition.

The Appeals Board has ruled that proceedings under FECA are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation benefits, the Office shares responsibility in the development of the evidence and has an obligation to see that justice is done.⁶

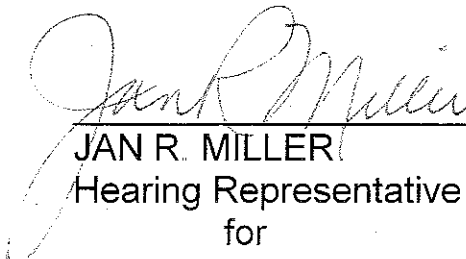
⁶ William J. Cantrell, 34 ECAB 1223 (1983).

On remand, the Office should prepare a statement of accepted facts and refer the claimant to a board-certified orthopedic specialist for a detailed, well-reasoned opinion on the causal relationship between the claimant's work factors beginning in November 1999 and his pre-existing cervical condition, along with a reference to the claimant's non-work related heart attack and absence from work as a result, and the extent and duration of the aggravation. Upon receipt and review of the specialist's opinion and after any other development actions deemed necessary, the Office should issue an appropriate decision on the outstanding issue in this case.

Consistent with these findings, the decision of the District Office dated June 10, 2005 and amended June 27, 2005 is hereby **SET ASIDE**.

JUN 16 2006

DATED:
WASHINGTON, D.C.



JAN R. MILLER
Hearing Representative
for
Director, Office of Workers'
Compensation Programs