

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL J. KRAUSE and DEPARTMENT OF THE NAVY,
NAVAL AIR SYSTEMS COMMAND, Pensacola, Fla.

*Docket No. 96-2535; Submitted on the Record;
Issued January 15, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained right shoulder and cervical spine conditions in the performance of duty, causally related to an August 18, 1986 employment incident or to other factors of his federal employment.

This is appellant's third appeal to the Board.¹ In the prior appeals the Board found that the evidence did not establish that appellant sustained a traumatic injury on August 18, 1986, but that he may have sustained an occupational disease condition which required further development by the Office of Workers' Compensation Programs and that the Office failed to adequately develop appellant's occupational disease claim.

After further development was undertaken, by decision dated July 22, 1994, the Office accepted that appellant sustained right epicondylitis on or before August 18, 1986 which resolved by January 6, 1987 when he returned to light duty, but denied appellant's claim for cervical and right shoulder conditions finding that causal relation was not established. However, by hearing representative's decision dated June 1, 1995, the July 22, 1994 decision was set aside and further development was ordered relating to appellant's alleged cervical and right shoulder conditions.

Thereafter appellant was referred, together with a statement of accepted facts, the complete case record, and questions to be answered, to Dr. William J. Hamilton, a Board-certified osteopathic neurologist of professorial rank, for a rationalized medical opinion on whether appellant's cervical and right shoulder conditions were causally related to an August 18, 1986 employment incident, or to other factors of appellant's employment.

Appellant had previously submitted a May 12, 1993 letter from Dr. John G. Brown, a Board-certified osteopathic family practitioner, which had referred to appellant's recurrent neck

¹ See Docket No. 89-1024 (issued August 29, 1989); Docket No. 92-1143 (issued March 24, 1993).

and right arm pain as being “associated with a work injury which occurred in 1986.” Dr. Brown diagnosed chronic neck sprain, right arm ulnar nerve palsy, brachial plexus neuritis and cervical spondylosis, and he opined: “The above listed diagnoses should be considered work related as there is no other historical evidence of other problems which have occurred to relate to such injuries, and this injury occurred in August of 1986.” An August 4, 1993 deposition of Dr. Brown revealed that in 1991 he treated appellant for probable cervical spondylosis with arthritis with restricted range of motion and a possible herniated disc, secondary to appellant’s “chronic injury.” He referred to appellant’s condition as “somatic dysfunction” and “secondary osteodystrophy,” which he described as secondary disability after an initial traumatic injury where nerve, bone, muscles and tendons become affected by an autonomic nervous system dysfunction which occurs secondary to an initial traumatic injury and pain. Dr. Brown stated that appellant had a single traumatic event, but that according to appellant’s history, he had problems even before that, such that appellant’s condition would have to be the result of occupational disease. Dr. Brown opined that the single traumatic episode was just evidence that he had prior injury over a long period of time, and that wear and tear weakened the site. Dr. Brown opined that the spurring and the remarkable inflammatory response that appellant had in the cervical spine was secondary to obvious long-term osteodystrophy-type changes associated with chronic pain and chronic overuse. Dr. Brown opined that appellant’s neck condition was related to his federal employment.

In a report dated July 28, 1995, Dr. Hamilton reviewed appellant’s history, described his symptoms, diagnosed chronic cervical right shoulder, right upper extremity and hand pain, etiology not delineated, and stated that appellant’s multiple symptomatology did not have a discreet identifiable etiology. He opined that appellant’s pain complaints were markedly disproportionate to the paucity of neurological findings, and he noted that with a 10-year history of radiculopathy, plexopathy or peripheral entrapment neuropathy, one would expect muscle atrophy, fasciculations and documentable weakness. Dr. Hamilton stated that it was totally unclear as to any relationship of appellant’s persistent cervical, shoulder and arm pain being secondary to his previous employment, and noted that with appellant’s lack of employment since 1986, the symptoms should have resolved. He stated that appellant’s chronic cervical pain was probably not resultant of his work.

By decision dated September 12, 1995, the Office denied appellant’s claim finding that the medical evidence did not establish that appellant’s cervical and shoulder problems were related to his August 18, 1986 injury. The Office did not analyze the evidence with respect to whether appellant’s one-armed working overhead prior to and after August 18, 1986 caused or aggravated his cervical and right shoulder problems but instead restricted its analysis to whether his problems were the discreet result of traumatic injury on August 18, 1986, and it quoted Dr. Hamilton’s opinion that appellant’s cervical and shoulder conditions did not have a discreet identifiable etiology.

The Board finds that this case is not in posture for decision due to an unresolved conflict in medical opinion evidence.

The Federal Employees’ Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: “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.”

In the instant case, there is an unresolved conflict between the opinions of Dr. Hamilton and appellant’s Dr. Brown on the employment relatedness of appellant’s cervical and right shoulder conditions. Dr. Hamilton analyzes the conditions in terms of a discreet etiology, one traumatic event, and Dr. Brown analyzes the conditions in terms of repeated exposures to factors of employment over a period of time. As the Board has already determined that the evidence does not support that appellant’s conditions are as a result of a discreet traumatic injury, it now suggests that the claim be further evaluated in the occupational disease context.

Therefore, the case will be remanded for creation of a statement of accepted facts including a narration of appellant’s occupational exposures over time and his reliance solely on his right arm to perform work, and for referral to an appropriate impartial medical specialist for a rationalized opinion on whether appellant’s occupational exposures caused or aggravated his cervical and right shoulder conditions, to resolve the existing medical opinion conflict.

Consequently, the decision of the Office of Workers’ Compensation Programs dated September 12, 1995 is hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, D.C.
January 15, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member