

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of NICHOLAS YAWORSKI and DEPARTMENT OF TRANSPORTATION,  
COAST GUARD SUPPORT CENTER, Governors Island, NY

*Docket No. 00-2346; Submitted on the Record;  
Issued July 27, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant's May 21, 1990 employment injury, accepted by the Office of Workers' Compensation Programs for low back derangement, right shoulder sprain and rotator cuff tear, also caused an injury to appellant's cervical spine.

On May 21, 1990 appellant, then a 36-year-old pipefitter, injured his lower back and right shoulder when he "slipped down stairs while carrying a hot water heater." The Office accepted the claim for low back derangement and a right shoulder sprain. Appellant received continuation of pay from May 21, 1990 until his return to work on July 9, 1990.

On January 19, 1999 appellant filed a claim for a recurrence of disability stating that on January 17, 1999 he experienced extreme pain in his right shoulder. He continued to work until May 4, 1999, when he underwent surgery, authorized by the Office, on his right shoulder for a torn rotator cuff and a torn labrum with subacromial impingement. The Office accepted that appellant sustained a recurrence of disability on May 4, 1999 and began payment of compensation for temporary total disability.

By letter dated November 10, 1999, appellant, through his attorney, requested that the Office expand the accepted conditions to include an injury to appellant's cervical spine. By decision dated February 1, 2000, the Office found that the medical evidence failed to show that appellant's May 21, 1990 employment injury caused a cervical spine condition. On this basis, the Office refused to pay for treatment of appellant's cervical spine condition, including physical therapy and possible surgery.

Appellant requested reconsideration and submitted additional medical evidence. By decision dated May 17, 2000, the Office found the evidence insufficient to warrant modification of its prior decision, noting that no medical evidence even remotely contemporaneous with the May 21, 1990 employment injury showed a cervical spine injury.

The Board finds that appellant has not established that his May 21, 1990 employment injury caused a cervical spine injury.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.<sup>1</sup>

In a report dated October 21, 1999, Dr. Allan Hausknecht described appellant's right shoulder condition, herniated discs at C5-6 and C6-7, and entrapment neuropathies shown on electromyography and nerve conduction velocity studies. Dr. Hausknecht concluded, "I feel that all injuries described are the direct result of the employment-related incidents of May 21, 1990 and January 15, 1999." In a report dated December 24, 1999, Dr. Stephen Marcus noted that appellant sustained two employment injuries, one on May 21, 1990 and another on January 15, 1999. After describing the condition of appellant's right shoulder, his herniated cervical disc, spinal stenosis of the lumbar spine, and carpal tunnel syndrome, Dr. Marcus stated, "Causal relationship does exist with the above-noted injuries."

The case record contains no indication that appellant has filed a claim for an alleged injury on January 15, 1999, although appellant did mention, in a statement received by the Office on April 14, 1999, a January 15, 1999 incident in which he was moving boxes at work and started to get a pain in his right shoulder.

The reports of Drs. Hausknecht and Marcus are not sufficient to meet appellant's burden of proof because they are based on an inaccurate history that appellant sustained an injury to his neck on May 21, 1990.<sup>2</sup> Such a history is not supported by the evidence in the case record. Appellant was initially examined on May 21, 1990 by Dr. Earl Katz, a chiropractor, who x-rayed only his lumbar spine and diagnosed only lumbosacral conditions.

Appellant was seen by Dr. Stanley W. Bleifer on June 21 and July 12, 1990; Dr. Bleifer diagnosed acute low back derangement and sprain to the right shoulder. The reports from Drs. Katz and Bleifer are the only medical evidence from 1990 and neither reflects any neck or cervical spine complaints or treatment. Appellant's claim form also does not mention the neck or cervical spine. The first mention of neck symptoms is in Dr. Marcus' January 17, 1999 report which he stated that appellant "feels as though the symptoms are traveling at this time to his neck."

Although a January 3, 2000 witness statement indicates that appellant was placed in a neck brace on May 21, 1990 after the water heater incident, this belated statement, which greatly embellishes the account by this same witness on appellant's claim form, does not establish that appellant sustained a neck injury on May 21, 1990, in light of the absence of any treatment or complaints referable to the neck before January 17, 1999.

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<sup>1</sup> *Froilan Negron Marrero*, 33 ECAB 796 (1982).

<sup>2</sup> *Peter Seaman*, 34 ECAB 1735 (1983).

The decisions of the Office of Workers' Compensation Programs dated May 17 and February 1, 2000 are affirmed.

Dated, Washington, DC  
July 27, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member