U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN L. JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Austin, TX

Docket No. 01-1372 and 01-1607; Submitted on the Record;
Issued February 6, 2003

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof to establish that his various medical conditions arose out of or are causally related to an August 23, 1998 work injury; (2) whether appellant sustained an emotional condition causally related to compensable factors of his federal employment; and (3) whether the Office of Workers' Compensation Programs properly rescinded its acceptance of appellant's claim for cervical and lumbar radiculopathy.

This case has previously been before the Board. By decision dated July 16, 2001, the Board affirmed the May 23 and March 24, 1999 decisions of the Office, which terminated appellant's compensation benefits for a fractured left great toe; found that appellant had not sustained a recurrence of disability on and after December 10, 1998 causally related to his August 23, 1998 employment injury; and found that the Office had properly denied appellant's request for a hearing.[1] The law and facts as set forth in the previous Board decisions are incorporated herein by reference.

After appellant's initial claim of the August 23, 1998 incident, he filed several claims for medical conditions resulting out of the claimed August 23, 1998 injury.[2] Appellant contended that forklift driver Robert Nales-Lopez confessed that he ran over his whole body with a speeding forklift. The employing establishment asserted that none of the statements taken at the time of the August 23, 1998 incident, including appellant's own statement, supported the current claims.

On July 28, 1999 appellant filed an occupational disease claim for mental and emotional stress caused by violence in the workplace by conflict with a supervisor arising from the forklift

[1] Docket Nos. 99-1892; 99-2382; and 00-120.

[2] Although many of the claims were developed under separate claim numbers, all claims were eventually combined into one master file.

injury of August 23, 1998. Appellant alleged that on August 27, 1998 he was verbally abused and harassed by his supervisor, Harold Youmans, and threatened with a termination of his job. He stated that Mr. Youmans called him into his office with the door open and humiliated him by resorting to a raised voice and aggressive behavior. The discussion appeared to revolve around appellant's capacity with regard to "throwing of mail" and the amount of training he had in which to do the job. Appellant stated that he reported the incident to managers Joyce Hill and Cleve Taylor on August 29, 1998 with no apparent consequences and also reported the incident to the inspection service hotline. In a petition addressed to the Western District of Texas, San Antonio Division, signed August 27, 1998, appellant requested the removal of Mr. Youmans or, in the alternative, to be relocated to a less hostile working environment. He took issue with his supervisor's management style and submitted statements detailing allegations of discrimination and harassment by his supervisor. Appellant has also alleged that he was refused proper medical attention after the August 23, 1998 incident and he was wrongfully terminated.

The Office found that the following events occurred: A couple days before appellant's accident of August 23, 1998, he was brought into the office by Mr. Youmans his supervisor and told that he was not meeting the expectations of his job. He was advised to refrain from excessive talking and idleness. Mr. Youmans monitored appellant from August 24 through 27, 1998 because he worked in his operation. He related that he gave appellant one-on-one instructions and, on August 27, 1998 had an official discussion with appellant regarding his poor performance. Appellant was advised that his performance must improve or he would be terminated. Mr. Youmans further related that he did not observe a limp or any indication that appellant was injured, nor did he mention it. At midnight on August 28, 1998, supervisor Aaron Miller advised appellant that he would be required to work 12 hours that night along with other casuals. Approximately 30 minutes later, appellant stated he was ill and could not work. He provided a statement and left. On August 29, 1998 appellant reported the alleged injury of August 23, 1998. He was terminated on or about December 10, 1998 for failure to report additional income from outside employment while in receipt of federal compensation benefits.

On January 28, 2000 appellant filed an occupational disease claim for a contusion on August 23, 1998, which resulted in a bilateral hearing loss. In a letter dated February 15, 2000, appellant was advised of the type of evidence needed to establish his claim. By decision dated April 18, 2000, the Office denied appellant's claim that the work injury caused or aggravated his hearing loss. The Office found that the medical evidence failed to include a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury of hearing loss.

On March 15, 2000 appellant filed an occupational disease claim for cervical radiculopathy, cervicalgia and clear spinal stenosis at C4-5, C5-6, C6-7 and C3-4, which he alleged were due to the August 23, 1998 injury. On April 4, 2000 the Office accepted the conditions of cervical and lumbar radiculopathy.[3] By decision dated June 28, 2000, the Office rescinded its acceptance of appellant's claims for cervical and lumbar radiculopathy on the basis

[3] The Office approved the conditions of brachial neuritis nos and lumbosacral neurotis nos and subsequently referred to those conditions as being a cervical and lumbar radiculopathy.

that the information of record was insufficient to establish that the diagnosed conditions were causally related to appellant's federal employment.

On March 28, 2000 appellant filed an occupational claim stating that the August 23, 1998 forklift injury caused traumatic injury to both legs and lower extremities with peripheral neuropathy prominent in peroneal nerve on the left with foot drop and denervation in anterior tibial muscle paroneal palsy.

On April 14, 2000 appellant filed an occupational claim for a left foot drop with peripheral neuropathy caused by the forklift injury on August 23, 1998.[4]

On October 1, 2000 appellant filed an occupational claim for bilateral carpal tunnel syndrome caused by the August 23, 1998 injury.

In an August 29, 1998 emergency treatment record, appellant complained of a left foot injury at work August 23, 1998 when he was run over by fork truck and was experiencing painful toes. Appellant was diagnosed with a fractured distal middle phalanx of the left third toe and cellulitis. In an August 31, 1998 report, the emergency room physician advised that he had a crush injury and that the cellulitis was resolving. No permanent effects were anticipated. Hospitalization was not required. Injury to any other part of appellant's body was not mentioned. A March 25, 1999 report from Dr. Richard C. Spinn, Jr., a clinical psychologist, noted that appellant reported a history that his left foot had been broken when a forklift ran over his foot. Dr. Spinn noted that the medical records indicated that the break was an old healed break and that the forklift had not broken appellant's toe. He noted that appellant was not receiving compensation. In a September 17, 1999 report, Dr. A.J. Morris, a Board-certified family practitioner, noted that appellant presented with the acute onset of left foot and ankle pain after being run into or over by a forklift on August 23, 1998. Appellant complained of left toe, foot, ankle and lumbar pain secondary to this injury. Dr. Morris diagnosed left foot digital fracture of number three; ankle and foot pain; and lumbar pain. No discussion on causal relationship was presented. Subsequent medical reports also failed to address causal relationship.

In a November 11, 1999 report, Dr. H. Bruce Hamilton, a Board-certified neurological surgeon, advised that appellant reported on August 23, 1998 he was run over by a forklift. He noted appellant's complaints of left foot numbness, foot drop, low back pain radiating into his left hip and left leg and neck pain radiating to his left arm. A magnetic resonance imaging (MRI) scan of the lumboscaral spine showed prominent disc bulging at L4-5, a right disc bulge at L3-4 as well as multiple degenerative disc disease and narrowing at L3-4, L4-5 and L5-1. An electromyogram (EMG) and nerve conduction studies showed left posterior tibial nerve and left peroneal nerve palsies. Diagnoses included: cervical radiculopathy; cervicalgia; low back pain; lumbosacral radiculopathy; and chronic left peroneal nerve palsy. Dr. Hamilton noted that appellant has significant degenerative disc disease in his lumbar spine which could cause

[4] The record reflects that on April 24, 2000 appellant filed an occupational claim for total disability of penis and sexual dysfunction along with a low back condition due to the forklift injury of August 23, 1998; however, the record does not show that the Office has issued a decision on this claim. Consequently, the Board has no jurisdiction over this matter. 20 C.F.R. § 501.2(c).

bilateral leg pain, numbness, weakness and low back pain. He also indicated that appellant likely had degenerative disease of the cervical spine. Subsequent reports, including form reports, advised that appellant's conditions were causally related to his employment injury.

In a July 15, 1999 report, Dr. Stephen G. Howlett, a Board-certified neurologist, reported that appellant was "run down and his whole body was run over by a speeding forklift, on the job, which resulted in a disability." He reported that appellant complained of foot drop and back pain, radicular complaints, trouble sleeping from occupational stress caused by a supervisor pulling a knife on him. Dr. Howlett reported poor effort during the evaluation and opined there were strong elements of a conversion reaction. In a September 1, 1999 report, Dr. Howlett reported the results of the nerve conduction studies and EMG. He advised that appellant had peripheral neuropathy involving both lower extremities and most prominent in the peroneal nerve on the left side. Appellant also has a partial foot drop. Dr. Howlett stated that this was aggravated by injury.

In an April 3, 2000 medical report, Dr. Bryan S. Drazner related that appellant sustained a crush injury on August 27, 1998. He reported that appellant stated: "he was coming out of a break room into a work area when a speeding fork lift ran over him while driving without warning lights or sirens." Appellant states that this forklift threw him 20 feet forward and that it hit him on his left side knocking him to the floor. He states that while he was quite dazed from this injury, he did not experience loss of consciousness." Dr. Drazner reviewed the reports of Dr. Hamilton. He opined that appellant was status post extensive work injury, when a forklift ran over him and he sustained injuries to the neck and lower back region, as well as to the left foot.

By decision dated February 28, 2001, the Office denied appellant's claims for bilateral leg conditions with peripheral neuropathy, left foot drop and peripheral neuropathy and bilateral carpal tunnel syndrome conditions as being causally related to either the August 23, 1998 work injury or to employment factors. Concerning the August 23, 1998 work injury, the Office stated that it did not accept that the forklift either ran over appellant's left foot or that it ran over appellant's entire body. The Office based its denial of appellant's medical conditions on the basis that the medical reports submitted were based on an erroneous history of injury and were insufficient to establish appellant's claim. The Office further denied appellant's claim for an emotional condition as he failed to identify any compensable employment factors. The Office found that appellant's allegations were unsupported by the evidence and that he failed to show error or abuse in any of the administrative actions taken by his supervisor.

On February 28, 2001 the Office issued a notice of proposed rescission of acceptance of appellant's neck and low back conditions on the grounds that the medical reports of treatment he received soon after the August 23, 1998 injury failed to show any neck or low back condition causally related to the work injury of August 23, 1998. The Office found that additional information from the employing establishment established that appellant initially reported the August 23, 1998 work injury on August 29, 1998 and stated that he had jumped over the front forks of the forklift as it passed by. In the current claim, appellant had claimed that the forklift driver had run over his entire body. The Office further found that the additional medical reports concerning appellant's emergency room treatment failed to describe any injury to the neck or

low back. The Office advised appellant that he had 30 days within which to submit additional evidence or argument.

Appellant disagreed with the proposed rescission and submitted numerous exhibits, many which were duplicative of evidence already of record, along with lengthy statements indicating his arguments as to why his conditions were causally related to the August 23, 1998 work injury. The Office additionally received medical reports beginning April 3, 2000 from Dr. Drazner.

By decision dated March 30, 2001, the Office rescinded the acceptance of neck and low back conditions as the medical evidence failed to establish that such conditions were causally related to the August 23, 1998 work injury.

The Board finds that appellant has not established that his claims of bilateral leg conditions with peripheral neuropathy, left foot drop and peripheral neuropathy, bilateral carpal tunnel syndrome conditions and bilateral hearing loss are causally related to either the accepted August 23, 1998 work injury or to factors of his employment.

When an employee claims an injury or condition causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the newly alleged condition and any related period of disability, are causally related to the accepted injury. It is insufficient merely to establish the presence of a condition. In order to establish his or her claim, appellant must also submit rationalized medical evidence, based on a complete and accurate factual and medical background, showing a causal relationship between the employment injury and the claimed conditions.[5]

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his newly claimed medical conditions and the accepted August 23, 1998 work injury.[6] Causal relationship is a medical issue.[7] The medical evidence required to establish a causal relationship, generally, is medical opinion evidence,[8] of reasonable medical certainty,[9] supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10] An award of compensation may not be made on the basis of surmise, conjecture, speculation nor on appellant's belief of causal relation unsupported by the medical record.[11]

[5] *See Armando Colon*, 41 ECAB 563 (1990).

[6] *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

[7] *Mary J. Briggs*, 37 ECAB 578 (1986).

[8] *See Naomi Lilly*, 10 ECAB 560, 572-73 (1959).

[9] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[10] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[11] *Ausberto Guzman*, 25 ECAB 362 (1974).

An obvious problem in this case in establishing causal relationship is the inconsistency in appellant's statements regarding the August 23, 1998 injury. The Office advised that it had not accepted that the forklift either ran over appellant's left foot or that it struck or ran over appellant's body[12] The Board notes that the medical evidence contemporaneous to the work injury of August 23, 1998 provides the most accurate depiction of what occurred. Within the Board's July 16, 2001 decision, it was noted that appellant visited an emergency room on August 29, 1998. Although it is not clear whether he had bumped his left foot on the forklift or whether the forklift had run over his left foot, the emergency room physician and all subsequent medical reports referred to a "crush" injury which was resolving. To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the facts and circumstances and his subsequent course of action.[13]

The evidence reveals that appellant initially reported the August 23, 1998 injury on August 29, 1998. In his statement dated August 29, 1998, appellant noted that he was coming out of a break room door and a forklift black went pass his foot and he stepped and jumped over the forklift, which was traveling at a fast rate of speed. An August 29, 1998 statement from Mr. Nales-Lopez, the driver of the forklift, advised that he blew the forklift horn several times as he was approaching the break room door. As he was passing by the break room door, appellant came from the break room and "he jumped over the front forks." Mr. Lopez stated that on August 27, 1998 appellant started to talk to him and showed him his foot toe, which he said he hurt that Sunday. Appellant claimed that the forklift driver had run over his entire body. This is evidenced by the fact that appellant filed approximately six occupational disease claims from July 1999 to April 2000 alleging various medical conditions arose from the August 23, 1998 work injury which he referred to as a vehicular assault in which his entire body was run over by a speeding forklift. Inasmuch as appellant's subsequent statements regarding the August 23, 1998 injury are inconsistent with the factual evidence, this history of injury as noted by various physicians of record renders their reports of diminished probative value. Appellant has not established that a forklift ran over his whole body on August 23, 1998.

In the July 16, 2001 decision, the Board affirmed the Office's May 23 and March 24, 1999 decisions which had terminated appellant's compensation benefits for the accepted condition of fracture to the left great toe and further found that appellant had not sustained a recurrence of disability on and after December 10, 1998 causally related to his August 23, 1998 employment injury. The medical evidence revealed that the emergency room x-rays taken August 29, 1998 revealed no fractures of the toes other than a preexisting fracture of the fifth metatarsal, which had healed. It was noted that the nail bed on the third toe had been removed in the emergency room. The medical opinion of records opined that appellant's crush injury was resolving in normal fashion. The medical and factual evidence further supported that there was no ongoing disability or residuals related to appellant's work injury of August 23, 1998 no later than December 17, 1998.

[12] Although the Office had originally accepted the claim for a fracture to the left great toe, it did not previously make specific findings with regard to appellant's contact with the forklift on August 23, 1998.

[13] *See Nathaniel Cooper,* 46 ECAB 1053 (1995).

The evidence on this appeal fails to show that appellant's claimed conditions of injuries to both legs and lower extremities, cervical radiculopathy, cervicada, spinal stenosis at C4-5, C5-6, C6-7, bulging disc at L4-5, L3-4, L5-S1, disc herniation, carpal tunnel syndrome, hearing loss and mental stress arose as a result of the August 23, 1998 injury or factors of his employment.

Evidence relating to appellant's claims of bilateral leg conditions with peripheral neuropathy and left foot drop were described in the Board's decision of July 16, 2001 and is incorporated by reference. The Board found that the medical evidence established that appellant's disability related to his August 23, 1998 injury ceased by December 17, 1998. Appellant has not submitted sufficient medical evidence demonstrating that the aggravation, acceleration or precipitation of his medical conditions resulted from the August 23, 1998 incident. Although numerous treatment notes indicated that appellant has problems with the above-noted conditions, none of the evidence addresses with rationale based on a proper history of injury how these conditions are causally related to the August 23, 1998 injury. Medical opinions, which are based on an incomplete or inaccurate factual background, are entitled to little probative value in establishing a claim for compensation benefits.[14] Additionally, 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.[15] Of the medical reports appellant submitted, the Board notes that the reports either failed to address causal relation or, of those reports which addressed causal relation, the reports were based on an inaccurate history of injury. Accordingly, the medical evidence is of diminished probative value and is not sufficient to establish appellant's claims.

Appellant filed a claim asserting that the August 23, 1998 work injury had caused or aggravated his bilateral hearing loss, there is no medical evidence sufficient to establish this claim. The record reflects that, although the Office had advised appellant, by letter dated February 15, 2000, of the type of evidence needed to establish this claim, no medical evidence which included a physician's opinion supported by a medical explanation as to how the accepted August 23, 1998 work injury caused or aggravated the claimed injury of hearing loss was submitted. Therefore he has not established an employment-related hearing loss.

The Board finds that appellant has not met his burden of proof to establish that he sustained an emotional condition in the performance of his duties.

Workers' compensation law does not cover each and every injury or illness that is somehow related to one's employment. There are situations in which an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. Generally, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act, though error or abuse by the employing establishment in an administrative or personnel matter may afford coverage.[16]

[14] *Daniel J. Overfield*, 42 ECAB 718 (1991).

[15] *Willie M. Miller*, 53 ECAB ___ (Docket No. 02-328, issued July 25, 2002).

[16] *Abe E. Scott*, 45 ECAB 164 (1993).

Mere perceptions or feelings of error or abuse, however, are insufficient to establish a compensable factor of employment. A claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[17]

Appellant asserts that his emotional condition was a result of the actions of his supervisor after he suffered a "vehicular" assault. As a general rule, such an emotional reaction falls outside the scope of workers' compensation, even though it has some connection with the employment. To establish that his claim is compensable, appellant must submit probative and reliable evidence sufficient to demonstrate that his supervisor committed error or abuse in the exercise of his administrative duties. Appellant has submitted no such evidence. He generally expressed disagreement with how his supervisor exercised his discretion.[18] Appellant alleged discrimination and wrongful termination as a result of the "vehicular accident" of August 23, 1998. But perceptions of what or how the supervisor should have been exercising his managerial functions do not demonstrate error or abuse by the supervisor. Appellant has submitted no corroborating evidence, no witness statements, no favorable decisions from any administrative body, to substantiate that his supervisor committed error or abuse in discharging his supervisory duties.[19] Without such evidence, appellant's claim is reduced to one of personal perception and a mere perception of harassment is not enough to establish a factual basis for a claim.[20]

The Office properly found that appellant's following allegations were not established as factual by the weight of the evidence of record. Appellant was run over his entire body by a forklift driven at a high rate of speed; the employing establishment refused to provide medical attention as a result of the August 23, 1998 accident; and the employing establishment wrongfully terminated appellant and denied him due process. The Office reviewed appellant's allegations concerning verbal abuse and harassment by supervisor, Mr. Youmans, on August 27, 1998, along with his later allegation that he pulled a knife on appellant and found that the allegations were not established as factual that such harassment occurred as described. The Office found that appellant failed to submit any corroboration to substantiate his allegations of harassment.

Accordingly, a reaction to such factors does not constitute an injury arising within the performance of duty. The Office properly concluded that in the absence of agency error or abuse such personnel matters were not compensable factors of employment.

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[17] *Donald E. Ewals*, 45 ECAB 111 (1993).

[18] A claimant's feelings or perceptions that a form of criticism or disagreement is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act. Mere disagreement or dislike of a supervisor or management action will not be compensable absent evidence of administrative error or abuse; *see Constance I. Galbreath*, 49 ECAB 401 (1998).

[19] In a letter of April 13, 1999, the Office of Inspector General advised appellant to follow the established avenues of resolution such as contractual grievance-arbitration procedures and/or the Equal Employment Opportunity (EEO) process. Although it appears appellant filed some EEO complaints, the record is devoid of any formal findings.

[20] *See Sharon R. Bowman*, 45 ECAB 187 (1993).

To the extent that appellant asserts that the emotional claim is a result of the accepted injury, he has submitted insufficient medical evidence to show that such condition is a consequence of the accepted injury of August 23, 1998. The general rule respecting consequential injuries is that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury similarly arises out of the employment unless it is the result of an independent intervening cause. An employee who asserts that a nonemployment-related injury was a consequence of a prior employment-related injury has the burden of proof to establish that such was the fact.[21] Because there is no reasoned medical opinion evidence of record to establish a causal relationship between appellant's diagnosed emotional condition and the work injury, the Board concludes that appellant has not carried his burden of proof.[22]

Finally, the Board finds that the Office met its burden of proof to rescind acceptance of appellant's claim for an employment-related cervical and lumbar radiculopathy.

The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128(a) of the Act and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.[23] The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.[24] Once the Office accepts a claim and pays compensation, it has the burden of justifying the termination or modification of compensation benefits. This holds true where, as here, the Office later decides that it erroneously accepted a claim. Section 10.610 of the implementing regulations of the Office states:

> "The Federal Employees' Compensation Act specifies that an award for or against payment of compensation may be reviewed at any time on the Director's own motion. Such review may be made without regard to whether there is new evidence or information. If the Director determines that a review of the award is warranted (including, but not limited to circumstances indicating a mistake of fact or law or changed conditions), the Director (at any time and on the basis of existing evidence) may modify, rescind, decrease or increase compensation previously awarded or award compensation previously denied. A review on the Director's own motion is not subject to a request or petition and none shall be entertained."[25]

[21] *See William F. Gay*, 50 ECAB 276 (1999).

[22] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence. *Elizabeth Stanislav*, 49 ECAB 540 (1998).

[23] *Eli Jacobs*, 32 ECAB 1147 (1981).

[24] *Shelby J. Rycroft*, 44 ECAB 795 (1993). *Compare Lorna R. Strong*, 45 ECAB 470 (1994).

[25] 20 C.F.R. § 10.610 (1999).

The Board notes that, in order to justify rescission, the Office must establish that the prior acceptance was erroneous.[26] This evidence must be substantial and probative evidence confirming the fact that the injury did not occur as appellant alleged.[27] The Office does not meet its burden of proof to rescind by merely showing that its acceptance may have been erroneous.[28] In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation for its rationale for rescission.[29]

Appellant filed claims stating that, while he was in the performance of duty on August 23, 1998 he suffered injuries to his neck and lower back when he was struck by a forklift. The Office accepted appellant's claim for conditions of cervical and lumbar radiculopathy on April 4, 2000. In 2001, the Office reopened appellant's case and issued a February 28, 2001 notice of proposed rescission of acceptance of appellant's neck and low back conditions on the grounds that the medical reports of treatment appellant received soon after the August 23, 1998 injury failed to show any neck or low back condition which was causally related to the work injury of August 23, 1998. In the March 30, 2001 decision, the Office based its rescission on the fact that evidence subsequently submitted established a different history of injury from what appellant had alleged at the time it accepted appellant's neck and low back conditions and that the medical evidence contemporaneous to the injury failed to describe any injury to the neck or low back.

The Office, in its memorandum of June 28, 2000, noted that appellant filed several claims due to an original injury in which he indicated that on August 23, 1998 he stepped over a moving forklift. The Office noted that the original medical evidence dated August 31, 1998 indicated a crush injury of the left foot with no fractures. There was no mention of any other medical diagnosis at that time. Appellant's subsequent statement indicated that he was run over by the forklift during the August 23, 1998 incident. The Board notes that appellant has not explained these inconsistencies in the history of injury.

The medical evidence relied on by the Office in rescinding its acceptance of appellant's claim is sufficient to establish that appellant's back and neck conditions were not causally related to the employment injury of August 23, 1998. The Office properly noted that medical reports concerning appellant's emergency room treatment contemporaneous to the August 23, 1998 work injury failed to describe any injury to appellant's neck or low back. Furthermore, the medical reports from Dr. Drazner failed to establish a causal relationship between appellant's neck and low back conditions and the work injury of August 23, 1998. Dr. Drazner merely related his impression of the injuries appellant had allegedly sustained after reviewing medical reports in conjunction with appellant's past medical history. Specifically, the Board notes that Dr. Drazner discussed the reports of Dr. Hamilton in reliance on appellant's stated medical history. Dr. Drazner noted that Dr. Hamilton confirmed that appellant was run over by a forklift at a rather high rate of speed and that he suffered immediate numbness to his left foot and

[26] *Michael W. Hicks*, 50 ECAB 325 (1999); *George E. Riley*, 44 ECAB 458 (1993).

[27] *Beatrice Meir*, 40 ECAB 1309 (1989).

[28] *Michael W. Hicks, supra* note 26.

[29] *See Alice M. Roberts*, 42 ECAB 747 (1991).

subsequent foot drop. Dr. Drazer noted that Dr. Hamilton had concurred with the diagnosis of lower back pain and lumbosacral radiculopathy, as well as cervicalgia and cervical radiculopathy and left peroneal nerve palsy as relative to appellant's work injury. He did not provide any rationale for his conclusion that appellant's injuries to the neck and lower region were "status post-extensive work injury." Dr. Drazner's reports are based on an incomplete and inaccurate history of injury as his only reference regarding how appellant came to have any of his neck and lower regions problems was based on medical reports which contained an inaccurate history. The Board finds that the Office properly rescinded its acceptance of appellant's claim for cervical and lumbar radiculopathy as the medical evidence of record does not establish that those conditions were causally related to the August 23, 1998 work injury.

The decisions of the Office of Workers' Compensation Programs dated March 30 and February 28, 2001 and June 28 and April 18, 2000 are hereby affirmed.

Dated, Washington, DC
February 6, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member