

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE G. WILK and U.S. POSTAL SERVICE,
MORAINE VALLEY FACILITY, Bridgeview, IL

*Docket No. 03-453; Submitted on the Record;
Issued May 15, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant has met his burden of proof in establishing that his cervical disc herniations are related to his federal employment.

Appellant, a 45-year-old letter carrier, filed a notice of occupational disease on November 11, 2001 alleging that he developed neck, upper back and right arm symptoms due to his federal duties. Appellant noted that he injured his neck in a motor vehicle accident on December 24, 1999 in the performance of duty. Appellant returned to full duty in December 2000 and began to experience right arm numbness and weakness lifting heavy objects in the performance of duty. He further noted that his employment duties required him to move his neck constantly in both casing mail and in his street delivery duties.

In a letter dated December 13, 2001, the Office of Workers' Compensation Programs requested additional factual and medical evidence. By decision dated January 30, 2002, the Office denied appellant's claim finding that he failed to establish a causal relationship between his current condition and either his accepted December 24, 1999 employment injury or his current employment duties.

Appellant requested reconsideration on February 27, 2002 and submitted additional medical evidence. He also requested that his claim be developed as a recurrence of disability. By decision dated March 25, 2002, the Office reviewed appellant's claim on the merits and denied modification of its prior decision. Appellant requested reconsideration on May 22, 2002 and by decision dated August 20, 2002, the Office again denied modification of its prior decisions.

The Board finds that appellant has failed to meet his burden of proof in establishing that his cervical disc herniations are related to his federal employment.

Appellant has attributed his current condition to both a recurrence of disability as a result of his December 1999 motor vehicle accident, which the Office accepted for cervical and lumbar

strains and to his employment duties of casing mail, turning his neck to make deliveries and lifting in the performance of duty. A recurrence of disability is defined as a spontaneous material change in the employment-related condition without an intervening injury.¹ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing November 6, 2001 and his December 24, 1999 employment injury.² This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.³

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 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. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁴

Appellant must either establish that his current condition is the result of a spontaneous material change of his cervical and lumbar strains or that his current condition is a result of his employment duties. To establish either aspect of his claim, appellant must submit supportive medical evidence establishing a causal relationship between his current condition and the factual elements claimed.

In a report dated March 29, 2000, Dr. Yasemin Ozcan, a Board-certified physiatrist, noted appellant's history of injury on December 24, 1999 and reported appellant's symptoms as a dull achy pain in the left posterior neck with some stiffness and crepitus in the neck. She noted that, when appellant brought his head back, he developed numbness in this left arm in a circumferential distribution and that this numbness did not follow any particular dermatome. Dr. Ozcan reported that appellant's employment duty of casing mail involved cervical extension. She diagnosed degenerative joint disease of the neck and stated that appellant "seems to have had an aggravation related to an auto[mobile] accident per his history December 24, 1999."

This report is insufficient to establish appellant's claim for either a new occupational disease or a recurrence of his accepted employment injuries. Dr. Ozcan reported her findings in

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(B)(1) (January 1995).

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

³ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁴ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

speculative terms noting that appellant “seemed” to have a recurrence related to his accepted employment injury. The Board has held that, while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, neither can such opinion be speculative or equivocal. The opinion should be one of reasonable medical certainty.⁵ Dr. Ozcan did not offer any medical reasoning explaining why she attributed appellant’s current condition to his employment injury rather than to the employment duties she mentioned. Without medical rationale describing the spontaneous material worsening of appellant’s condition, Dr. Ozcan’s report is insufficient to establish a recurrence of disability. Furthermore, as Dr. Ozcan attributed appellant’s condition to a recurrence of his accepted cervical sprain, her report does not support that appellant developed a new occupational disease as a result of the employment duties mentioned.

In a report dated October 2, 2000, Dr. Joseph G. Thometz, a Board-certified orthopedic surgeon, noted appellant’s December 24, 1999 employment injury and appellant’s symptoms of pain in the back of the neck and down the shoulder into the left arm. He reviewed appellant’s February 28, 2000 magnetic resonance imaging (MRI) scan noting degenerative joint disease in the cervical spine. Dr. Thometz diagnosed status post cervical/lumbar strain due to the December 24, 1999 employment injury and found that this condition had resolved with no limitations. He stated that appellant’s cervical degenerative disc disease had an impact on appellant’s ability to do repetitive neck motions such as casing mail. Dr. Thometz concluded, “He does have complaints of pain that are related to a moderate degree of cervical spine degenerative joint disease which preexisted his cervical strain.”

In this report, Dr. Thometz concluded that appellant’s accepted cervical and lumbar strains had resolved and that his ongoing symptoms were due to preexisting cervical degenerative disc disease. He further indicated that appellant’s difficulty with repetitive neck motions such as casing mail was due to his preexisting condition. As Dr. Thometz did not opine that appellant’s employment duty of casing mail resulted in an aggravation of appellant’s degenerative joint disease, and did not offer any medical reasoning in support of such an opinion, this report does not establish that appellant has a condition as a result of his employment and is insufficient to meet appellant’s burden of proof in establishing an occupational disease claim. Furthermore, as Dr. Thometz indicated that appellant’s cervical and lumbar strains had resolved without restriction, his report does not support appellant’s claim for a recurrence of disability due to these conditions.

In a report dated October 12, 2001, Dr. Isaac M. Thapedi, a Board-certified neurosurgeon, reported appellant’s symptoms of persistent right-sided neck pain radiating into the right shoulder and arm aggravated by neck movement. He noted appellant’s December 24, 1999 motor vehicle accident and stated that appellant returned to full duty in six weeks with resolution of his symptoms. Dr. Thapedi stated that appellant experienced a resurgence of pain in August 2001 which radiated into his right shoulder and arm. On November 6, 2001 Dr. Thapedi reviewed appellant’s MRI scan of October 18, 2001 and found that appellant had disc herniations at C4-5, C6-7 and C5-6. He stated, “The patient relates that his symptoms began after a work-related injury when he was involved in a two-car collision.”

⁵ *Norman E. Underwood*, 43 ECAB 719, 723 (1992).

The October 12, 2001 report is insufficient to meet appellant's burden of proof in establishing that his current condition is due to his 1999 employment injury. Dr. Thapedi did not offer any medical opinion on the causal relationship between appellant's current condition and his employment. He merely noted that appellant related that his current symptoms began after the 1999 employment injury. The Board has held that an award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.⁶ Without medical reasoning explaining why and how Dr. Thapedi believed appellant's current condition was related to his 1999 employment injury, this report is insufficient to meet appellant's burden of proof in establishing a recurrence of disability.

In a report dated January 29, 2002, Dr. Thapedi noted appellant's history of injury as well as physical findings and stated:

"The disc herniations followed a work-related injury when he was involved in a two-car collision on a[n] [employing establishment] job as a letter carrier a little over two years ago on December 24, 1999.... He did achieve remission of symptoms at one time, but then actually had resurgence of symptoms. He is currently assigned to casing mails for about three hours and mail expressing for about two to three hours a day. He is working at a maximum with casing at three hours, but certainly could work longer at mail express or some other job description. The case mailing causes him resurgence of symptoms because of repeated motion of the arm and also maintaining his neck in extension and due to rotational movements of his neck."

This report does not meet appellant's burden of proof in establishing that appellant developed an occupational disease as a result of his employment duties of casing mail. Dr. Thapedi did not base his report on a proper factual background. The medical evidence in the record does not support his contention that appellant's disc herniations were the direct result of his accepted December 1999 employment injuries. In his October 2, 2000 report, Dr. Thometz specifically noted that appellant's February 2002 MRI scan findings did not include any herniated discs. This report suggests that appellant did not immediately experience herniated disc due to his December 1999 employment injury. Furthermore, Dr. Thapedi did not offer any medical reasoning to establish that appellant's current cervical disc herniations were due to a material spontaneous change in his accepted condition of cervical strain rather than to his preexisting degenerative joint disease. Dr. Thapedi also failed to opine that appellant's employment duties of casing mail actually caused the disc herniations.

As appellant has failed to submit rationalized medical opinion evidence based on a proper factual background which establishes either a recurrence of disability or a new condition as a result of new employment factors, he has failed to meet his burden of proof and the Office properly denied his claim.

⁶ Donald W. Long, 41 ECAB 142, 146 (1989).

The August 20, March 25 and January 30, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 15, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member