

**United States Department of Labor
Employees' Compensation Appeals Board**

JERMANRE GILLINS, Appellant

and

**DEPARTMENT OF THE ARMY,
FORT CARSON, CO, Employer**

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**Docket No. 05-579
Issued: September 12, 2005**

Appearances:
Jermanre Gillins, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On January 11, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' December 17, 2004 decision affirming an April 12, 2004 merit decision. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that his claimed cervical condition was sustained in the performance of duty.

FACTUAL HISTORY

On May 30, 2001 appellant, a 47-year-old engineering equipment operator, experienced a vehicular accident when the windshield of the vehicle he was driving caved in on him during a hail storm. Appellant injured his neck and several teeth, sustained facial lacerations and experienced persistent headaches as a result of the accident. He filed a claim for benefits on June 4, 2001 which

the Office accepted for foreign object in the eye and lacerations of the face. The Office authorized treatment for three of his teeth, numbers 12 through 14, on February 13, 2002.

On January 19, 2004 appellant filed a Form CA-2a claim for recurrence of disability, alleging that his current condition was causally related to his accepted May 30, 2001 employment injury. He indicated on the form that he had never fully recovered from the original injury.

In a statement dated January 28, 2004, appellant asserted that in December 2002 he experienced a severe headache and was rushed to the emergency room at Penrose Community Hospital, where the attending physician performed an examination and x-rays and informed him that he thought he had a damaged disc in his neck or back. Appellant also underwent a magnetic resonance imaging (MRI) scan on December 12, 2002, the results of which indicated: (1) diffuse irregular bone narrow signal intensity on the T1-weighted images; (2) acquired spondylosis with possible central protrusion at C4-5, with neural foraminal narrowing at multiple levels, as well as mild central carpal narrowing; and (3) broad-based protrusion possibly reflecting a protrusion-type disc herniation resulting in central canal stenosis and moderate left neural foraminal stenosis, and mild right-sided neural foraminal narrowing.

By letter dated March 29, 2004, the Office requested additional medical evidence from appellant. The Office advised appellant that it had never accepted a claim for a cervical condition, and that it required diagnostic tests or other objective medical documentation to establish that he sustained a cervical injury prior to December 2002. The Office informed appellant that he had 14 days in which to submit the additional evidence.

In a report dated January 29, 2004, Dr. Phillip A. Pennington, a Board-certified family practitioner and appellant's treating physician, reviewed the history of injury and advised that appellant had been experiencing some neck pain since his May 2001 accident. He stated that appellant underwent an MRI scan in December 2002 which showed some narrowing at C4-5 and C6-7 with a broad-based disc protrusion at C6-7. Dr. Pennington indicated that appellant has had to treat the neck problem continuously since the original injury.

In a report dated March 12, 2004, Dr. Jack L. Rook, Board-certified in physical medicine and rehabilitation, reviewed appellant's history of injury and advised that after the May 2001 accident appellant developed a number of problems. These included dental problems, jaw pain, headaches and neck pain. Dr. Rook stated:

“Aside from the dental problems, since the motor vehicle accident [appellant] has also had headaches and neck pain. These problems were not part of the initial workman's compensation claim. However, the patient was not having headaches or neck pain prior to the motor vehicle accident. These problems began on the date of accident.”

Dr. Rook advised that appellant's neck pain was bilateral radiating to both upper trapezi. He stated that appellant experienced occasional tingling in his right arm and right upper extremity nocturnal paresthesias. Dr. Rook diagnosed chronic neck pain, myofascial pain syndrome, cervical

degenerative changes with herniated disc and a negative upper extremity neurological examination. He opined:

“This patient continues to suffer from pain related to injuries sustained in the motor vehicle accident/occupational injury that occurred on May 30, 2001. [Appellant] is currently complaining of neck pain, headaches, jaw pain and dental problems. All of these problems are 100 percent related to his occupational injury/motor vehicle accident.”

Dr. Rook listed the following reasons in support of his opinion: these problems began at the time of that accident; appellant was not experiencing these problems immediately prior to the accident; significant forces were involved in the accident and appellant sustained direct trauma to his head and face at the time of accident; since the accident, he has had complaints related to his head and neck; and he has not been involved in any other traumatic events.

By decision dated April 12, 2004, the Office advised appellant that, based on the medical evidence he had submitted with his claim, the original claim was being reopened for the originally accepted conditions. The Office advised appellant that it had not included the claimed cervical condition among his accepted conditions because it had never been accepted as a condition causally related to the May 20, 2001 employment injury. The Office stated that it had requested additional medical documentation to support a claim for a cervical condition but appellant had not submitted such evidence. The Office further found that treatment by Dr. Rook was not authorized because appellant had never requested prior approval for such treatment. The Office therefore denied appellant’s claim, finding that appellant failed to submit medical evidence sufficient to establish that he sustained the claimed cervical condition in the performance of duty.

On April 16, 2004 appellant requested an oral hearing, which was held on October 26, 2004. Appellant submitted a January 8, 2004 opinion from Dr. Pennington, who advised that he was experiencing some ongoing problems with neck tightness. He noted that appellant had an accident about three years before and had experienced some persistent stiffness in his neck that bothered him intermittently. Dr. Pennington stated that appellant had a computerized axial tomography (CAT) scan of his neck which did not show any signs of degenerative disc disease or abnormality. He diagnosed neck pain due to recurring spasm of the neck.

By decision dated December 17, 2004, an Office hearing representative affirmed the April 12, 2004 Office decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing that 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

¹ 5 U.S.C. §§ 8101-8193.

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

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed cervical condition and his accepted employment injury. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁴

ANALYSIS

The Board finds that appellant has failed to submit any medical evidence containing a rationalized, probative report which relates his claimed cervical condition to accepted vehicular accident. For this reason, he has not discharged his burden of proof to establish his claim that this condition was sustained in the performance of duty.

Appellant submitted reports from Drs. Rook and Pennington, but neither of these reports provided a probative, rationalized medical opinion that the claimed cervical condition was causally related to employment factors. Dr. Rook stated in his March 12, 2004 report that appellant had developed headaches and neck pain after the May 2001 accident. He stated that these problems were not part of the initial claim, but noted that appellant was not having headaches or neck pain prior to the motor vehicle accident, which began on the date of accident; he also noted that appellant had not been involved in any other traumatic events since the May 2001 work injury. Dr. Rook diagnosed chronic neck pain, myofascial pain syndrome and cervical degenerative changes with herniated disc, which he opined were 100 percent related to his May 2001 motor vehicle accident.

The report from Dr. Rook did not contain a probative, rationalized medical opinion that the claimed cervical condition was causally related to the accepted vehicular accident. His opinion is therefore of limited probative value as it does not contain any medical rationale explaining how or why appellant's claimed cervical condition was currently affected by or related to factors of employment.⁵ Although Dr. Rook suggested that appellant had developed headaches and neck pain as a result of his May 2001 motor vehicle accident, he failed to provide a probative, rationalized medical opinion to establish that appellant's cervical condition was causally related to his accepted May 2001 automobile accident, which was accepted only for foreign object in the eye, lacerations of the face and dental treatment for teeth 12 through 14. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case,

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

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁵ *William C. Thomas*, 45 ECAB 591 (1994).

the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁶ Dr. Rook did not sufficiently describe the medical process through which appellant's motor vehicle accident would have been competent to cause the claimed cervical condition. While he attributed "100 percent" of appellant's current cervical symptoms to the May 2001 motor vehicle accident, this statement is not probative with regard to causal relationship because it is vague and lacking in rationale.⁷ Dr. Pennington, the attending physician, merely stated in his January 29, 2004 report that appellant had been experiencing some neck pain since his May 2001 accident, and advised that appellant's MRI scan results in December 2002 showed some narrowing at C4-5 and C6-7 with broad-based disc protrusion at C6-7. Neither of these physicians, therefore, provided a rationalized, probative medical opinion relating appellant's current condition to any factors of his employment. The Office therefore properly found that appellant did not sustain a cervical condition in the performance of duty.

Following the April 12, 2004 decision, appellant submitted a January 8, 2004 report from Dr. Pennington, who advised that appellant had been experiencing some ongoing problems with neck tightness. He noted that appellant had an accident about three years before and had experienced some persistent stiffness in his neck that bothered him intermittently. Dr. Pennington stated that appellant had undergone a CT scan of his neck which did not show any signs of degenerative disc disease or abnormality and diagnosed neck pain due to recurring neck spasms. This report, however, as with the January 29, 2004 report Dr. Pennington submitted, does not provide a probative, rationalized medical opinion that the claimed cervical condition was causally related to employment factors. It essentially restates Dr. Pennington's opinion, rejected by the Office in its April 12, 2004 decision, that his cervical condition developed as a result of the May 2001 motor vehicle accident without providing any supporting explanation or medical rationale, and is therefore repetitive of Dr. Pennington's findings and conclusions that the Office rejected in its April 12, 2004 report.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁸ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

The Office advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Consequently, appellant has not met his burden of proof in establishing that his claimed cervical condition was causally related to his employment. The Board therefore affirms the Office's April 12 and December 17, 2004 decisions denying benefits for his claimed cervical condition.

⁶ See *Anna C. Leanza*, 48 ECAB 115 (1996).

⁷ See *Thomas*, *supra* note 5.

⁸ *Id.*

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof in establish that his claimed cervical condition was sustained in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the December 17 and April 12, 2004 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: September 12, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board