

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ORVILLE SCOTT and U.S. POSTAL SERVICE,
POST OFFICE, Miller, MO

*Docket No. 00-1545; Submitted on the Record;
Issued April 5, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability causally related to an accepted June 27, 1998 employment injury.

On June 29, 1998 appellant, then a 64-year-old rural mail carrier, filed a notice of traumatic injury alleging that on June 27, 1998 his vehicle was rear-ended by a one-ton truck and he suffered whiplash to his neck and right arm strain. By decision dated July 13, 1998, the Office of Workers' Compensation Programs accepted appellant's claim for right thumb contusion and cervical strain.

On October 7, 1998 appellant filed a notice of recurrence of disability beginning on August 5, 1998.¹ By letter dated October 16, 1998, the Office informed appellant that it needed additional medical evidence to consider his claim.

By decision dated December 7, 1998, the Office denied appellant's claim on the grounds that the medical evidence failed to establish a causal relationship between his current condition and the original injury.

In a letter dated April 20, 1999, appellant's representative requested a review of the written record, submitting medical reports from Dr. John F. Ferguson, a Board-certified neurological surgeon, and Dr. Clarence Melvin Lewis.²

By decision dated August 5, 1999, the hearing representative affirmed the Office's December 7, 1998 decision on the grounds that appellant did not meet his burden of proof in establishing a causal relationship between the claimed recurrence of disability and the accepted employment injury.

¹ Appellant actually first filed a Form CA-7 claiming compensation from October 4 to 24, 1998, but was informed by the Office on October 1, 1998 that he needed to file a Form CA-2a instead.

² Appellant requested an oral hearing by letter dated December 11, 1998, but subsequently engaged counsel, who requested a written review instead.

By letter dated October 25, 1999, appellant requested reconsideration, submitting two medical reports dated July 6 and September 9, 1999 from Dr. Lewis.

On January 26, 2000 the Office denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant modification of the prior decision.

The Board has duly reviewed the entire case record on appeal and finds that this case is not in posture for decision and requires further development by the Office.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disabilities for which he claims compensation are causally related to the accepted injury.³ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁴

In this case, the February 17 and September 9, 1999 reports from Dr. Lewis specifically addressed the causal relationship between appellant's accepted employment injury -- cervical strain -- and his claimed recurrence of disability. In his report dated February 17, 1999, Dr. Lewis stated: "the whiplashing of his neck no doubt aggravated or caused disc narrowing in his neck which caused the pain in the left thumb and pain into the shoulders and arms." He further stated:

"In summary, we have a patient with a strong work ethic and excellent history who was working with arthritic pain in his neck and carpal tunnel pain in his hands when his mail Jeep was rear-ended severely and he suffered a whiplash injury which either aggravated or caused disc nerve compression in the neck with disabling pain."

In his September 9, 1999 report, Dr. Lewis stated:

"I believe I can clarify the diagnosis to cast a different light on this question. Undoubtedly the patient was beginning to experience painful symptoms from the degenerative changes going on in his neck, namely the cervical spondylosis with radiculopathy at C6-7. As I mentioned in my report in paragraph 5, he was having difficulty turning his head to look behind him when pulling away from mailboxes in his Jeep.

"The aggravating factor, of course, was the rear-end collision and the whiplashing of the involved area of his neck. During this violent movement of his neck the supporting ligaments of the vertebral column were forcefully stretched and the nerve roots traumatized against the narrowed foramina in the neck. This in turn has caused prolonged inflammatory reaction locally and persistent pain due to the

³ *Jose Hernandez*, 47 ECAB 288 (1996).

⁴ *Id.*

nerve injury. In fact, the milder pain he had been experiencing before the accident has been greatly increased and aggravated.”

While Dr. Lewis did not provide a complete rationale on how appellant’s current disability relates to his original employment injury, his opinion does provide documented evidence of a specific diagnosis and bridging symptoms which support an inference that the diagnosed condition was aggravated by the June 27, 1998 incident. The Board finds that these reports, given the absence of evidence to the contrary, are sufficient to require further development of the evidence. It is well established that proceedings under the Federal Employees’ Compensation Act,⁵ are not adversarial in nature,⁶ and while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.⁷ The Office has the obligation to see that justice is done.

On remand, the Office should provide Dr. Lewis with the medical records and a statement of accepted facts and request that he submit a rationalized medical opinion on whether appellant’s current diagnosis of cervical spondylosis, with stenosis and radiculopathy, is causally related to his June 27, 1998 accepted employment injury. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers’ Compensation Programs dated August 5 and January 26, 2000 are set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC
April 5, 2001

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁵ 5 U.S.C. § 8101 *et seq.*

⁶ *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985); *Michael Gallo*, 29 ECAB 159 (1978).

⁷ *Dorothy L. Sidwell*, 36 ECAB 699 (1985).