

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANCIS THOMAS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Northport, NY

*Docket No. 02-1741; Submitted on the Record;
Issued December 9, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant had a recurrence of disability causally related to his April 6, 1999 employment injury; and (2) whether appellant's cervical condition is causally related to his April 6, 1999 employment injury.

On April 6, 1999 appellant, then a 47-year-old housekeeping aide, slipped on water while stripping the floor, landing on a bucket he was using in the task. The Office of Workers' Compensation Programs accepted appellant's claim for right cubital tunnel syndrome and right carpal tunnel syndrome and authorized surgery for the right carpal tunnel syndrome and ulnar nerve transposition.

On November 11, 2000 appellant filed a claim for recurrence of disability effective August 25, 2000. Appellant indicated that he had a pins and needles sensation and numbness in his right hand since the employment injury. Appellant underwent cervical surgery on September 6, 2000.

In a November 24, 2001 decision, the Office denied appellant's claim for a recurrence of disability on the grounds that it was not shown to be causally related to his employment injury. The Office also denied appellant's request for approval of the September 6, 2002 cervical surgery. Appellant requested reconsideration. In a March 25, 2002 merit decision, the Office denied appellant's request for modification of the November 24, 2001 decision.

The Board finds that appellant has not met his burden of proof in establishing that he had a recurrence of disability causally related to the April 6, 1999 employment injury.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related

to his employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.¹

Appellant submitted an August 25, 2000 report of a magnetic resonance imaging (MRI) scan of the cervical spine. Dr. Bonnie Rosen, a Board-certified radiologist, indicated that appellant had a shallow, broad central disc herniation at C2-3 which did not depress or deform the spinal cord. She indicated that, at C3-4, appellant had a minimal disc bulge. At C4-5 appellant had a broad disc bulge with associate end plate osteophyte with a superimposed moderate, broad central disc herniation. Dr. Rosen also noted hypertrophic degenerative changes resulting in mild to moderate bilateral neural canal narrowing. At C5-6 Dr. Rosen reported that appellant had a diffuse disc bulge with associated end plate osteophyte and mild hypertrophic degenerative arthritis. She indicated that appellant had moderate central spinal stenosis with borderline compression of the spinal cord. At C6-7 Dr. Rosen noted that appellant had a minimal disc bulge with no focal disc herniation or significant central spinal stenosis. She also reported that appellant had a signal abnormality from the cervicomedullary junction to approximately C3 which was highly suspicious of a tumor. Dr. Rosen stated that appellant had cervical spondylosis with resultant severe central spinal stenosis and cord compression at C4-5 and moderate spinal stenosis and borderline compression at C5-6.

In a December 28, 2000 report, Dr. Michael Brisman, a Board-certified neurosurgeon, stated that appellant underwent surgery for a cervical laminectomy from C1 to C7 to remove an ependymoma tumor. He noted that postoperatively appellant had some numbness in his arms and legs and some trouble with proprioceptive functioning. Dr. Brisman indicated that appellant had trouble using his hands because of decreased proprioceptive function, significantly worse in his right hand. He stated that appellant was going to be limited by his pain and trouble with sensation particularly in the right hand, trouble walking and decreased stamina. Dr. Brisman stated that the fall exacerbated appellant's underlying problems in the cervical spinal cord.

In an August 14, 2001 memorandum, an Office medical adviser stated that he saw no evidence that the condition found by Dr. Brisman was causally related to appellant's employment and that the surgery had anything to do with the employment injury. He indicated that appellant had a spinal cord tumor and spinal stenosis, both unrelated to the employment injury. The Office medical adviser found no evidence that the employment injury aggravated or accelerated the disease process. He noted that appellant injured his right elbow and right rib cage in the fall. The Office medical adviser indicated that all the early physical findings and tests pointed to an elbow problem, not a cervical problem. He stated that Dr. Brisman failed to give a significant rationale relating the cervical problems to appellant's fall.

The Office referred appellant to Dr. Anthony G. Puglisi, a Board-certified orthopedic surgeon acting as an impartial medical specialist, for an examination to resolve the conflict in the medical evidence. In an October 10, 2001 report, Dr. Puglisi stated that appellant did not complain about neck problems until September 1999. He noted that appellant had difficulty ambulating and appeared to be unsteady on his feet. Dr. Puglisi diagnosed status post spinal cord tumor and resolved contusion of the right elbow and chest wall. He stated that the only

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986).

conditions related to the employment injury was the right elbow and chest wall conditions which had fully resolved. Dr. Puglisi commented that the tumor was not related to the employment injury. He stated that a fall could not cause a tumor. Dr. Puglisi concluded that the fall did not exacerbate appellant's cervical problems, noting that appellant was not unconscious after the fall and did not need cervical x-rays immediately after the fall. He indicated that there was nothing in the medical evidence to show that appellant's fall aggravated or accelerated the disease process which probably was present at the time of the April 6, 1999 employment injury. Dr. Puglisi stated that, if the fall did aggravate appellant's condition, his cervical surgery would have occurred in 1999 and not in September 2000. He indicated that appellant was markedly limited in the type of work he might be able to perform in the future. Dr. Puglisi stated, however, that appellant's inability to work was due to his tumor and subsequent surgery, not his employment injury.

In a January 18, 2002 report, Dr. Brisman stated that appellant had stenosis in the cervical spine and a spinal cord tumor. He indicated that after the fall appellant noted tingling and problems using the right arm. Dr. Brisman commented that he suspected the fall exacerbated the underlying condition within the cervical spine. He noted that appellant did not have any problems prior to the employment injury. Dr. Brisman stated that, as appellant's symptoms became worse, he had an MRI scan which revealed the tumor, resulting in his surgery and subsequent problems.

Dr. Brisman stated that appellant's employment injury aggravated his underlying spinal stenosis and tumor, noting that appellant did not have any symptoms in his arms until after the employment injury. His reports, however, are speculative as they are based only on the finding that appellant had no symptoms before the employing establishment but had symptoms after the employment injury. He did not provide any physiological explanation on how appellant's fall at work would have aggravated his underlying cervical conditions. Dr. Puglisi pointed out that appellant did not have cervical symptoms until five months after the employment injury. He indicated that appellant was not unconscious after the fall and did not need cervical x-rays at the time of the employment injury. Dr. Puglisi concluded that the tumor and cervical stenosis preexisted the employment injury and were not affected by the employment injury. He stated that appellant's disability for work was due entirely to the tumor and the surgery to remove the tumor, which was not related to appellant's employment injury. Dr. Puglisi indicated that appellant's employment-related conditions had resolved. In situations when there exists opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.² In this case, Dr. Puglisi's report was based on a proper factual and medical history and was sufficiently well rationalized to support his conclusion that appellant's employment injury was unrelated to his tumor and underlying cervical condition. His report is therefore entitled to special weight and, in the circumstances of this case, constitutes the weight of the medical evidence. Appellant, therefore, has failed to establish that he had a recurrence of disability effective August 25, 2000 causally related to the April 6, 1999 employment injury.

² *James P. Roberts*, 31 ECAB 1010 (1980).

The Board also finds that appellant is not entitled to medical benefits for his September 6, 2000 cervical surgery.

“The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation.”³

Appellant would be entitled to medical benefits for any injury sustained in the performance of duty. As discussed above, however, Dr. Brisman’s reports failed to establish that appellant’s fall aggravated his cervical condition to the point that he needed surgery. Dr. Puglisi’s report established that appellant’s cervical condition and resulting surgery were unrelated to the employment injury. Appellant, therefore, has not shown that his cervical condition was a condition sustained in the performance of duty. As a result he is not entitled to medical benefits for his cervical condition.

The decisions of the Office of Workers’ Compensation Programs dated March 25, 2002 and November 24, 2001 are hereby affirmed.

Dated, Washington, DC
December 9, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

³ 5 U.S.C. § 8103(a).