

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HAROLD CAMERON and DEPARTMENT OF THE NAVY,
NAVAL SEA COMMAND, PUGET SOUND NAVAL SHIPYARD,
Bremerton, WA

*Docket No. 01-1603; Submitted on the Record;
Issued February 12, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has a neck condition causally related to factors of his employment.

On August 28, 1999 appellant, then a 44-year-old welder, filed a notice of occupational disease alleging that he suffered from arthritis and cervical stenosis due to factors of his employment.¹ He resigned from work on January 1, 1999.

An x-ray of the spine dated October 11, 1999 showed mild disc degeneration at C4-5. A magnetic resonance image (MRI) dated October 11, 1999 also showed changes of spondylosis in mid cervical spine and disc protrusions at C4-5.

In a September 21, 1999 letter, the Office of Workers' Compensation Programs advised appellant of the factual and medical evidence required to establish his claim.

In a decision dated October 28, 1999, the Office determined that appellant had failed to establish that the diagnosed conditions of arthritis and cervical stenosis were caused by employment factors.

In a letter dated June 26, 2000, appellant requested reconsideration and submitted additional evidence.

In a June 7, 2000 report, Dr. Nino R. Lentinini, appellant's treating physician and a Board-certified orthopedic surgeon, noted that on physical examination appellant had limitation of extension of the cervical spine and limited bending. He related that appellant had cervical

¹ Appellant had a previous claim for bilateral carpal tunnel syndrome, which was accepted by the Office on October 30, 1998. He underwent surgery on December 3, 1999 for surgical release of the median nerve in the palms of both hands.

spondylosis related to activities that he was required to carry out in the performance of his employment as a welder.

The record also contains an undated report from Dr. Lentinini, in which he notes the results of the October 11, 1999 MRI and spine x-ray. He stated, "I believe that [appellant] has an impairment to the cervical spine related to the activity he carried out on the job" as a welder. He further stated, "I am not aware of any other causative factors that have been responsible for or contributed to [appellant's] cervical symptoms."

In a letter dated July 26, 2000, the Office asked Dr. Lentinini to review a statement of accepted facts and to provide his rationale as to how appellant's neck condition was causally related to his employment as a welder.

In an August 3, 2000 report, Dr. Lentinini stated:

"[T]his is yet another repetition of the same information that I have already submitted twice on [appellant]. I am at somewhat of a loss to know how to go into further detail and describe causal relationship when I was not at the facility and did not directly observe him as he sustained his work-related injuries. Under causal relationship, [appellant's] cervical spondylosis ... is directly related to and materially caused by [his work activities] as a welder."

He further stated:

"I did not mention that [appellant's] condition progressed or was an aggravation of an underlying disease. Since I was not at the site and not privy to observation of [him] while these activities happened to him, I must go by what he tells me. Acceleration of the condition would be the result of repetitive performance of the same activities which caused [appellant] to develop the spondylitis in his cervical spine in the first place."

Because the physician considered appellant's cervical condition to have been directly related to his work activities, he further noted that the terms "temporary aggravation" and "permanent aggravation" of the condition did not apply. He stressed that appellant did not have a preexisting cervical condition prior to his employment.

The Office subsequently scheduled appellant for a second opinion evaluation with Dr. Rajih Haddawi, a Board-certified orthopedic surgeon, on September 18, 2000. He was asked to describe appellant's current condition and to offer his opinion and rationale as to whether his neck condition was causally related to employment factors.

In a September 18, 2000 report, Dr. Haddawi noted that appellant had bilateral carpal tunnel syndrome for which he was receiving appropriate treatment and recovering nicely. He stated, however, that he could not offer an opinion as to whether the claimant had incurred an injury to his cervical region as a result of his occupation as a welder. Dr. Haddawi recommended that appellant undergo a neurological evaluation to address the issue of causal relationship.

The Office scheduled appellant for an examination on November 8, 2000 with Dr. Thomas Browser, a Board-certified neurologist, who stated:

“[Appellant] also has filed for problems related to his neck. My only record of any sort of neck abnormality is related to an MRI scan dated October 11, 1999, after he was no longer in the service. [Appellant] was 44 years old at the time and had mild spondylosis changes without evidence of cord or nerve entrapment. My physical exam[ination] today does not demonstrate any physical findings consistent with cervical radiculopathy, cervical myelopathy, or nerve entrapment. My physical findings most consistent with mild carpal tunnel syndrome.

“I do not feel strongly that his position as a welder accelerated, aggravated, or precipitated his mild arthritic and degenerative changes within the neck. I do n[o]t think there was anything significant that he would do to bring on those symptoms. In fact, many forty-four-year old men may well have x- rays of their neck similar to that, without symptoms. The fact that he never had symptoms radiate from his neck down his arms does suggest no evidence of cervical radiculopathy. Any problems within the neck appear to be soft tissue or muscular skeletal.”

Dr. Browser opined in conclusion that appellant could return to duty as a welder, with periods of rest to rotate the use of his hand. He further opined that there was no significant nerve involvement of the neck.

Because the Office determined that a conflict existed in the record between Drs. Browser and Lentinini, appellant was sent for an impartial medical evaluation with Dr. James T. Fesenmeir, a Board-certified neurologist on February 14, 2001. Dr. Fesenmeir was provided a copy of the medical record and a statement of accepted facts.

In his report dated February 14, 2001, Dr. Fesenmeir stated: “I was asked to state whether or not I felt that the [appellant’s] problems in his neck was related to his previous employment as a welder. In my opinion, the spondylosis seen on his MRI scan is not related to his job as a welder. Certainly, the constant movement of the neck would make the pain from this worse, but this is simply a symptom of the underlying problem and I do not believe that his employment is the actual cause of the problem. I believe [apellant] could resume his occupation as a welder. At [the] present, I do not have any further recommendations regarding his treatment or diagnostic workup.”

In a decision dated February 22, 1991, the Office denied modification of its prior decision.

The Board finds that this case is not in posture for a decision.

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing the essential elements of his or her claim including the fact that the

² 5 U.S.C. §§ 8101-8193.

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 of the Act, that an injury was 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.³ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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 a 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 claimant.⁵

The medical evidence required to establish causation, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by claimant.⁶

In this case, the Office correctly determined that a conflict existed in the record as to whether appellant’s neck condition was causally related to factors of his employment. The Board notes that Dr. Lentinini opined that appellant’s diagnosed condition of cervical spondylosis was due to the activities he performed as a welder. Dr. Browser, however, opined that appellant’s MRI findings of spondylosis were unrelated to his position as a welder and not unusual for a man of his age. In light of this conflict, appellant was sent for an impartial medical examination.

Section 8123 of the Act provides that if there is a disagreement between the physician making the examination for the Office and the employee’s physician, the Office shall appoint a third physician to resolve the conflict.⁷ When a case is referred to an impartial medical specialist for the purpose of resolving a conflict of medical evidence, the opinion of such specialist, if

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton* 40 ECAB 1143 (1989).

⁴ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Woodhams*, *supra* note 4.

⁶ *Id.*

⁷ 5 U.S.C. § 8123; *see Robert D. Reynolds*, 49 ECAB 561 (1998).

sufficiently well rationalized and based on a proper medical background, must be given special weight.⁸

The impartial medical examiner in this case was Dr. Fesenmeir, who performed a thorough examination of appellant, reviewed the medical record and a statement of accepted facts. He specifically opined that appellant's cervical condition was not causally related to his employment as a welder. Dr. Fesenmeir noted, however, that the constant movement of the neck in the performance of the described job duties would make appellant's pain worse, but "this is simply a symptom of the underlying problem and I do not believe his employment is the actual cause of the problem."

Although the Office relied on Dr. Fesenmeir's opinion to deny compensation for lack of causal relationship, the Board finds that Dr. Fesenmeir's opinion suggests that appellant's neck condition was aggravated by his job duties and that his opinion needs to be clarified. Dr. Fesenmeir basically limited his opinion to this issue of whether appellant's cervical condition was directly caused by his employment and did not address whether appellant's cervical condition was aggravated or accelerated by his employment. Thus, the Board finds it necessary to remand this case for the Office to further develop the claim. The Office, on remand should send a supplemental letter to Dr. Fesenmeir to more fully address whether appellant's cervical condition is causally related to his employment.⁹ Thereafter, the Office should issue a *de novo* decision.

The February 22, 1991 decision of the Office of Workers' Compensation Programs is hereby vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
February 12, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ See *Sherry Hunt*, 49 ECAB 467 (1998); *Wiley Richey*, 49 ECAB 166 (1997).

⁹ The Board also notes that Dr. Fesenmeir did not discuss the etiology of appellant's disc herniations, instead he limited his discussion to the condition of cervical spondylosis as seen on the MRI.