

Appellant, a 42-year-old electrical technician, injured his right shoulder and lower back on May 1, 2002 when he fell off a ladder. He filed a claim for benefits on May 10, 2002 which the

Office accepted for lumbosacral sprain and right shoulder sprain. The Office paid appropriate compensation for temporary total disability.

In a report dated June 10, 2002, Dr. William A. Stewart, Board-certified in neurology, stated:

“From a neurosurgical point of view of his low back and neck complaints, his subjective complaints are out of proportion to his objective findings. He shows evidence of physiologically inconsistent sensory findings and evidence of symptom magnification.... He certainly doesn’t need surgery and there is no reason for further neurosurgical follow-up.”

Appellant returned to work on July 20, 2002 on modified duty. He underwent a right shoulder acromioplasty which was performed on January 30, 2003.

In a report dated June 3, 2003, Dr. Stephen C. Robinson, the attending physician and a Board-certified orthopedic surgeon, stated that appellant had complaints of dysfunction and/or pain in his right shoulder. He advised that appellant was doing well with his right shoulder while working on light duty but that his neck pain had persisted. Dr. Robinson related that appellant was wondering whether anything else could be done to ameliorate his neck pain; he noted that appellant had a history of degenerative disc disease at C5-6 and C6-7, with a possible disc herniation at C7 to T1 according to his most recent magnetic resonance imaging (MRI) scan. He diagnosed osteoarthritis of the right shoulder, shoulder joint pain, cervical radiculitis and cervical degenerative disc disease at C5, C6 and C7 with a possible disc herniation at C7 to T1.

In a report dated August 5, 2003, Dr. Robinson stated that appellant had complaints of dysfunction and/or pain in the lumbar and thoracic spine in addition to pain in his neck and right shoulder. He related that appellant indicated that he experienced significant pain in his right shoulder if he tried to lift more than 15 pounds. Dr. Robinson stated that appellant’s shoulder had not completely resolved with surgery. He advised that the condition of appellant’s cervical spine could be most effectively determined with an updated MRI scan. Dr. Robinson reiterated his diagnoses of cervical radiculitis, cervical degenerative disc disease and shoulder joint pain.

By letter dated August 28, 2003, the Office denied appellant’s request for authorization to undergo an MRI scan, as the request was not accompanied by an explanation as to why the procedure was needed for the treatment for an accepted condition.

In a September 19, 2003 report, Dr. Robinson reiterated that appellant had a history of degenerative disease at C5-6 and C6-7 with a possible herniated disc at C7-T1, and indicated that as appellant’s shoulder symptoms were not resolved with surgery there was a possibility that these symptoms could be related to his neck condition. Dr. Robinson stated that he was therefore trying to get an updated MRI scan of the cervical spine to see if appellant had experienced a progression of the degenerative disc disease in his neck. He indicated that he would make another request to the Office for authorization of an MRI scan. Appellant underwent an MRI scan on November 12, 2003, the results of which showed significant disc herniation at C5-6 with earlier herniation at C6-7, both of which contacted and deformed the cord. The results also indicated uncinate spurring and forminal stenosis, greater on the right on each level.

In a report dated November 21, 2003, Dr. Robinson advised that appellant had severe cervical radiculopathy secondary to C5-6 and C6-7 disc herniation. He stated that he would request approval for C5-6 and C6-7 anterior discectomy and fusion with iliac crest bone graft.

By letter dated December 6, 2003, the Office denied appellant's request for authorization to undergo cervical discectomy and fusion surgery, as the procedure was not related to an accepted condition.

By decision dated January 14, 2004, the Office 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, and that surgery was not warranted for a work-related condition.

By letter dated January 30, 2004, appellant requested an oral hearing, which was held on July 30, 2004. Appellant submitted a July 1, 2004 opinion from Dr. Robinson, who stated:

"[Appellant] has continued cervical radicular complaints secondary to C5-6 and C6-7 disc herniations. He states that the [m]edical [e]xaminer felt that there was some issue with the C7-T1 congenital fusion. I would have to say that this is very unlikely to have any part in his current symptoms. Again, he had no history of neck pain prior to his injury in May of 2002. He has had neck trouble since that time. Because of this, I would conclude that the neck trouble does date and is caused by the injury. He will continue symptomatic care and continue to request approval for surgery."

By decision dated October 14, 2004, an Office hearing representative affirmed the January 14, 2004 Office decision.

LEGAL PRECEDENT -- ISSUE 1

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 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 federal employment. This burden includes providing medical evidence from a physician who concludes

¹ 5 U.S.C. §§ 8101-8193.

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

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

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 factors of his employment. 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 Dr. Robinson, but none of the reports he submitted provided a probative, rationalized medical opinion that the claimed cervical condition was causally related to employment factors. Dr. Robinson advised in his June 3 and August 5, 2003 reports that, in addition to his complaints of pain and dysfunction in his right shoulder, appellant had begun to experience significant and increasing pain in his neck. He diagnosed cervical radiculitis, cervical degenerative disc disease and shoulder joint pain. Dr. Robinson advised that appellant had a history of degenerative disc disease at C5-6 and C6-7, with a possible disc herniation at C7 to T1 according to the most recent MRI scan results. He recommended that appellant undergo another MRI scan in order to determine the current condition of appellant's cervical spine. In his September 19, 2003 report, Dr. Robinson stated that, as appellant's right shoulder symptoms were not resolved with surgery, there was a possibility that the rest of his symptoms could be related to the neck. Appellant underwent an MRI scan on November 12, 2003 to determine whether he had experienced a progression of his degenerative disc disease. Based on the results of this test, Dr. Robinson opined in his November 21, 2003 report that appellant had severe cervical radiculopathy secondary to C5-6 and C6-7 disc herniation. He stated that he would request approval for C5-6 and C6-7 anterior discectomy and fusion with iliac crest bone graft.

The reports from Dr. Robinson did not contain a probative, rationalized medical opinion that the claimed cervical condition was causally related to employment factors. Dr. Robinson stated that appellant had a history of degenerative disc disease at C5-6 and C6-7 and diagnosed severe cervical radiculopathy secondary to C5-6 and C6-7 disc herniation. His opinion, however, is 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 In addition, although Dr. Robinson suggested that appellant's right shoulder pain had increased as a result of his deteriorating neck condition, he failed to provide a probative, rationalized medical opinion to establish that appellant's cervical condition was causally related to his accepted right shoulder sprain injury. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁶ Dr. Robinson

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

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

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

did not sufficiently describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed condition. His reports, the only evidence appellant submitted in support of his claim, did not constitute sufficient medical evidence to establish that his claimed cervical condition was causally related to his employment.

Following the January 14, 2004 decision, appellant submitted Dr. Robinson's July 1, 2004 report, which restated his diagnoses that appellant had continued cervical radicular complaints secondary to C5-6 and C6-7 disc herniations. Dr. Robinson also indicated that because appellant had no history of neck pain prior to his May 2002 work injury, his current cervical condition was causally related to this injury. This report, however, as with the previous reports Dr. Robinson submitted, does not provide a probative, rationalized medical opinion that the claimed cervical condition was causally related to employment factors. It essentially reiterates Dr. Robinson's prior opinion that his cervical condition developed as a result of the May 2002 right shoulder injury without providing any supporting explanation or medical rationale, and is therefore cumulative and repetitive of Dr. Robinson's findings and conclusions that the Office rejected in its January 14, 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 her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁷ 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 January 14 and October 14, 2004 decisions denying benefits for his claimed cervical condition.

LEGAL PRECEDENT -- ISSUE 2

Section 8103 of the Act⁸ provides that 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 Office considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.⁹ In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly

⁷ *Id.*

⁸ 5 U.S.C. § 8101 *et seq.*

⁹ 5 U.S.C. § 8103.

unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.¹⁰

ANALYSIS

In this case, the Office accepted that appellant had sustained the conditions of lumbosacral sprain and right shoulder sprain. Dr. Robinson, the attending physician, performed right shoulder acromioplasty on January 30, 2003. He stated in a September 19, 2003 report that given the fact that appellant's shoulder symptoms were not resolved with surgery, there was a possibility that these symptoms could be related to his cervical condition. Dr. Robinson had appellant undergo an MRI scan on November 12, 2003, which showed significant disc herniation at C5-6 with earlier herniation at C6-7. In a November 21, 2003 report, Dr. Robinson advised that appellant had severe cervical radiculopathy secondary to C5-6 and C6-7 disc herniation. He requested approval from the Office for C5-6 and C6-7 anterior discectomy and fusion with iliac crest bone graft. The Office denied appellant's request for authorization to undergo cervical discectomy and fusion surgery by letter dated December 6, 2003 and in decisions dated January 14 and October 14, 2004 on the grounds that the procedure was not related to an accepted condition.

As noted above, the only restriction on the Office's authority to authorize medical treatment is one of reasonableness. None of the reports Dr. Robinson submitted indicated that appellant's proposed cervical discectomy and fusion surgery was necessitated by a work-related condition. Further, Dr. Stewart stated in his June 10, 2002 report, one month after appellant's May 2002 employment injury, that appellant's subjective low back and neck complaints were out of proportion to his objective findings from a neurosurgical perspective. He opined that appellant showed evidence of physiologically inconsistent sensory findings and evidence of symptom magnification. Dr. Stewart concluded on the basis of his examination that appellant did not need surgery and did not require any further neurosurgical follow-up. Based on this medical evidence of record, the Office properly found on December 6, 2003, January 14 and October 14, 2004 that the medical evidence was not sufficient to establish a causal relationship between appellant's cervical condition -- a condition not accepted as work related by the Office -- and factors of his employment. Therefore, given the fact that the medical evidence of record indicates that appellant's cervical condition is not work related, the Office did not unreasonably deny appellant's request for surgery to ameliorate this condition. The Office did not abuse its discretion to deny appellant authorization for cervical discectomy and fusion left knee replacement surgery.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof in establishing that his claimed cervical condition was sustained in the performance of duty. The Board finds that the Office did not abuse its discretion by denying appellant's request for authorization for cervical discectomy and fusion surgery.

¹⁰ *Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the October 14 and January 14, 2004 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: July 18, 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