U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JIMMY D. JOHNSON and TENNESSEE VALLEY AUTHORITY, PARADISE STEAM PLANT, Drakesboro, Ky.

Docket No. 96-1996; Submitted on the Record;
Issued July 24, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant's disability after September 21, 1991 is causally related to his April 29, 1991 employment injury.

On April 29, 1991 appellant, then a 49-year-old iron worker, sustained an injury while in the performance of duty. According to his claim form, he was carrying a 150-pound steel plate when, as he was putting it down, he dropped it and it fell on his right hand. He described the nature of his injury as a contusion, laceration and possible fracture of the right hand.

Appellant's attending orthopedic surgeon, Dr. John E. Heumann, reported on April 30, 1991 that appellant jerked his hand free from the steel plate and pulled the muscles in his shoulder and mid-back but that the primary pain was in the dorsum of the hand. "He has a little redness and bruising in this area," he stated. X-rays were reported normal, with no evidence of fracture. Appellant maintained good function with no numbness. Dr. Heumann reported, "I think this is just a contusion." Appellant's right hand was placed in a splint and his arm in a sling. He was released to light work with no lifting with the right hand.

Appellant's supervisor reported that appellant was terminated from his federal employment on May 4, 1991 for lack of work.[1] He reported that appellant's rate of pay at the time of injury was $14.30 an hour, that appellant had not worked in the position for 11 months

[1] The supervisor did not make clear whether appellant was terminated due to a general lack of work irrespective of the employment injury or whether appellant was terminated because the employing establishment could not provide work within appellant's medical restrictions.

prior to the injury, that the position would not have afforded employment for 11 months but for the injury, and that appellant had been employed in federal civilian employment for one month.[2]

On May 7, 1991 Dr. Heumann reported that appellant's hand was getting a little bit better and that appellant complained mostly of pain in his right shoulder and the muscles of his neck. He noted that appellant was quite tender over the acromioclavicular joint. X-rays revealed no separation. Dr. Heumann reported that appellant "does have some old injury in this area and some degenerative changes."

On June 17, 1991 Dr. Heumann reported that nerve conduction studies revealed nothing clinically significant and that appellant was resisting any activity in therapy because of continued complaints of pain. "Clinically," Dr. Heumann stated, "I cannot find any real reason for this. Of course, it is masked by the fact that he has had a significant old injury to this arm."

In a report dated July 31, 1991, Dr. Heumann stated that he first examined appellant on April 30, 1991. At that time he obtained a history from appellant that he was injured at work on April 29, 1991 when a 150-pound plate fell on his right hand. Appellant reported that he tried to jerk his hand free and at that time strained his shoulder and midback area. Dr. Heumann stated that appellant complained at that time of pain in both his hand and his back and right shoulder. After repeating the findings he made on clinical examination, Dr. Heumann stated that it was his opinion "that the related injury at work was responsible for appellant's symptoms, and that appellant has been off work since the time of his original injury."

A cervical myelogram performed on August 1, 1991 was reported to be suboptimal with no large anterior extradural defects at C2 through C6. The cervical spine was reported to show posterior bars developing at C2-3 and C3-4. A post-myelogram computerized tomography of the cervical spine, also performed on August 1, 1991, was reported to show a large left osteophyte at C2-3 and C3-4 with early herniation on the right at C5-6 and a large herniation on the right at C6-7.

The Office of Workers' Compensation Programs accepted appellant's claim for contusion and abrasion of the right hand and for muscle strain of the right shoulder. Appellant received continuation of pay through June 18, 1991 and was paid compensation on the daily rolls from June 19, 1991 to September 21, 1991.

Beginning in October 1991 appellant found work through his union as a foreman.

On June 15, 1992 Dr. Heumann reported that appellant was still complaining of weakness and soreness in his shoulders and that appellant was unable to work as an ironworker because he had difficulty climbing. "He does have some limitation of motion in the shoulders," Dr. Heumann stated, "but he has had old injuries there too, so it is difficult to say what is new and what is old. X-rays of his shoulders don't reveal anything outstanding." Dr. Heumann

[2] The employing establishment reported on January 22, 1992 that the rate of pay of a similar employee, exclusive of overtime, for the one-year period from May 5, 1990 to May 4, 1991 was also $14.30 an hour; *see* 5 U.S.C. § 8114(d)(3) (computation of average annual earnings).

released appellant from further treatment and recommended that he be given a rating of 5 percent impairment to the body as a whole on the basis of his continued complaints.

Appellant claimed a schedule award. The Office asked Dr. Heumann to provide medical rationale explaining how the contusion and strain caused by the April 29, 1991 employment injury resulted in a permanent impairment of the right upper extremity. The Office noted that a strain does not normally result in any permanent impairment.

On January 14, 1993 Dr. Heumann replied that muscular strains of a chronic nature can indeed result in permanent disability. "I would think that continued complaints over the past year and one-half would fall under the category of a chronic problem."

The Office referred appellant to Dr. R. Anthony Marrese, a Board-certified orthopedic surgeon, for a second opinion. On March 11, 1993 Dr. Marrese reported that an x-ray examination of the cervical spine revealed a narrowing of the disc spaces and loss of cervical lordosis from C4 to C7; a posterior osteophyte on the inferior edge of C6 with a canal diameter of about 12.5 millimeters, which is at or below the lower limit of normal; and some foraminal stenosis. A magnetic resonance imaging scan showed cervical spondylosis with herniation of the C5-6 and C6-7 discs. He noted that the herniation was captioned as a large herniation according to the post-myelogram computerized tomography scan report of August 1, 1991. "This would correlate with his signs and symptoms," Dr. Marrese reported. A nerve conduction report showed some obtunding of the ulnar nerve conduction. After reporting findings on clinical examination, Dr. Marrese stated that appellant, with two disc ruptures and multi-level degenerative disc disease, decreased range of motion of the cervical spine and decreased grip, had lost the use of approximately 15 percent of his body as a whole. He stated: "We believe this is permanent and secondary to the work-related injury."

In a supplemental report dated April 23, 1993, Dr. Marrese stated that appellant's real disability and impairment was due to the untreated cervical disc rupture present in the cervical spine, "which apparently by history, is a result of the [April 29, 1991] trauma." He also stated that it was quite apparent that appellant would continue to have cervical disc problems and symptomatology that would worsen without treatment, "which has been the history of this patient since the date of injury."

In a supplemental report dated May 25, 1993, Dr. Marrese stated that appellant apparently did suffer an injury to his cervical spine and his shoulder on April 29, 1991: "It is so documented in records of Dr. John Heumann and in a report of July 31, 1991, as well as substantiated on a myelogram performed August 1, 1991." Dr. Marrese explained that his rating of appellant's impairment was based upon the history given by appellant, his orthopedic findings and radiographic findings. He added that appellant's extremity pain was probably referred pain from the injury to the cervical spine.

In a supplemental report dated June 18, 1993, Dr. Marrese stated that he felt that appellant suffered permanent impairment of the right shoulder "in that his shoulder pain is referred pain from his cervical radiculopathy." "This so called 'strain' of the shoulder," he stated, "does not rate an impairment rating in itself. His symptomatology of shoulder pain is felt by this examiner to be due to again the referred pain from his cervical spine."

On June 22, 1993 the Office issued a schedule award for a 21 percent permanent impairment of the right upper extremity. The period of the award ran from June 15, 1992 through September 16, 1993.[3]

On July 31, 1994 Dr. Heumann reported that it was his feeling that appellant had a contusion of the hand and a muscle pull in his shoulders and that the injury at work was responsible for his symptoms.

Appellant advised the Office that he had been an ironworker for 33 years that he had worked in all phases of ironwork; however, since the he missed work quite frequently because he could do only certain phases of ironwork due to the injury. He asked the Office to reconsider his evaluation "as I am unable to do ironwork on a full-time basis."[4] He submitted a printout from his union showing his hours for the last three years. He stated: "I have worked a total of 3,531 hours; if I had been physically able I could of worked 6,240 hours, but due to my injury I could only [accept] certain jobs. I work every hour I am physically able to."

On September 15, 1994 appellant filed a claim for wage loss from April 29, 1991 to present. He also submitted a September 9, 1994 attending physician's report from Dr. Andrew T. Saltzman, an orthopedic surgeon. Dr. Saltzman reported that on April 29, 1991 a 100-pound steel baffle plate hit appellant on the neck, shoulders and right arm and that there was no history or evidence of concurrent or preexisting injury or disease or physical impairment. Dr. Saltzman diagnosed persistent neck and right shoulder pain and cervical degenerative disc disease. With an affirmative mark he indicated that this condition was caused or aggravated by the employment activity. "The injuries do appear to be due to the work injury," Dr. Saltzman stated.

On November 1, 1994 appellant's union reported that in October 1991 appellant was sent out on an overtime job as a foreman, but that the jobs to which appellant could be sent were restricted because the union was required to send workers to job sites who were 100 percent physically and mentally. Appellant reported on September 15, 1994 that he had found work through his union with Industrial Contractors in Evansville, Illinois, with a rate of pay of $19.85 an hour.[5] He asserted that his accepted employment injury had prevented him from earning what he could have earned had he been physically able to work full time.

In a clinic note dated September 9, 1994, Dr. John O. Grimm, an orthopedic surgeon to whom Dr. Saltzman referred appellant, stated that he thought that appellant was too symptomatic to be working. On November 14, 1994 Grimm noted that appellant was reporting pain in his right posterior shoulder, the ulnar aspect of the right forearm, and the right side of his neck. Dr. Grimm reported that appellant had given him a history of doing overhead work in April 1991

[3] Claimants are precluded from concurrently receiving compensation for permanent impairment through a schedule award and compensation for wage loss on the theory that these are parallel remedies for the same injury. *Marie J. Born*, 27 ECAB 623, 628 (1976).

[4] The Office denied appellant's request for reconsideration of the schedule award.

[5] On February 21, 1994 appellant reported that his pay rate was $19.10.

"when a plate came down from the ceiling hitting him on the right side of the neck and right hand." He also reported that appellant had a past history of being struck by two automobiles, resulting in the traumatic amputation of his small and ring finger on his left hand as well as severe burns to the right posterior aspect of his shoulder and posterolateral aspect of the arm. Appellant had undergone multiple skin graft procedures to save the arm. Appellant reported that he had no difficulty with his arm prior the employment injury. Dr. Grimm diagnosed chronic right shoulder pain with questionable rotator cuff arthropathy, as well as early degenerative disc disease at the C5-6 and C6-7 levels.

On January 6, 1995 the Office advised appellant that the loss of wages he was claiming was not established to be the direct result of the accepted employment conditions. The Office requested documentation stating that appellant was scheduled to work for a specified number of hours and was not to do so as a direct result of his accepted conditions.

Appellant submitted a January 11, 1995 letter from his union stating that appellant could have worked at least 40 hours a week if he was not limited by his injuries; that from October 1, 1993 through November 30, 1994 appellant work 1,547 hours; that if appellant were not limited as to what he could do, it was estimated that appellant could have worked at least 2,400 hours.

In a decision dated February 3, 1995, the Office denied appellant's claim for a loss of wage-earning capacity on the grounds that the evidence of file failed to demonstrate a loss of wage-earning capacity as a result of the accepted work injury.

Appellant requested an oral hearing.

In a letter dated October 20, 1995, the union business agent responsible for dispatching appellant to work advised that appellant was scheduled to work a minimum of 40 hours a week, but that due to his injuries to the right hand, sprain of the right shoulder and arm, and contusion of the right upper arm sustained on April 29, 1991, appellant had been able to perform only the job of a nonworking foreman. The business agent listed the number of hours appellant was scheduled to work from October 1993 through July 1995, as well as the number of hours he did work and his rate of pay for various periods. He noted that appellant was forced to file for a union disability pension as of July 31, 1995.

In a report dated March 17, 1995, Dr. Saltzman stated that his diagnosis included persistent right knee and periscapular shoulder discomfort, with a permanent impairment of 15 percent of the right upper extremity. "He is currently not capable of performing the work required of him as a full time iron worker," Dr. Saltzman stated.

After the hearing, which was held on October 25, 1995, the Office issued a decision on April 26, 1996 affirming the February 3, 1995 denial of compensation for wage loss. The Office found that there was no rationalized medical evidence to support that appellant actually incurred a loss of wage-earning capacity for the period April 29, 1991 to the present, and that he evidence was insufficient to establish a loss of wage-earning capacity.

The Board finds that the medical opinion evidence of record is insufficient to establish that appellant's disability after September 21, 1991 is causally related to his April 29, 1991 employment injury.

A claimant seeking compensation under the Federal Employees' Compensation Act[6] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,[7] including that he sustained an injury in the performance of duty as alleged and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[8]

The Office accepted that appellant sustained an injury in the performance of duty on April 29, 1991. Appellant later filed a claim for wage loss from April 29, 1991 to present. As the record establishes that he received continuation of pay through June 18, 1991 and was paid compensation on the daily rolls for disability from June 19, 1991 to September 21, 1991, the issue on this appeal is whether appellant's disability after September 21, 1991 is causally related to the employment injury of April 29, 1991.

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his currently disabling condition and the accepted employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury, and must explain from a medical perspective how the current condition is related to the injury.[9]

The medical opinion evidence submitted in this case is insufficient to establish that appellant's condition or disability after September 21, 1991 is causally related to the employment injury of April 29, 1991. First, it is important to note that the history of injury related by appellant has changed significantly through the years. The history he described on his April 29, 1991 claim form was that he was carrying a 150-pound steel plate when, as he was putting it down, he dropped it and it fell on his right hand. He described the nature of his injury as a contusion, laceration and possible fracture of the right hand. This description was basically repeated by Dr. Heumann in his contemporaneous medical reports, wherein he stated that a 150-pound plate fell on appellant's right hand. Dr. Heumann added that appellant tried to jerk his hand free and at that time strained his shoulder and midback area. By September 9, 1994, however, appellant was relating to Dr. Saltzman that the steel plate hit him on the neck, shoulders and right arm. By November 14, 1994 he was relating to Dr. Grimm that he was doing overhead work when a plate came down from the ceiling hitting him on the right side of the neck and right hand. These histories come several years after the fact, they are uncorroborated, and they are significantly inconsistent with history first related by appellant and contemporaneously

[6] 5 U.S.C. §§ 8101-8193.

[7] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[8] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[9] *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

reported by Dr. Heumann.[10] The Board finds that these later histories are inaccurate and unreliable and may not properly form the basis of any medical opinion attempting to connect appellant's condition or disability after September 21, 1991 to the incident that occurred at work on April 29, 1991. It is well established that medical conclusions based on inaccurate or incomplete histories are of little probative value.[11]

Second, neither of the physicians who obtained an accurate history of injury supported their opinions with a well-reasoned medical explanation. Dr. Heumann reported on June 17, 1991 that clinically he could find no real reason for appellant's continued complaints of pain; nonetheless, he stated on July 31, 1991 that it was his opinion "that the related injury at work was responsible for his symptoms." He offered no medical explanation. On June 15, 1992 he reported that appellant was still complaining of weakness and soreness in his shoulders. He found that appellant did have some limitation of motion in the shoulders and recommended a rating of 5 percent impairment to the body as a whole on the basis of continued complaints. He later stated that a chronic strain could cause permanent impairment, but he failed to explain the reason appellant's muscular strain did not resolve over such a long period of time. On July 31, 1994 Dr. Heumann reported that it was his feeling that appellant had a contusion of the hand and a muscle pull in his shoulders and that the injury at work was responsible for appellants symptoms, but once again he offered no well-reasoned medical explanation for this opinion.

The Office referred appellant to Dr. Marrese for a second opinion. On March 11, 1993 Dr. Marrese reported cervical pathologies correlating with appellant's signs and symptoms. He stated that appellant had two disc ruptures, multi-level degenerative disc disease, decreased range of motion of the cervical spine and decreased grip. He stated that appellant had lost the use of approximately 15 percent of his body as a whole, an impairment he believed was permanent and secondary to the work-related injury. On April 23, 1993 he explained that appellant's real disability and impairment was due to the untreated cervical disc rupture present in the cervical spine, "which apparently by history, is a result of the [April 29, 1991] trauma." In a supplemental report dated May 25, 1993, Dr. Marrese further explained that appellant apparently did suffer an injury to his cervical spine and his shoulder on April 29, 1991: "It is so documented in records of Dr. John Heumann and in a report of July 31, 1991, as well as substantiated on a myelogram performed August 1, 1991."

Although he accounted for appellant's continuing complaints and symptoms by connecting them to untreated ruptured cervical discs, Dr. Marrese failed to explain how the accepted history of injury in this case "apparently" supported that appellant's cervical disc ruptures were a result of the April 29, 1991 trauma. Further, although Dr. Heumann's reports do support a muscular strain of the right shoulder, they do not expressly document an injury to

[10] Dr. Saltzman also reported no history or evidence of concurrent or preexisting injury or disease or physical impairment, a statement contradicted by Dr. Heumann's reports of a significant old injury to the right shoulder and by Dr. Grimm's report of previous severe burns to the posterior aspect of the right shoulder and multiple skin grafts to save the arm.

[11] *See James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete); *see generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

appellant's cervical spine on April 29, 1991. Dr. Marrese's comment in this regard is wrong. Also, the myelogram performed on August 1, 1991 was reported to be suboptimal with no large anterior extradural defects at C2 through C6. The cervical spine was reported to show posterior bars developing at C2-3 and C3-4. The post-myelogram computerized tomography of the cervical spine performed that same day was reported to show a large left osteophyte at C2-3 and C3-4 with early herniation on the right at C5-6 and a large herniation on the right at C6-7. Neither of these reports, however, attempted to draw any connection between the impressions given and the incident that occurred on April 29, 1991. It is unclear, therefore, how Dr. Marrese relied on this evidence to support his opinion on causal relationship.

Medical conclusions unsupported by rationale are of little probative value.[12] Although both Dr. Heumann and Dr. Marrese related appellant's continuing complaints and symptoms to the incident that occurred on April 29, 1991, neither supported their opinions with convincing medical rationale. For this reason, the Board finds that the opinions of these physicians are of little probative value.

Because the medical opinion evidence submitted in this case is either based on an inaccurate history of injury or lacks a well-reasoned medical explanation of how appellant's disability after September 21, 1991 is causally related to the incident that occurred on April 29, 1991, the Board finds that appellant has not met his burden of proof to establish his claim for compensation.

The April 26, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
July 24, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[12] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).