

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID W. KEHRWALD and DEPARTMENT OF THE NAVY,
MARINE CORPS BASE, Camp Pendleton, Calif.

*Docket No. 96-1898; Submitted on the Record;
Issued June 18, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that his spasmodic torticollis,¹ a form of focal dystonia or muscle movement disorder, was causally related to the insect bite he sustained at work on December 25, 1981.

On June 6, 1985 appellant, then a 32-year-old firefighter, filed a notice of occupational disease, claiming that his anxiety and stress were work related. Appellant stated that he first became aware of his condition in November 1983, stopped work on March 17, 1984 and involuntarily retired on May 26, 1984.

On January 17, 1986 the Office of Workers' Compensation Programs denied modification of its August 10, 1984 order finding that medical reports from Dr. Marshall Lightner, a licensed clinical psychologist, were insufficient to establish that any work factors caused appellant's emotional condition. The Office noted that additional medical reports from Dr. Kenneth Shandell, a Board-certified psychiatrist to whom the Office had referred appellant, concluded that appellant's mental condition and symptoms were not caused by work factors.²

Subsequently, appellant requested reconsideration on the grounds that his condition had been misdiagnosed. He submitted letters from Dr. Thomas J. Chippendale, Board-certified in psychiatry and neurology, and Dr. Daniel D. Truong, assistant professor of neurology and director of the Parkinson and Movement Disorders Clinic at the University of California (Irvine), both of whom diagnosed spasmodic torticollis, and from Dr. Lightner who stated that work-

¹ Torticollis or wry neck is a contracted state of the cervical muscles, producing twisting of the neck and an unnatural position of the head. Spasmodic torticollis or torticollis spastic is due to spasm of certain muscles, occurring intermittently. *Dorland's Illustrated Medical Dictionary* (27th ed. 1988).

² Appellant was also treated by Dr. Manuel D. Tobias, a clinical psychologist who diagnosed depression and anxiety and recommended further neurological examination because appellant's testing implied a possible organic dysfunction.

related stressors contributed to appellant's diagnosed condition. Appellant pointed out that Dr. Shandell had recommended further neurological testing in his March 1985 report to determine to what extent appellant's facial tremors were related to an underlying organic factor.

In a decision dated August 18, 1992, the Office vacated its January 17, 1986 order and accepted appellant's claim for aggravation of his spasmodic torticollis due to his employment as a firefighter, based on the report of Dr. Truong. The Office stated that the aggravation ceased in May 1984 when appellant retired and that the diagnosed condition itself was not caused by work factors.

Appellant again requested reconsideration and submitted a November 20, 1992 report from Dr. David L. Edelman, a Board-certified neurologist who opined that appellant's torticollis could have been caused by the toxin from a spider bite he sustained in December 1981. Appellant also submitted a November 14, 1992 report from Dr. Truong.

On February 2, 1993 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant modification of its prior decision. The Office noted that the medical evidence was not well rationalized on the issue of whether the aggravation of appellant's condition was temporary or permanent.

Appellant again requested reconsideration and submitted the April 21, 1993 report of Dr. Thomas A. Schweller, Board-certified in psychiatry and neurology, who stated that appellant's condition was "triggered by a venomous spider bite" during the course of his work as a firefighter. On September 17, 1993 the Office again denied modification of its prior decision on the grounds that the evidence was insufficient to establish that any spider bite occurred at work.

On February 28, 1994 appellant submitted affidavits from co-workers and medical reports from Dr. Schweller in support of his fourth request for reconsideration. On April 4, 1994 the Office modified its prior decision and accepted that appellant had sustained a brown recluse (violin) spider bite on December 25, 1981. The Office then referred appellant, along with an amended statement of accepted facts and the medical records, for a second opinion evaluation on the question of whether appellant's spasmodic torticollis was caused by the spider bite.

Based on the reports of Dr. Michael E. Mahler, Board-certified in psychiatry and neurology, and Dr. Philip Harber, Board-certified in internal and preventive medicine, the Office again denied the claim on the grounds that appellant's condition was not caused by work factors and that the temporary aggravation of his condition ceased when he retired in May 1984. Within a year of that September 22, 1994 decision, appellant requested reconsideration and submitted a May 23, 1995 report from Dr. Jungtung Cheng, Board-certified in psychiatry and neurology and an assistant adjunct professor at the university clinic, who opined that appellant's condition was "activated, accelerated and aggravated" by his employment, specifically toxic chemical and smoke exposure, infection of his leg due to a spider bite, and heavy physical exertion.

On November 22, 1995 the Office denied appellant's request on the grounds that Dr. Cheng's report was insufficient to overcome the probative weight of the opinion of Drs. Mahler and Harber and thus not sufficient to warrant modification of its prior decision.

The Board finds that this case is not in posture for decision because of a conflict in the medical opinion evidence.

Section 8123 of the Federal Employees' Compensation Act³ provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.⁴ However, the Board has held that the medical opinions must be of relatively equal weight for a conflict to arise, and in assessing the medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value, and its convincing quality.⁵

In this case, the second opinion specialists, Drs. Harber and Mahler concluded that appellant's spasmodic torticollis was idiopathic and not caused by the spider bite sustained on December 25, 1981. They based this conclusion on the premise, demonstrated in medical literature, that appellant's condition, when caused by a traumatic incident such as a spider bite or whiplash, would be confined to the anatomic area of the trauma. Thus, the spider bite on appellant's right shin could not have caused the torticollis in his neck.

By contrast, Dr. Cheng stated in his May 23, 1995 report that the medical literature documented the fact that "peripheral insult can cause focal dystonia in other parts of the body." Thus, Dr. Cheng indicated that the spider bite could have set off appellant's torticollis condition. Dr. Truong⁶ agreed with Dr. Cheng, noting in his November 14, 1992 letter that torticollis was accelerated by trauma, infections, stress, and physical exertion, and that appellant's torticollis was "activated" by his employment.

In addition, Dr. Schweller opined that, while appellant's condition could be related to genetic sensitivity, the spider bite was "not only an aggravation of an underlying condition but [also] triggered the onset of an ongoing neurologic disorder" that did not subside and caused permanent disability. Dr. Schweller reiterated his conclusions in a February 16, 1994 report, noting that torticollis could appear up to two years after a trauma, and that appellant's tremors starting seven months after the spider bite were consistent with the known clinical evolution of his disorder.

The Board notes that Drs. Schweller and Cheng, who attribute appellant's torticollis to the spider bite, are Board-certified specialists in neurology, as is Dr. Mahler, while Dr. Harber's

³ 5 U.S.C. §§ 8101-8193. (1974); 5 U.S.C. § 8123(a).

⁴ *Shirley L. Steib*, 46 ECAB 309, 316 (1994).

⁵ *Connie Johns*, 44 ECAB 560, 570 (1993).

⁶ While the Office accepted appellant's claim for temporary aggravation of his condition, based on the reports of Dr. Truong, the physician's letters indicate some misunderstanding in communications with the claims examiner.

field is internal and preventive medicine. Inasmuch as there is disagreement among the experts on the issue of whether a traumatic event such as appellant's spider bite could trigger dystonia in a separate part of the body, thus leading to their conflicting conclusions about the cause of appellant's torticollis, the Board finds that this case must be remanded to resolve the conflict.⁷

On remand, the Office should refer appellant, the medical records, and a statement of accepted facts to an appropriate medical specialist for an impartial evaluation pursuant to Section 8123(a).⁸ After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The November 22, 1995 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
June 18, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁷ See *William C. Bush*, 40 ECAB 1064, 1075 (1989) (remanding the case for an impartial medical examiner to resolve the issue of whether stress at work worsened appellant's dystonia); *Ernestine M. Wall*, 16 ECAB 563, 565 (1965) (remanding the case to determine whether appellant's work permanently aggravated his torticollis).

⁸ See 20 C.F.R. §10.408; *Debra S. Judkins*, 41 ECAB 616, 620 (1990).