

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN M. BURKE and DEPARTMENT OF THE INTERIOR, BUREAU OF  
LAND MANAGEMENT, Idaho Falls, Ida.

*Docket No. 95-1657; Submitted on the Record;  
Issued May 14, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant sustained a head injury causally related to his August 3, 1992 employment injury.

On August 3, 1992 appellant, then a 40-year-old firefighter, sustained lumbosacral and cervical strains and a contusion of the right eyebrow as a result of a helicopter crash. Appellant received appropriate compensation benefits.

In an emergency room report dictated on August 3, 1992, Dr. Robert S. Wagner, a Board-certified internist, related that appellant was involved in a helicopter crash and complained of mild cervical spine and lower lumbosacral pain. He noted that appellant did not lose consciousness and was restrained and was not thrown from the helicopter. He provided findings on examination and diagnosed lumbosacral and cervical strains secondary to the flight accident. Dr. Wagner also noted that appellant had a contusion over the right eyebrow.

In notes taken on August 3, 1992, a nurse noted that appellant complained of cervical and lumbosacral pain but had no exterior trauma to the head. She noted that appellant was alert when extricated from the helicopter.

In a certificate dated August 6, 1992, Dr. Larry Van Genderen, a Board-certified orthopedic surgeon, recommended that appellant wear a rib belt.

In notes dated December 2, 1992, Dr. Thomas R. Guyer, a specialist in emergency medicine and general surgery, noted that appellant was experiencing severe headaches.

In a letter dated January 5, 1993, Dr. Guyer stated that he first examined appellant on August 25, 1992 and that he took him off work at that time but that when appellant returned on September 8, 1992 his ribs were still hurting and he was not well enough to work. Dr. Guyer noted that on September 22, 1992 appellant stated that he felt much better and was allowed to return to work. He stated that approximately two and one half months later he saw appellant

again and that he had symptoms compatible with a cervical disc problem and was also experiencing headaches. Dr. Guyer stated “sometimes subdural hematomas do not become symptomatic immediately ... tests are necessary to be able to properly diagnose his condition.”

A January 29, 1993 report of a magnetic resonance imaging (MRI) scan of the brain was normal with the exception of mild sinusitis.

In a narrative report dated September 9, 1993, Dr. Stephen G. Vincent, a Board-certified neurologist, related that appellant had been involved in a helicopter crash in which, according to appellant, the helicopter had dropped 250 feet with no autorotation. He related appellant’s statement that he had lost consciousness for approximately 45 minutes. Dr. Vincent related appellant’s statement that he had experienced headaches since the helicopter crash. He provided findings on examination which were essentially normal including a normal motor examination and normal cerebellar examination. Dr. Vincent diagnosed chronic daily headaches following a traumatic injury and occasional arm pain. He recommended that appellant undergo an MRI scan of the cervical spine and a repeat electromyogram.

By decision dated September 28, 1993, the Office of Worker’s Compensation Programs denied appellant’s claim for compensation benefits on the grounds that the evidence of record failed to establish that he had any continuing medical condition causally related to his August 3, 1992 employment injury.

By letter dated October 12, 1993, through his representative, appellant requested reconsideration of the denial of his claim but submitted no new evidence.

By decision dated October 25, 1993, the Office denied appellant’s request for further merit review.

In Life Flight notes dated August 3, 1992, a registered nurse who accompanied appellant in the medical helicopter transport to the hospital noted that appellant did not lose consciousness following the helicopter accident. She noted that upon arrival at the hospital appellant complained of pain in the left occipital skull, cervical spine, ribs and abdomen. The nurse diagnosed “[rule out] [fracture] of the [cervical] spine, thorax, and skull.”

By letter dated January 6, 1994, through his representative, appellant requested reconsideration of the denial of his claim and submitted additional evidence.

In a letter dated December 3, 1993, Dr. Guyer stated:

“As you know I entered into the case later on after [appellant] was seen by the emergency room physicians and by Dr. Van Genderen. On the first sheet with [appellant’s] statement of the accident, [appellant] states that he was rendered unconscious and was pinned in the crashed aircraft and had to be extricated. This of course was in his own words but I have searched and found other evidence that he sustained a head injury. On going over the Life Flight record which was dated the same date, and signed by the flight nurse, it states that [appellant] was conscious upon arrival and alert but that he complained of pain in his occipital

skull, cervical spine and ribs. Her diagnosis was to rule out fracture of cervical spine, thorax (*i.e.*, ribs), or the skull. Also on the consent form for transportation and treatment on the same date, the diagnosis for the patient was rule out fracture of cervical spine, left ribs, and skull. I have also obtained a copy of the flight dispatch record which represents the time the helicopter was sent to the scene and the nature of the problem was stated to have been cervical spine pain with a laceration on the scalp. This was prior to any professional evaluation. In going back over my records I find that [appellant] first reported headaches to me on December 2, 1992. Heretofore the main complaint had been his ribs. As you remember he had resolving left rib injuries so to me there is no problem with him complaining more about that problem at one time and the head another time. However it is my opinion that [appellant] had definite head injuries which occurred on the date of his accident in the helicopter crash and that this head injury relates directly to his current problems and current treatment needs.”

In the Life Flight dispatch record, dated August 3, 1992, the medical helicopter dispatcher noted that the nature of the problem was cervical spine pain, a laceration on the scalp, and left lower quadrant pain.

In the August 3, 1992 consent for transportation and treatment, the diagnosis was noted as rule out fracture of the cervical spine, ribs and skull.

By decision dated February 8, 1994, the Office denied modification of its prior decision.

By letter dated April 21, 1994, through his representative, appellant requested reconsideration of the denial of his claim and submitted additional evidence.

In a statement dated August 5, 1992, Missy Cox, the medical unit leader, stated that on August 3, 1992, all occupants of the helicopter involved in the accident exited immediately upon landing and that appellant complained of head pain and had a contusion of the right upper quadrant.

In notes dated August 6, 1992, Dr. Van Genderen related that appellant had been involved in a helicopter crash and that when he landed he noticed acute pain in his rib area. He related that appellant also had a history of headaches since the accident. He indicated his opinion that appellant had sustained an acute rib contusion. In notes dated August 31, 1992, Dr. Van Genderen related that appellant still had discomfort in his left anterior ribs and also intermittent headache problems which had been increasing in severity and frequency.

In a letter dated March 7, 1994, Dr. Guyer stated:

“This is in addition to my previous letter dated December 3, 1993 at which time I clearly stated that in my opinion [appellant’s] head injuries were directly related to the helicopter crash.

“His diagnosis is post-concussion syndrome. He also suffers from residual chest and abdominal pain. There is no actual treatment plan. He has been told to come in when he needs to for pain medication.”

By decision dated August 4, 1994, the Office denied modification of its prior decision.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a head injury causally related to his August 3, 1992 employment injury.

An award of compensation may not be based on surmise, conjecture, speculation, or appellant’s belief of causal relationship.<sup>1</sup> The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>2</sup> Neither the fact that the condition became apparent during a period of employment nor appellant’s belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.<sup>3</sup> While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,<sup>4</sup> neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>5</sup>

In this case, appellant sustained an employment-related lumbosacral and cervical strain and contusion of the right eyebrow on August 3, 1992 when he was involved in a helicopter crash. Appellant later alleged that he sustained a head injury as a result of the accident.

In an emergency room report dictated on August 3, 1992, Dr. Wagner, a Board-certified internist, related that appellant was involved in a helicopter crash and complained of mild cervical spine and lower lumbosacral pain. He noted that appellant did not lose consciousness and was restrained and was not thrown from the helicopter. Dr. Wagner provided findings on examination and diagnosed lumbosacral and cervical strains secondary to flight accident. He also noted that appellant had a contusion over the right eyebrow. Dr. Wagner did not note any complaint from appellant of a head injury.

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<sup>1</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

<sup>2</sup> *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

<sup>3</sup> *Ern Reynolds*, 45 ECAB 690 (1994); *James Mack*, 43 ECAB 321 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>4</sup> *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

<sup>5</sup> *See Margaret A. Donnelley*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

In notes taken on August 3, 1992, a nurse noted that appellant complained of cervical and lumbosacral pain but had no exterior trauma to the head. She noted that appellant was alert when extricated from the helicopter.

It was not until December 2, 1992, four months following the accident, that a physician noted a complaint of headaches. In notes dated December 2, 1992, Dr. Guyer, a specialist in emergency medicine and general surgery, noted that appellant was experiencing severe headaches. However, Dr. Guyer provided no medical rationale explaining how these headaches were related to the August 3, 1992 employment injury. Therefore, this report is insufficient to establish that appellant sustained a head injury causally related to the August 3, 1992 employment injury.

A January 29, 1993 report of an MRI scan of the brain was normal with the exception of mild sinusitis. Therefore, this report does not support an employment-related head injury.

In a letter dated January 5, 1993, Dr. Guyer stated that he first examined appellant on August 25, 1992 and that he took him off work at that time but that when appellant returned on September 8, 1992 his ribs were still hurting and he was not well enough to work. Dr. Guyer noted that on September 22, 1992 appellant stated that he felt much better and was allowed to return to work. He stated that approximately two and one half months later he saw appellant again and that he had symptoms compatible with a cervical disc problem and was also experiencing headaches. Dr. Guyer stated "sometimes subdural hematomas do not become symptomatic immediately ... tests are necessary to be able to properly diagnose his condition." As Dr. Guyer indicated that further tests were necessary to confirm the diagnosis of a subdural hematoma, it appears that this diagnosis is speculative. Moreover, insufficient medical rationale is provided by Dr. Guyer as to how the headaches were related to the August 3, 1992 employment injury. He merely stated that "sometimes subdural hematomas do not become symptomatic immediately." Therefore, this report is not sufficient to discharge appellant's burden of proof.

In a narrative report dated September 9, 1993, Dr. Vincent, a Board-certified neurologist, related that appellant had been involved in a helicopter crash in which the helicopter had dropped 250 feet with no autorotation according to appellant. He related appellant's statement that he had lost consciousness for about 45 minutes. He related appellant's statement that he had experienced headaches since the helicopter crash. Dr. Vincent provided findings on examination which were essentially normal including a normal motor examination and normal cerebellar examination. He diagnosed chronic daily headaches following a traumatic injury and occasional arm pain. He recommended that appellant undergo an MRI scan of the cervical spine and a repeat electromyogram. This report is not based upon a complete and accurate factual background, as none of the contemporaneous medical reports related that appellant had any period of unconsciousness following the August 3, 1992 accident. In Life Flight notes dated August 3, 1992, a registered nurse, who accompanied appellant in the medical helicopter transport to the hospital, noted that appellant did not lose consciousness following the helicopter accident. As noted above, Dr. Wagner, the emergency room physician, related that appellant did not lose consciousness. Moreover, Dr. Vincent's findings on examination were normal and he provided no explanation as to how appellant's headaches were causally related to the August 3,

1992 employment injury. As this report is not based upon an accurate factual background and provides no rationale regarding causal relationship, it is not sufficient to establish that appellant sustained a head injury causally related to the August 3, 1992 employment injury.

Although there are some contemporaneous reports from individuals who are not physicians which indicate that appellant was complaining of head pain at the time of the accident, this fact alone is not sufficient to establish that appellant did sustain any head injury on August 3, 1992, particularly in light of the negative tests and physical findings in the medical evidence of record. Additionally, as noted above, the emergency room physician did not note any complaint of head pain.

In notes dated August 6, 1992, Dr. Van Genderen related that appellant had been involved in a helicopter crash and that when he landed he noticed acute pain in his rib area. He related that appellant also had a history of headaches since the accident. He indicated his opinion that appellant had sustained an acute rib contusion. In notes dated August 31, 1992, Dr. Van Genderen related that appellant still had discomfort in his left anterior ribs and also intermittent headache problems which had been increasing in severity and frequency. Although Dr. Van Genderen noted appellant's complaint of headaches in these notes, he made no diagnosis of a head injury and did not explain how the headaches were causally related to the August 3, 1992 employment injury. Therefore, these notes do not support an employment-related head injury.

In a letter dated December 3, 1993, Dr. Guyer stated:

"In going back over my records I find that [appellant] first reported headaches to me on December 2, 1992. Heretofore the main complaint had been his ribs. As you remember he had resolving left rib injuries so to me there is no problem with him complaining more about that problem at one time and the head another time. However it is my opinion that [appellant] had definite head injuries which occurred on the date of his accident in the helicopter crash and that this head injury relates directly to his current problems and current treatment needs."

However, Dr. Guyer provided insufficient medical rationale explaining how the alleged head injury was causally related to the August 3, 1992 employment injury or why a definite diagnosis was not provided until March 1994,<sup>6</sup> nineteen months after the accident, particularly in light of the fact that an MRI taken in January 1993 was normal. Therefore, his opinion as to causal relationship is not sufficient to discharge appellant's burden of proof.

In a letter dated March 7, 1994, Dr. Guyer stated:

"This is in addition to my previous letter dated December 3, 1993 at which time I clearly stated that in my opinion [appellant's] head injuries were directly related to the helicopter crash.

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<sup>6</sup> Although Dr. Guyer noted complaints from appellant of headaches in the December 1992 report and made a tentative diagnosis of a subdural hematoma in the January 1993 report (to be confirmed by further tests), his diagnosis of post-concussion syndrome does not appear until his March 1994 report.

“His diagnosis is post-concussion syndrome. He also suffers from residual chest and abdominal pain. There is no actual treatment plan. He has been told to come in when he needs to for pain medication.”

Dr. Guyer has provided no medical rationale explaining causal relationship, and therefore, his opinion that appellant’s head injury is related to the August 3, 1992 employment injury is not sufficient to discharge appellant’s burden of proof.

The August 4, 1994 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, D.C.  
May 14, 1998

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member