

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ELMER L. MOORE and DEPARTMENT OF THE INTERIOR,  
BUREAU OF LAND MANAGEMENT, NATIONAL TRAINING CENTER,  
Phoenix, Ariz.

*Docket No. 96-827; Submitted on the Record;  
Issued May 1, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant sustained a medical condition causally related to his federal employment.

On March 24, 1995 appellant, then a 54-year-old training technician, filed a traumatic injury claim alleging that on March 23, 1995 he sustained injuries to his neck, back, and left shoulder and arm when he was struck from behind by a coworker and "pinned" between a photocopy machine and the coworker.

In a letter dated April 4, 1995, Wayne Winterton, appellant's supervisor, related that appellant told him that he was hit very hard from behind by a coworker, Robert Sykes, and pinned between the copy machine and that Mr. Sykes' elbow struck him in the spine resulting in pain to his neck, back, left shoulder, and left arm and leg. Mr. Winterton stated that Mr. Sykes recalled being in close quarters with appellant on the day of the incident and being back-to-back with him in the small space occupied by the copier but that he did not recall pinning appellant between himself and the copier nor of inadvertently striking appellant with his elbow. Mr. Winterton related that Mr. Sykes did not say that his elbow did not strike appellant but that, if it did happen, he was unaware of it. Mr. Winterton related that appellant had a history of back problems.

In a report dated March 27, 1995, Donald R. Middleton, D.O., diagnosed cervical and thoracic sprain and cervical radiculopathy and related appellant's statement that he had been making photocopies when he was struck from behind and pinned between the copier and the person who struck him and that he had been struck in the spine by the individual's elbow.

In a memorandum to the file dated August 21, 1995, the Office of Workers' Compensation Programs accepted that an incident occurred on March 23, 1995 at which time appellant came in contact with another employee but indicated that the issue as to whether

appellant had sustained any medical condition as a result of the incident had not yet been resolved.

By letter dated August 20, 1995, the Office referred appellant, along with the statement of accepted facts and copies of medical records, to Dr. David A. Rand, a Board-certified orthopedic surgeon, for an examination and evaluation as to whether appellant had sustained any medical condition causally related to the incident on March 23, 1995.

In a report dated September 28, 1995, Dr. Rand provided a history of appellant's condition and noted that appellant had been experiencing back problems since 1989 after he tripped over a curb while holding a computer. He related that since the 1989 incident appellant had been on and off work because of numbness and back pain. He related appellant's statement that on March 23, 1995 he was working in a room and another employee came into the room and the two of them bumped into each other back-to-back and appellant related that he was pinned against a copy machine and had pain in his back, neck and left shoulder and right leg. Dr. Rand provided x-ray findings which were negative and findings on examination and stated:

“[I]t appears that [appellant] has lots of complaints. But on physical examination they are not [corroborated]. I really do not know what type of injury, if any, [appellant] really sustained when he was ‘pushed’ by the other person. He complains of shoulder and neck pain and increased back pain, but I am not convinced of it. I do feel that his back problem, if he really does have one, is due to his 1989 accident and not his 1995 accident. As far as his working ability, I do not see any reason why he cannot continue working. I do not see anything from the 1995 accident that would prevent him from working or would limit his amount of work. I do not feel that he had even a temporary aggravation.”

By decision dated November 3, 1995, the Office denied appellant's claim for compensation benefits.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an injury on March 23, 1995 causally related to factors of his employment.

A person who claims benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation is caused or adversely affected by his employment.<sup>2</sup> This burden includes the necessity of furnishing rationalized medical opinion evidence showing a causal relationship between the alleged condition and factors of his employment which is based upon a proper medical and factual background of the claimant and a specific and accurate history of employment incidents or factors alleged to have caused or exacerbated the claimed disability.<sup>3</sup> The medical evidence submitted by appellant did not meet this criteria.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Birger Areskog*, 30 ECAB 571 (1979).

<sup>3</sup> *Philip J. Deroo*, 39 ECAB 1294 (1988); *William Nimitz, Jr.*, 30 ECAB 567 (1979).

In this case, appellant alleged that on March 23, 1995 he sustained injuries to his neck, back, and left shoulder and arm when he was struck from behind by a coworker and “pinned” between a photocopy machine and the coworker.

In a report dated March 27, 1995, Dr. Middleton diagnosed cervical and thoracic sprain and cervical radiculopathy and related appellant’s statement that he had been making photocopies when he was struck from behind and pinned between the copier and the person who struck him and that he had been struck in the spine by the individual’s elbow. However, Dr. Middleton provided no rationalized medical opinion establishing causal relationship between the work incident on March 23, 1995 and appellant’s back condition. He also did not seem to be aware that appellant had a history of back problems prior to the work incident. Therefore, this report is not sufficient to establish that appellant sustained a work-related injury on March 23, 1995.

By letter dated August 20, 1995, the Office referred appellant, along with the statement of accepted facts and copies of medical records, to Dr. Rand, a Board-certified orthopedic surgeon, for an examination and evaluation as to whether appellant had sustained any medical condition causally related to the incident on March 23, 1995.

In a report dated September 28, 1995, Dr. Rand provided a history of appellant’s condition and noted that appellant had been experiencing back problems since 1989 after he tripped over a curb while holding a computer. He related that since the 1989 incident appellant had been on and off work because of numbness and back pain. He related appellant’s statement that on March 23, 1995 he was working in a room and another employee came into the room and the two of them bumped into each other back-to-back and appellant related that he was pinned against a copy machine and had pain in his back, neck and left shoulder and right leg. Dr. Rand provided x-ray findings which were negative and findings on examination and stated:

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As Dr. Rand stated his opinion that appellant’s back condition was not the result of the March 23, 1995 work incident, this report does not support appellant’s claim of a work-related injury.

As appellant failed to provide rationalized medical evidence establishing that his claimed back condition was causally related to the March 23, 1995 work incident, he has failed to meet his burden of proof.

The November 3, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
May 1, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member