

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GENE E. TETTERTON and DEPARTMENT OF THE NAVY,
NAVAL WEAPONS STATION, Charleston, S.C.

*Docket No. 97-183; Submitted on the Record;
Issued November 25, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant's lumbar condition is causally related to his May 4, 1991 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that this case is not in posture for decision.

The facts in this case indicate that on May 4, 1991 appellant, then a 48-year-old ordinance blocker and bracer, sustained a compression fracture at C7 while on duty in Saudi Arabia immediately following Desert Storm. He stopped work that day, received appropriate compensation, was placed on the periodic roll effective August 24, 1991, and has not worked since.¹ Following further development, by decision dated May 28, 1993, the Office of Workers' Compensation Programs found that appellant's low back condition was not causally related to the May 4, 1991 employment injury. The Office noted that the initial medical notes regarding appellant's condition included scant mention of problems relating to his back, and that it was not until two and one-half months after the employment injury that the lower back was mentioned. Appellant, through counsel, requested a hearing that was held on February 4, 1994. In a May 20, 1994 decision, an Office hearing representative affirmed the prior decision. Appellant requested reconsideration and submitted additional medical evidence. By decision dated August 3, 1995, the Office denied modification of the prior decision. Appellant again requested reconsideration, and in a June 28, 1996 decision, the Office once again denied modification of the prior decision. The instant appeal follows.

Causal relationship is a medical issue,² and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical

¹ The record indicates that appellant was still receiving compensation benefits in January 1996.

² *Mary J. Briggs*, 37 ECAB 578 (1986).

evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.³

The relevant medical evidence in this case includes reports from appellant's treating Board-certified orthopedic surgeon, Dr. Donald R. Johnson, II, who diagnosed an annular tear at L4-5 as demonstrated by discogram. In an August 10, 1994 report, Dr. Johnson explained why computerized axial tomography (CAT), myelography and magnetic resonance imaging⁴ (MRI) would not demonstrate such a condition and advised that, to a reasonable degree of medical certainty, it was "most probable" that appellant's low back condition was directly related to his May 4, 1991 work injury, stating:

"With his initial fractured neck, his low back condition would not have been obvious to him until his neck fracture healed. Thereafter, typically with his condition, that being a tear of the covering of a disc (annular tear), I would fully expect that there be a delay of diagnosis as a numbers of tests such as [a] CAT scan and MRI were being done."

In deposition testimony dated August 11, 1994, Dr. Stephen E. Rawe, a Board-certified neurosurgeon, advised that he first saw appellant on May 16, 1991 and noted that at about two months after his initial evaluation, appellant began complaining about hip discomfort, noting that up until that time his neck and head discomfort far overshadowed any discomfort in his low back and hip.⁵ Dr. Rawe concluded:

"I believe that both the neck and back problems were related to his injury on May 6, 1991 [sic]. I think he had a cervical and lumbosacral muscle strain. I think he also had significant degenerative disc disease of the lumbar spine. I believe that that was most likely present prior to the injury.

"I think it is most probable that the accident he had on May 6, 1991 [sic] aggravated the degenerative arthritis in his lumbar spine and is a direct relationship or is a direct cause of his current discomfort. So I think that basically not only his neck but his low back symptoms are related to his work-related injury of May 6, 1991 [sic]."

³ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ A February 2, 1994 MRI of the lumbar spine revealed minimal loss of disc height at L2-3, L4-5 and L5-S1 and mild diffuse bulging at L5-S1.

⁵ An office note dated July 22, 1991 indicates that appellant was complaining of increased pain in the right hip.

Furthermore, the record contains a report dated May 6, 1991 in which Dr. K. Colliton, a military physician, noted that appellant developed numbness over the legs and arms before being air-evacuated on May 5, 1991.⁶

While these reports do not contain sufficient detail and rationale to establish that appellant's low back condition is causally related to his May 4, 1991 employment injury, the fact that the medical evidence contains deficiencies preventing appellant from discharging his burden does not mean that it should be completely disregarded by the Office. It merely means that the probative value of the evidence is diminished.⁷ It is well established that proceedings under the Federal Employees' Compensation Act⁸ are not adversarial in nature,⁹ and while the claimant has the burden to establish causal relationship, the Office shares responsibility in the development of the evidence.¹⁰ The case must, therefore be remanded for the Office to refer appellant, along with an appropriate statement of accepted facts, to an appropriate specialist for a rationalized medical opinion on the issue of whether his low back condition was either caused or aggravated by the May 4, 1991 employment injury. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

⁶ The record also contains medical reports documenting appellant's injury, transport and treatment by military medical personnel in Saudi Arabia and Germany, treatment notes from Dr. Rawe, reports from Dr. Johnson, psychological evaluations from George L. Cogar, Ph.D. and L. Randolph Ward, Ph.D., a May 14, 1992 second opinion evaluation from Dr. Howard L. Brilliant, a Board-certified orthopedic surgeon, an October 27, 1992 Office medical adviser report, a January 6, 1993 second opinion evaluation from Dr. Joseph Thompson, a Board-certified orthopedic surgeon, second opinion evaluations from Board-certified psychiatrist-neurologists, Dr. Wayne K. Braverman dated January 21 and 27, 1993 and Dr. John M. Roberts, dated September 16, 1994, reports from Dr. John F. Abess, a psychiatrist, who treated appellant regarding pain management, and physical therapy notes.

⁷ See *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant's claim. While the Office referred appellant, along with the medical record, a statement of accepted facts and a set of questions, to Dr. Joseph Thompson, a Board-certified orthopedic surgeon, for a second opinion evaluation December 22, 1992 and he provided a January 6, 1993 report in which he indicated that appellant needed pain management. On January 27, 1993 the Office requested that Dr. Thompson furnish a supplementary report asking whether the May 4, 1991 employment injury aggravated appellant's preexisting degenerative disc disease. The record does not contain Dr. Thompson's response.

⁸ 5 U.S.C. §§ 8101-8193.

⁹ See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

¹⁰ See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

The decision of the Office of Workers' Compensation Programs dated June 28, 1996 is hereby vacated and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, D.C.
November 25, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member