

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA R. HANNAH and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Fort Meade, SD

*Docket No. 98-1444; Submitted on the Record;
Issued December 1, 1999*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof in establishing that her cervical and right arm conditions are causally related to her employment.

On September 28, 1995 appellant, then a 57-year-old housekeeping aide, filed a claim for extreme pain in her shoulders and arms. In an accompanying statement, she indicated that she began having problems with pain and numbness in her arms in July and August 1994. Appellant also noted that she began having headaches that started in her neck. She related that she was told in November 1994 that an x-ray showed there was a bone spur resting on a nerve in her neck. Appellant continued treatment and received a recommendation for surgery. She stated that around September 15, 1995 she pulled down on the mop wringer attached to her mop bucket and felt severe pain in her neck, radiating down her shoulder and arm. Appellant indicated that she received medication and treatment but the pain had persisted since that time. She subsequently described her duties as mopping and dusting 40 to 60 rooms daily, lifting 6-gallon mop buckets 8 to 10 times a day, wringing out her mop 40 times a day, cleaning 40 bathrooms, including showers, floors and stools, emptying trash from every room, lifting 30-gallon trash bags 6 to 8 times a day and pushing or pulling a large trash cart to the trash compactor once a day. She also noted that two to three times a week she would change all light bulbs and take down and replace curtains, both activities requiring that she climb a ladder and work over her head. Appellant again indicated that her problems progressed until September 8, 1995 when she pulled down on a mop wringer which exacerbated her condition.

In an April 11, 1996 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that the evidence of record failed to demonstrate a causal relationship between the injury and the claimed condition and disability. In an April 17, 1996 letter, appellant requested reconsideration. In a June 3, 1996 merit decision, the Office denied appellant's request for modification of its prior decision. In an April 1, 1997 letter, appellant, through her representative, again requested reconsideration. In a June 17, 1997 merit decision, the Office found that appellant had established fact of injury but denied appellant's claim on the

grounds that causal relationship had not been established. In an October 7, 1997 letter, appellant's representative again requested reconsideration. In a January 7, 1998 merit decision, the Office denied appellant's request for modification.

The Board finds that the case is not in posture for a decision.

A person who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim. Appellant has the burden of establishing by reliable, probative and substantial evidence that her medical condition was causally related to a specific employment incident or to specific conditions of employment.² As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.³ The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁴ Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.⁵

In a November 7, 1995 report, Dr. Cynthia Anderson Weaver, a Board-certified internist, indicated that she had been treating appellant for osteoarthritis since October 1994. An electromyogram (EMG) in December 1994 was normal. In April 1995 appellant complained of increased pain in her neck and down her right arm. Dr. Weaver indicated that x-rays showed degenerative disc disease at C5-6 with retrolisthesis. She referred appellant for a magnetic resonance imaging (MRI) scan which showed probable compression of the right C6 nerve root.

In an April 16, 1996 report, Dr. Larry L. Teuber, a Board-certified neurosurgeon, indicated that he first examined appellant on September 26, 1995 with a history of neck pain since July 1995. He noted that appellant, on examination, demonstrated a C6 radicular sensory abnormality in the right arm. Dr. Teuber performed surgery on October 10, 1995, which consisted of a C5-6 bilateral foraminotomy compression followed by fusion of the C5-6 vertebrae. He noted appellant did reasonably well until October 25, 1996 when she fell and developed severe neck pain with right shoulder and arm pain. A second MRI scan showed posterior subluxation of C5 over C6 with no evidence of impingement on the spinal cord. X-rays showed a collapse of the spinal fusion performed in the October 10, 1995 surgery. A computerized tomography (CT) scan showed mild retrolisthesis of C5 on C6 with incomplete ossification of the axillary pouch at C5-6 on the right caused by prominence of the anterior articular facet. Dr. Teuber noted that appellant underwent a second operation on November 1, 1995 which included a C5 corpectomy and decompression of the right C6 foramina and fusion of the cervical spine at C4-5 and C5-6. In a copy of the operative report, Dr. Teuber noted that the

¹ 5 U.S.C. §§ 8101-8193.

² *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

³ *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁴ *Juanita Rogers*, 34 ECAB 544, 546 (1983).

⁵ *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

fusion graft placed in the October 10, 1995 operation had collapsed and a C4-5 discectomy was performed to remove the small amount of the C5 vertebral body left. He indicated that appellant returned to full duty on January 30, 1996.

In a March 18, 1997 report, Dr. Teuber stated that, based on a review of appellant's medical records and his recollection of her condition, appellant began experiencing progressive discomfort in the neck as a progressive problem, not due to any specific injury she recalled. He concluded that the type of activity appellant performed while at work at the employing establishment was aggravating and could cause the progressive cervical spinal condition from which she suffered.

In an April 9, 1997 report, Dr. Daryl S. Dickson, a general practitioner, stated that he saw appellant on September 8, 1995 for pain in her left shoulder which she indicated came on suddenly after pulling down a mop wringer while at work. He diagnosed a left shoulder strain at the time. Dr. Dickson noted that, in a September 22, 1995 examination, appellant continued to complain of left shoulder pain and pain in the middle of the back. He diagnosed an upper back pain syndrome. Dr. Dickson noted that appellant was subsequently treated for a herniated disc. He stated that the herniated disc was caused by the September 8, 1995 incident and the problem became more clear as time progressed.

In a May 27, 1997 report, Dr. Teuber stated that appellant had cervical degenerative disc disease, cervical spondylosis, and stenosis secondary to degenerative disc at C5-6. He noted that after surgery appellant had done well with resolution of the C6 radiculopathy but continued to have problems associated with cervical spondylosis. Dr. Teuber related that at the time appellant was first seen in the Office she related her symptoms to the work she had been performing over a long period. He indicated that since then appellant had indicated that an incident occurred on May 8, 1995 which she felt contributed to her problem. Dr. Teuber stated, "I do not feel that this injury, or my belief that her work activities are responsible for her symptoms resulted in any break in the change of causation." This report formed the basis for the Office's June 17, 1997 decision in which it concluded that appellant had not established a causal relationship between her employment and her cervical condition. However, in an August 28, 1997 affidavit, Dr. Teuber indicated that he was aware that appellant's September 8, 1995 incident occurred at work. He therefore concluded that appellant's employment, including 15 years of overhead work and repetitive arm activities precipitated her condition which was further aggravated by the September work incident.

The reports of Drs. Dickson and Teuber concluded that appellant's cervical condition was causally related to her employment. Appellant, in her initial filing of her claim, noted that she had cervical pain for over a year which was aggravated by an incident which she dated as occurring around September 15, 1995 when she pushed down on a mop wringer. Dr. Dickson indicated that he treated appellant on September 8, 1995 for left shoulder pain after she pushed down a mop wringer. This history provides a more accurate date for the incident. Dr. Dickson related appellant's herniated cervical disc to this incident. Dr. Teuber, after receiving an accurate history of the September 8, 1995 incident as occurring at work, concluded that appellant's cervical condition was related to repetitive motion at work and was aggravated by the September 8, 1995 incident. These reports are otherwise not contradicted by any other medical

evidence of record. Drs. Dickson and Teuber's reports are not sufficiently well rationalized to satisfy appellant's burden of proof. The reports, however, are sufficient to require further development of the record.⁶

On remand, the Office should refer appellant, together with the statement of accepted facts and the case record, to an appropriate physician for an examination and diagnosis of her condition. He should then provide his opinion on whether appellant's condition is causally related to factors of her employment, including the September 8, 1995 incident. After such further development as it may find necessary the Office should issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs, dated January 7, 1998 and June 17, 1997, are hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.
December 1, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁶ *John J. Carlone*, 41 ECAB 354 (1989).