

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT L. VIOLETTE and DEPARTMENT OF THE AIR FORCE,
OKLAHOMA CITY AIR LOGISTICS CENTER, TINKER AIR FORCE BASE, OK

*Docket No. 98-1772; Submitted on the Record;
Issued December 20, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an aggravation of a preexisting cervical disc bulge causally related to a July 19, 1996 employment-related fall upon his buttocks.

On November 22, 1996 appellant, then a 39-year-old jet engine mechanic in terminal leave status from active duty,¹ filed a claim alleging that on July 19, 1996 he stepped down from a four-legged three-step stool, one corner of which was on a floor drain and fell into the drain hole on his "tail bone." Appellant described his injuries as contusion of the buttocks and "tail bone" and spine. He did not stop work.

Also on November 22, 1996 appellant filed a claim alleging a recurrence of disability, alleging that, after his fall, he was having a problem with his left arm tingling and itching which started two days after his July 19, 1996 fall.

By letter dated January 22, 1997, the Office of Workers' Compensation Programs requested further information including a rationalized medical opinion supporting causal relation.

In response appellant submitted a January 9, 1997 magnetic resonance imaging (MRI) scan report which revealed a minimal left paracentral disc bulge at C5-6 with an associated osteophyte of the left posterior inferior aspect of C5 without any significant effect upon the cal sac, central canal or neural foramina. No causation of this finding was discussed.

¹ Appellant went on terminal leave from the employing establishment on July 3, 1996 and began civil service employment on July 8, 1996 while he was still considered to be on active duty and in receipt of military pay and benefits, pending actual formal retirement from active duty. As he was initially treated and followed up by the military medical system, to which he was entitled while still active duty in terminal leave status, the government is entitled under 10 U.S.C.A. § 1074(4) to seek reimbursement from the Federal Employees' Compensation Act for any care and services rendered to appellant due to his nonmilitary-related injury.

By decision dated March 4, 1997, the Office rejected appellant's claim finding that the evidence was insufficient to establish causal relation between his current condition and the July 19, 1996 fall.

By letter dated August 29, 1997, appellant requested reconsideration of the March 4, 1997 decision. Appellant indicated that he originally injured his neck on active duty causing a bulging disc in 1985 and that subsequent problems arising from the injury were treated in 1992 with complete resolution. He alleged that he was having no further problems at the time of the July 19, 1996 fall, which he claimed aggravated and intensified the original injury and caused completely new problems with his left forearm and left hand. Appellant stated that after a year his left arm symptoms had not resolved and he consulted a neurosurgeon who operated on him on August 5, 1997, performing a cervical discectomy and fusion of C5-6. In support of his reconsideration request, appellant submitted his old military records dating from 1985 when he was injured at survival school and was diagnosed with right cervical radiculopathy, right arm neuropathy, right shoulder nerve compression injury, cervical sprain/strain, a pulled trapezius and right C8 numbness and tingling. A July 29, 1992 military medical report indicated that appellant was injured in survival school seven years earlier and that he had cervical radiculopathy with weakness in the right arm with paresthesias in the ulnar distribution. An August 4, 1992 cervical MRI scan was reported as demonstrating a bulging C5-6 disc.

Appellant also submitted a July 19, 1996 date-of-injury employing establishment military medical clinic report which noted the history of injury and provided a diagnosis of contusion of buttocks (sacrum). The record indicated that appellant was a "term employee hire" but was on terminal leave retiring from the employing establishment. In an August 14, 1996 follow-up medical progress note, Dr. David D. Bissell, a military employing establishment Board-certified pediatrician working as an occupational medicine specialist, diagnosed sensory symptoms secondary to mild whiplash. A November 21, 1996 military clinic note stated that appellant explained that he was still considered on active duty and had been referred to the base hospital for any problems. A November 22, 1996 military clinic note indicated that appellant was there to file an AF-12; and the treating physician, Dr. Alberto Angles, a civilian Board-certified gastroenterologist and general surgeon working as an occupational medicine specialist, noted that appellant was in terminal leave when the injury occurred on July 19, 1996 and that an AF-12 was not completed at that time. He reviewed the history of injury, noted that following the injury appellant complained of tingling and stinging in the left arm and noted that it had improved since the injury but persisted. Dr. Angles diagnosed contusion of the buttocks on July 19, 1996 and mild whiplash on July 19, 1996. He indicated that appellant was being followed by his private medical doctor at that time.

Appellant's private physician, Dr. Ronald R. Hopkins, an osteopath, noted that appellant was seen on November 20, 1996 complaining of paresthesias of the left arm. He diagnosed cervical radiculopathy.

By letter to the Office dated February 15, 1997, Dr. Hopkins reviewed appellant's history of injury, which he claimed occurred when appellant was working for "your company" on July 19, 1996, noted that the January 8, 1997 MRI scan revealed a minimal left paracentral disc bulge at C5-6 with an associated osteophyte on C5 and opined that the C5-6 disc bulge was due to the accident on July 19, 1996.

In a July 28, 1997 report to Dr. Hopkins, Dr. Brent N. Hisey, a Board-certified neurosurgeon, noted that appellant had a 12-year history of intermittent neck and upper extremity pain, that at that time a Maryland neurosurgeon recommended a C5-6 discectomy, but that appellant elected conservative care until he fell from the stand, landing on his buttocks, which was followed by severe symptomatology involving his cervical spine and left C6 distribution. Dr. Hisey opined that appellant's symptomatology was secondary to his left C5-6 disc protrusion. He performed the C5-6 anterior cervical discectomy and interbody fusion on August 5, 1997.

Appellant also submitted other previous military medical records documenting the preexisting C5-6 disc bulge and right arm symptomatology, occupational medicine service medical records, his family physician medical records and his neurosurgical treatment records.

By decision dated November 25, 1997, the Office denied modification of its March 4, 1997 decision finding that the evidence submitted in support was insufficient to warrant modification. The Office found that the medical evidence submitted was void of any opinion supporting causal relation between appellant's fall on his buttocks and the C5-6 symptomatology occurring after the fall and did not explain how the fall aggravated his preexisting C5-6 disc bulge.

The Board finds that appellant has failed to establish that he sustained an aggravation of a preexisting cervical disc bulge causally related to a July 19, 1996 employment-related fall upon his buttocks.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the injury claimed was caused or aggravated by his federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and factors of his federal employment.² Causal relationship is a medical issue that can be established only by medical evidence.³ The Board notes that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.⁴

In this case, no medical report submitted to the record related appellant's left-sided radicular symptomatology to an employment-related aggravation of his preexisting C5-6 disc bulge. The only medical opinion of record which mentioned any federal civil employment-related causation was Dr. Hopkins' February 15, 1997 report which causally related appellant's C5-6 disc bulge to the July 19, 1996 fall, but failed to provide any medical rationale as to why and failed to base this opinion on an accurate factual and medical history, which indicated that the C5-6 disc bulge preexisted the July 19, 1996 fall. The Board notes that mere conclusions,

² *Steven R. Piper*, 39 ECAB 312 (1987); *see* 20 C.F.R. § 10.110(a).

³ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁴ *Paul D. Weiss*, 36 ECAB 720 (1985); *Hugh C. Dalton*, 36 ECAB 462 (1985).

such as Dr. Hopkins', without supporting rationale and not based upon an accurate factual and medical history, are of little probative value.⁵

Dr. Hisey, who performed the anterior discectomy, opined that appellant's symptomatology for which he underwent the surgery, was related to the C5-6 disc bulge, which occurred in 1985 as a result of a military mishap and did not relate the onset of the symptomatology to the July 19, 1996 civil employment accident aggravating the preexisting C5-6 disc bulge. Consequently this report also does not support a July 19, 1996 aggravation of the C5-6 disc bulge causing symptomatology which necessitated surgery.

The remainder of the medical evidence of record merely reports appellant's conditions and symptoms at the time of those examinations and does not discuss causation of his 1996 to 1997 left upper extremity symptomatology. Consequently, it is not probative on the issue of whether appellant sustained an aggravation of his preexisting C5-6 disc bulge on July 19, 1996. Therefore, appellant has not met his burden of proof to establish his aggravation claim.

Accordingly, the decision of the Office of Workers' Compensation Programs dated November 25, 1997 is hereby affirmed.

Dated, Washington, D.C.
December 20, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ See *Daniel J. Overfield*, 42 ECAB 718 (1991); *Lucrecia M. Neilsen*, 42 ECAB 583 (1991); *Richard Giordano*, 36 ECAB 134 (1984).