

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WAYNE F. RULLO and DEPARTMENT OF THE NAVY,
NAVY SHIPS PARTS CONTROL CENTER, Mechanicsburg, Pa.

*Docket No. 96-2509; Submitted on the Record;
Issued January 11, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant's seizure condition is causally related to his accepted fall at work on February 16, 1989.

The case has been on appeal twice previously.¹ In an October 28, 1991 decision, the Board noted that the Office of Workers' Compensation Programs had found that appellant's fall at work on February 16, 1989 was due to a seizure disorder unrelated to work and therefore was an idiopathic fall not sustained in the performance of duty. The Board, however, found that the case was not in posture for a decision because medical evidence submitted by appellant related his fall to exposure to carbon monoxide and further concluded that he sustained a concussive head injury which caused his seizure disorder. The Board concluded that the medical evidence of record supported a finding that appellant's seizures did not predate the February 16, 1989 fall and that appellant's physician had concluded that the fall probably caused appellant's seizures. The Board remanded the case for a decision on whether the February 16, 1989 fall was sustained in the performance of duty and, if so, whether the seizure sustained by appellant on December 11, 1989 was a recurrence of that injury. In the October 15, 1995 decision, the Board found that the Office had accepted that appellant's fall on February 16, 1989 was an employment injury that caused a contusion to the head. The Board noted, however, that the Office had denied appellant's claim on the grounds that the seizure disorder was unrelated to the accepted employment injury or to factors of appellant's employment. The Board pointed out that the medical evidence of record was essentially the same evidence that existed at the time of the last appeal. The Board found that the Office had not complied with the Board's instructions from its first decision to further develop the medical evidence to determine whether appellant's seizure disorder was causally related to the February 16, 1989 employment injury or to other factors of

¹ Docket No. 94-632 (issued October 19, 1995); Docket No. 91-564 (issued October 28, 1991). The history of the case is contained in the prior decisions and is incorporated by reference.

appellant's employment. The Board therefore remanded the case for further development by the Office on the medical issue as it had previously ordered.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Leland F. Patterson, a Board-certified neurologist, for an examination. In its statement of accepted facts, the Office indicated that industrial air quality surveys taken at the employing establishment showed the chemicals in appellant's work area to be within acceptable limits.

In a February 5, 1996 report, Dr. Patterson stated that appellant's classical neurological examination was completely within normal limits. He diagnosed a seizure disorder. Dr. Patterson indicated that, given the tenuous relationship of carbon monoxide levels that had been given and the lack of having reached real toxic levels, he had doubts that carbon monoxide played any role in appellant's seizure although he noted that the possibility existed. He commented that other areas had not been addressed would be the fact that appellant had an idiopathic seizure disorder. Dr. Patterson stated that it was most unusual statistically for patients to have their first seizure at age 40 but it did occur. He concluded, however, that this was the cause of appellant's seizures. He indicated that appellant had one seizure, the first, in which carbon monoxide might be implicated as a cause but had three further seizures in which carbon monoxide had not been documented as being associated, including the December 11, 1989 seizure. He noted that appellant's electroencephalogram (EEG) was normal and indicated that 20 percent of patients with epilepsy have a normal EEG. He stated that the abnormality on appellant's first EEG could very well have been related to post-seizure events as well as a concussion from the fall. He noted that appellant had a slow EEG after the second seizure but he related this finding as most likely due to a post-seizure effect and not to any other illness.

The Office requested clarification of Dr. Patterson's report. In a February 8, 1996 report, Dr. Patterson stated that it was his opinion that appellant had a concussion from the February 16, 1989 fall. He noted that appellant's EEG showed a right-side abnormality which was the side of his laceration. Dr. Patterson indicated that a computerized tomography (CT) scan showed a slit like appearance of the right ventricle from which he could infer that there was some swelling from the fall. He commented that appellant denied any other symptoms such as headache, blurred vision, dizziness or lightheadedness that could clinically be seen following a concussion. Dr. Patterson concluded that appellant could have returned to full duty on March 20, 1989. He stated that appellant's second seizure was not related in any way to the first seizure from the standpoint of a work-related injury. Dr. Patterson indicated that he believed appellant had an idiopathic seizure disorder and therefore any further seizures would have an idiopathic or unknown cause.

In a February 13, 1996 decision, the Office terminated appellant's claim for compensation effective March 20, 1989 on the grounds that the weight of the medical evidence established that appellant's disability resulting from the February 16, 1989 employment injury ceased by March 20, 1989 and that there was no work-related seizure disorder.

Appellant requested reconsideration contending that the fall on February 16, 1989 caused a head injury which caused the seizure disorder which manifested when he was exposed to carbon monoxide on December 11, 1989, causing a second seizure. Appellant's attorney

submitted previous medical records in support of his argument. In a June 5, 1996 merit decision, the Office denied appellant's request for modification of the Office's February 13, 1996 employment injury.

The Board finds that the case is not in posture for a decision due to a conflict in the medical evidence.

Dr. Patterson concluded that appellant had a idiopathic seizure disorder and therefore his seizure disorder was not caused by the February 16, 1989 fall at work. He indicated that appellant had a concussion as a result of the fall but stated that appellant was able to return to work by March 20, 1989. Dr. Patterson's conclusion directly conflicts with the conclusions of the other physicians who examined appellant. In an August 31, 1989 report, Dr. David J. Ferner, an osteopath, stated that a review of appellant's medical records showed that he did not have any type of idiopathic or intrinsic seizure disorder and concluded that the evidence established a definite link between appellant's single seizure and exposure to carbon monoxide. In a January 19, 1990, report, Dr. Margit L. Bleecker, a Board-certified neurologist and then Chief of Neurology at the John Hopkins University Medical School, and Dr. James A. Palmier, a resident in occupational medicine, stated that appellant's symptoms at the time of the February 16, 1989 fall were consistent with carboxyhemoglobin levels greater than 20 percent. They noted, although it had been originally thought that the exposure to carbon monoxide caused a one-time seizure event, the second seizure on December 11, 1989 occurred while appellant had a lower carboxyhemoglobin level. The physicians therefore concluded that the exposure to carbon monoxide caused appellant's fall and the injury sustained in the fall caused the seizure disorder. In a January 28, 1993 report, Dr. Bleecker stated that appellant's disability was caused by the contusion to his head because the seizure disorder was a consequence of the contusion. She indicated that there was no evidence that an underlying condition existed. She stated the second seizure on December 11, 1989 showed that scar tissue had formed from the initial concussion and that appellant therefore had post-traumatic seizure disorder. The reports of Dr. Bleecker therefore directly conflict with the reports of Dr. Patterson on the cause and diagnosis of appellant's seizure condition. The case must therefore be remanded for further development.

On remand the Office should refer appellant, together with the statement of accepted facts and the case record, to an appropriate impartial medical specialist for an examination. The specialist should be requested to give a diagnosis of appellant's condition and state whether the seizure condition previously diagnosed was idiopathic in nature or caused by the accepted traumatic injury. The specialist should provide his rationale for his opinion on the issue of causal relationship. After 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 June 5 and February 13, 1996 are hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.
January 11, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member