

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAUL REYES and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Long Beach, Calif.

*Docket No. 97-1164; Submitted on the Record;
Issued January 7, 1999*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that he has a medical condition causally related to his accepted February 18, 1992 employment injury.

The Board has duly reviewed the record and concludes that appellant has not met his burden of proof in this case.

The Office of Workers' Compensation Programs has accepted that on or around February 18, 1992 appellant, then a 36-year-old revenue officer, developed right elbow tendinitis as a result of lifting a box of inventory in the course of his federal employment duties. Appellant did not stop work but missed nine hours of work between June and July 1992 because of the injury. On March 11, 1996 appellant filed a notice of recurrence of disability, alleging that his condition had steadily deteriorated since the employment injury to the point where he had trouble writing and holding objects, his fingers got numb and he had pain in his neck shoulders, arms and hands. Appellant added that he underwent extensive testing to find the cause of his condition and that magnetic resonance imaging (MRI) performed in May 1995 revealed the presence of a herniated cervical disc. The Office denied appellant's claim for recurrence of disability on January 7, 1997.

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.¹ In support of his notice of recurrence of disability, appellant submitted a number of medical reports which indicate that appellant was diagnosed

¹ *Lourdes Davila*, 45 ECAB 139 (1993).

with both thoracic outlet syndrome and a herniated cervical disc. The medical evidence of record, however, does not include any rationalized medical report which supports, with sound medical reasoning a causal relationship between either of these conditions and the February 18, 1992 employment injury.

Appellant's treating physician, Dr. Andrew Carr, a neurologist, opined in a report dated January 17, 1995 that appellant had a thoracic outlet syndrome based upon physical examination findings, x-ray and test results as well as his clinical course. Regarding the cause of this condition, Dr. Carr stated only that appellant himself had related his chief complaints of pain in the arms and shoulders and swelling in the hands worsening over the past three years "possibly to an injury he had at work where he was lifting something and he hurt his forearm and around the elbow and up to the shoulder before this began." Dr. Carr did not offer his own rationalized medical opinion as to the cause of appellant's condition.

In a report dated November 6, 1995, Dr. William So, a Board-certified neurological surgeon, to whom appellant had been referred by Dr. Carr, noted that appellant complained of numbness and pain in his hands, arms shoulders and neck. Following a full physical examination, including medical testing, Dr. So noted that an MRI showed evidence of moderate posterior disc herniation at C5-6 with distortion of the cervical cord. Regarding the cause of appellant's condition, Dr. So stated that appellant himself related the onset of his symptoms to lifting at work in February 1992, and reported that since then he has had persistent neck and bilateral upper extremity symptoms. Dr. So did not offer his own medical opinion as to the cause of appellant's condition or in any way relate appellant's condition, medically, to the 1992 work injury.

In a summary report dated May 10, 1996, appellant's treating physician, Dr. Carr, reiterated that he first saw appellant on February 25, 1992 at which time he was complaining of pain in his neck and arms. He noted that an MRI performed in May 1995 revealed a moderate size central disc herniation at the C5-6 level which appellant declined to have surgically treated, and that appellant also had some disc disease at T7 and T8 in the thoracic area. Dr. Carr added that appellant was last seen by him on April 16, 1996, at which time he was still complaining of pain and numbness in the neck, arms and hands. The physician noted that although appellant had a diagnosis of a ruptured cervical disc he had very little in the way of objective neurological findings, and most of his findings were very subjective. Dr. Carr stated that he still recommended surgical correction of the disc condition, and additionally recommended that appellant's working conditions be adjusted to avoid activities, such as driving, which could possibly cause trauma to the neck and further injure appellant's spinal cord. Dr. Carr did not offer his medical opinion as to the cause of appellant's current condition, or its relationship, if any, to appellant's February 18, 1992 work injury.

The Board has held that an award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.² In addition, the mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship

² *William S. Wright*, 45 ECAB 498 (1994).

between the condition and the employment.³ Such a relationship must be established by medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁴ As neither Dr. Carr or Dr. So offered any opinion as to the cause of appellant's current condition and its relationship, if any, to the February 18, 1992 employment injury, their opinions are insufficient to meet appellant's burden of proof.

In a report dated August 7, 1996, Dr. William McColl, a Board-certified orthopedic surgeon, acting as the Office's second opinion physician, related the history of appellant's lifting incident on February 18, 1992, noted that appellant still complained of pain in his arms, shoulders, hands and neck, and burning in the lower legs from the mid calf to the toes, and further noted that a May 25, 1995 MRI revealed the presence of a herniated disc at C5-6. Dr. McColl stated that he concurred with the results of the MRI, but did not feel that the herniated disc was giving appellant his symptoms. Rather, the results of his physical examination revealed "more of a connective type disease with generalized problem of tenderness into the tendon attachment areas." He added that he had referred appellant to Dr. Maria Susan Buhay-Maglunog, a rheumatologist, whose initial impression was that appellant was suffering from a type of soft tissue rheumatism, probably fibromyalgia, and had ordered additional testing to confirm this diagnosis. Dr. McColl opined that appellant did not appear to be suffering from residuals of his February 18, 1992 employment injury, and that while his specific diagnosis would depend on the final report from Dr. Buhay-Maglunog, he felt appellant had a soft tissue rheumatism condition, such as fibromyalgia. Dr. McColl concluded that he did not feel that appellant's working activities had precipitated or accelerated appellant's present complaints.

In her rheumatological follow-up report dated September 20, 1996, Dr. Buhay-Maglunog confirmed her earlier tentative diagnosis of fibromyalgia, and added that she had reviewed appellant's prior medical records which showed evidence of a herniated disc at C5-6. Dr. Buhay-Maglunog's final assessment was: "Fibromyalgia, related to and aggravated by the trauma that he experienced affecting his cervical spine. He has definite disc herniation, symptomatic."

By letter dated October 21, 1996, the Office asked Dr. McColl to review Dr. Buhay-Maglunog's follow-up report and give his final opinion as to whether he felt appellant's current medical condition was related to the February 18, 1992 employment incident.

In a report dated October 28, 1996, Dr. McColl again reviewed all of the medical evidence of record, including Dr. Buhay-Maglunog's most recent report. Dr. McColl stated that he agreed with Dr. Buhay-Maglunog's conclusion that appellant was suffering from fibromyalgia, but disagreed with her statement that the fibromyalgia was "related to and aggravated by the trauma [appellant] experienced affecting his cervical spine." Dr. McColl stated that he did not know what Dr. Buhay-Maglunog meant by this statement. In conclusion,

³ *Juanita Rogers*, 34 ECAB 544 (1983).

⁴ *Lourdes Davila*, *supra* note 1.

Dr. McColl reiterated his earlier opinion that appellant is suffering from fibromyalgia, that appellant does not appear to be suffering from residuals of the February 18, 1992 injury, and that he did not feel that appellant's working activities had precipitated or accelerated his current complaints. Dr. McColl confirms that, while appellant is currently suffering from fibromyalgia, causal relationship has not been established in this case. His opinion is supported by the medical evidence of record and is of probative medical value. Although there appears to some disagreement between Drs. McColl and Buhay-Maglunog as to whether appellant's diagnosed fibromyalgia is causally related to or aggravated by his cervical condition, as there is no medical opinion of record which causally relates appellant's cervical condition to the employment injury of February 18, 1992, this disagreement is immaterial.

The medical evidence of record therefore does not support, with rationalized medical evidence, a finding that appellant's current medical conditions of fibromyalgia and a herniated cervical disc are causally related to the accepted employment injury.

The decision of the Office of Workers' Compensation Programs dated January 7, 1997 is hereby affirmed.

Dated, Washington, D.C.
January 7, 1999

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member