

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LELL DEAN SHILLINGS and DEPARTMENT OF DEFENSE,
THIOKOL SPACE OPERATIONS PLANT, Promontory Point, Utah

*Docket No. 97-2464; Submitted on the Record;
Issued June 1, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that his mid and lower back condition was causally related to employment factors.

On August 17, 1995 appellant, then a 43-year-old quality assurance specialist, filed a notice of traumatic injury, claiming that he strained his right arm and shoulder joint when he lost his balance and tried to prevent himself from falling on the outside steps of a building on August 10, 1995.

Appellant was treated by Dr. Stephen R. Tucker, a practitioner in internal medicine, who diagnosed severe muscle strain and tendinitis and released appellant to return to work on September 1, 1995. Subsequently, appellant stopped work because of cervical pain and was referred to Dr. Bryson S. Smith, a neurosurgeon, who agreed with Dr. Tucker that appellant had an acute disc herniation at C6-7.

The Office of Workers' Compensation Programs accepted the claim for a right shoulder strain and herniated disc at C6-7, authorized fusion surgery, which was done on February 20, 1996, and paid appropriate compensation. Appellant returned to part-time light duty on April 15, 1996 with no overhead lifting, avoidance of tight-confined spaces, and a weight limit of 25 pounds. On May 27, 1996 appellant returned to full unrestricted duty. On July 2, 1996 Dr. Smith completed a work evaluation form, stating that appellant had reached maximum medical improvement.

On October 3, 1996 the Office denied appellant's claims for wage loss on the grounds that the medical evidence did not support any disability due to the accepted conditions. Appellant requested reconsideration and submitted magnetic resonance imaging (MRI) scans dated July 22, 1996 of his thoracic and lumbar spine, which showed disc herniation.

On December 9, 1996 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant modification of its prior decision. Appellant's subsequent request for reconsideration was denied on the same grounds on February 26, 1997. A June 4, 1997 request for reconsideration was denied on June 17, 1997 as insufficient to warrant review.

The Board finds that the medical evidence is insufficient to establish that appellant's mid and lower back condition is causally related to employment factors.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.³

In a claim for compensation based on a traumatic injury, the employee must establish fact of injury by submitting proof that he or she actually experienced the employment accident or event in the performance of duty and that such accident or event caused an injury as defined in the Act and its regulations.⁴ The Office's regulations define traumatic injury as a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.⁵ Thus the claimant must show that the specific event or incident or series of events or incidents within a single workday or shift resulted in an injury within the meaning of the Act.⁶

Once the claimant establishes fact of injury he or she must then demonstrate through medical evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specified conditions of the employment.⁷ The causal relationship must be shown by rationalized medical evidence which includes a physician's opinion of reasonable medical certainty based on a complete factual and medical background of the claimant and on a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.

¹ 5 U.S.C. §§ 8101-8193.

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Richard A. Weiss*, 47 ECAB 182, 183 (1995).

⁴ *Gene A. McCracken*, 46 ECAB 593, 596 (1995).

⁵ 20 C.F.R. § 10.5(15).

⁶ *Richard D. Wray*, 45 ECAB 758, 762 (1994).

⁷ *Robert Lombardo*, 40 ECAB 1038, 1041 (1989).

The physician's conclusion of causal relationship must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by claimant.⁸ Neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that his condition was caused by her employment is sufficient to establish a causal relationship.⁹

In this case, the medical evidence is insufficiently probative to support appellant's beliefs that his thoracic and lumbar condition was "overlooked" in 1995 and that the diagnosed herniated discs resulted from the August 10, 1995 incident. First, appellant's assertion that he had informed various physicians from the beginning that his neck pain extended down to his low back was "not well documented," according to Dr. Charles P. Bean, a Board-certified orthopedic surgeon. Second, Dr. Bean stated in his May 28, 1997 report:

"[Appellant] feels that after his neck pain was improved by April of [19]96, following his injury in August [19]95, the low back pain then surfaced and became much more apparent and progressively worsened thereafter. [Appellant] feels that the low back pain may have been masked by the upper back pain.... [Appellant] feels that when his neck pain resolved, it left the residual low back pain which was there from the beginning. Unfortunately, from the medical record, this cannot be documented."

Dr. Bean's opinion that appellant's initial neck injury "seems to have progressed" to mid and low back pain some time later is solely speculative and not supported by the record, as he himself indicated. Thus, Dr. Bean's report is insufficient to meet appellant's burden of proof.

Dr. Tucker's various reports are similarly deficient. On July 19, 1996 Dr. Tucker reported that appellant was complaining of "severe back pain" and referred him to Dr. Smith, who interpreted an MRI done on July 22, 1996 as showing no "surgically significant" disc herniation and only minimal protrusion findings. On September 16, 1996 Dr. Tucker diagnosed cervical spinal stenosis with some thoracic spinal impairment and chronic severe back pain resulting from the initial injury.

On October 3, 1996 Dr. Tucker stated that appellant had "recovered nicely" from his cervical surgery, but because of continued back problems, specifically his thoracic spine, morbid obesity, and an out-of-work related depression, had not reached maximum medical improvement. On October 8, 1996 Dr. Tucker stated that appellant was still complaining of "severe back pain, although that cannot be documented very well through physical exam[ination]." Dr. Tucker warned appellant that if he failed to undergo psychological counseling, a rigorous weight loss regimen and physical therapy, he would no longer be considered disabled.

On October 14, 1996 Dr. Tucker stated that when appellant was allowed to return to work, he noted that pain in his thoracic spinal area has not resolved and was actually worsening.

⁸ *Steven R. Piper*, 39 ECAB 312, 314 (1987).

⁹ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

“Apparently, this pain had been there since the accident at work but had been overlooked because of the neck problems.”

On November 18, 1996 Dr. Tucker stated that appellant had cervical and thoracic disc disease resulting from the August 10, 1995 incident, but his thoracic herniated discs were not treated and his pain had persisted. In an attempt to “clear the misunderstanding,” Dr. Tucker stated on November 25, 1996 that appellant had “pain covering almost the entire spinal column,” that “[i]t was thought” that cervical surgery would alleviate all the symptoms, but the pain in the mid and lower back remained, that “[i]t was found” that appellant had thoracic disc disease and that added to the back pain, and that “[i]t is felt” that this pain was also caused by the original incident in August 1995.

On February 7, 1997 Dr. Tucker repeated his opinion that the damage to appellant’s thoracic spine “had been overlooked” and that he continued to suffer from severe back pain which made him unable to work. Dr. Tucker added that until appellant lost 100 pounds, participated in intensive physical therapy to increase his exercise tolerance, decreased his dependence on pain medication, and underwent complete psychiatric evaluation and treatment, he would be unable to perform the duties of his job.

In none of his reports did Dr. Tucker provide a rationalized medical opinion explaining how catching oneself from falling down steps in August 1995 caused thoracic and lumbar disc disease to surface in July 1996.¹⁰ Nor did Dr. Tucker document any thoracic or lumbar symptoms in his initial treatment notes of appellant in August, September and October 1995. At that time he did not record any complaints from appellant of pain in the thoracic or lumbar spine.

When appellant completed his claim notice, he provided a detailed explanation of the pain in his right arm, shoulder joint, and fingers but made no mention of any back pain. Not until he was released to return to part-time light duty in April 1996 did the back pain complaints appear. Inasmuch as the medical evidence is insufficient to establish that appellant’s mid and lower back condition was causally related to either the August 1995 injury or to work factors, the Board finds that the Office properly denied his claims for wage-loss compensation.¹¹

¹⁰ See *Margarette B. Rogler*, 43 ECAB 1034, 1039 (1992) (finding that a physician’s opinion that provides no medical rationale for its conclusion on causation is of diminished probative value).

¹¹ See *Robert J. Krstyan*, 44 ECAB 227, 230 (1992) (finding that appellant failed to submit sufficient medical evidence to establish that specific work factors caused or aggravated his back condition).

The June 17 and February 26, 1997 and the December 9 and October 3, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

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

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member