

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FLOSSIE E. McDANIELS and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATIONS ADMINISTRATION, Oklahoma City, Okla.

*Docket No. 97-1855; Submitted on the Record;
Issued March 9, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury to her cervical spine that was causally related to factors of her federal employment.

On June 19, 1995 appellant, then a 52-year-old legal instruments examiner, filed an occupational disease claim, alleging that she sustained chronic soft tissue and joint dysfunction in her cervical spine which she first became aware of on May 8, 1995 and realized was causally related to her employment on June 13, 1995 after it was confirmed by her treating physician. Appellant stopped work on June 5, 1995. By decision dated January 23, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence did not establish that an injury was sustained as alleged. In decisions dated July 30, 1996 and January 27, 1997, the Office denied appellant's requests for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification of the prior decision.

The Board has duly reviewed the entire case record on appeal and finds that this case is not in posture for decision.¹

A person who claims benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of her claim, including that she sustained an injury while in the performance of duty and that she had disability as a result.³ In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually

¹ The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed her appeal with the Board on July 25, 1997, the only decisions before the Board are the Office's July 30, 1996 and January 27, 1997 decisions. See 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. §§ 8101-8193.

³ *Daniel R. Hickman*, 34 ECAB 1220 (1983); see 20 C.F.R. § 10.110(a)

sustained an injury in the performance of her duty, the Office begins with the analysis of whether “fact of injury” has been established. Generally, “fact of injury” consists of two components which must be considered one in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.⁴ In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁵ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁶ The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.⁷

In the present case, the Office denied appellant’s claim based on a finding that the report by Dr. Donald L. Landstrom, a Board-certified neurologist and Office referral physician, constituted the weight of the medical evidence. In a report dated July 17, 1996, Dr. Landstrom provided a history of injury, in which he noted that appellant was symptomatic for temporomandibular joint disease dating back to 1983 and that her dentist had referred her to a neurologist due to cervical pain which began about 1993. Dr. Landstrom noted that tomograms of the temporomandibular joints were normal, a computerized tomography (CT) scan of the chest was normal, but magnetic resonance imaging (MRI) scans revealed straightening of the normal cervical curvature with mild narrowing of the left C4 to C5 and C6 to C7 neuroforamina on the left and right C6 to C7 neuroforamen, a small focal disc or spur formation to the left of midline at the C6 to C7, but no evidence of right-sided nerve compression. He found that there was “no truly objective findings upon neurologic examination” and that “the subjective findings upon examination do not correlate well neuroanatomically with cervical problems including cervical radiculopathy or myelopathy.” The Office accorded this report determinative weight, finding that the reports of Dr. Ellen E. Hope, a Board-certified neurologist and appellant’s treating physician, while providing an accurate description of the incriminated work factors and indicating that there was a causal relationship, did not provide a medical explanation of how these work factors were responsible for the aggravation. However, a review of the medical reports submitted by Dr. Hope and of her testimony before the Merit Systems Protection Board reveals that she did provide a medical explanation for her conclusion that appellant’s claimed condition was causally related to factors of her federal employment. Specifically, in the testimony which the Office cursorily dismissed as cumulative, Dr. Hope noted appellant’s history of temporomandibular complaint followed by cervical complaints and degenerative problems revealed by MRI scans. She indicated that the films established that appellant’s cervical spine was abnormal anatomically, which would predispose her to having the muscle of

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.(2)(a) (June 1995).

⁵ *John C. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (“injury” defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) (“traumatic injury” and “occupational disease” defined).

⁶ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

⁷ *Manuel Garcia*, 37 ECAB 767 (1986).

the shoulder girdle and into the neck, particularly on the right, to cramp which would lead simple activities such as answering the phones, sitting in a car or other usual activities, to cause painful spasms in the upper muscular quadrant. In her testimony and prior medical reports dated March 20, 1996 and December 18, 1995, Dr. Hope indicated that appellant had chronic degenerative cervical discs and that sedentary office work was a well known exacerbating factor for patients with intervertebral disc disorders. She noted that static sedentary posture strained postural muscles and connective tissues of the spine and repetitive “overuse activities such a keyboarding or writing” are aggravating to underlying cervical disease and myofascial pain disorders which appellant had. Therefore, the record includes medical report evidence of virtually equal which conflict with respect to the issue of whether appellant’s claimed condition was causally related to factors of her federal employment.

Section 8123(a) of the Act⁸ states that if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination. Because there exists an unresolved conflict between the opinions of Drs. Landstrom and Hope, this case must be remanded to allow the Office to further develop the evidence by referral of the case to an impartial medical examiner to resolve the conflict.

The decisions of the Office of Workers’ Compensation Programs dated January 27, 1997 and July 30, 1996 are hereby set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
March 9, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁸ 5 U.S.C. § 8123(a).