

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FIDENCIO A. PEREZ and DEPARTMENT OF THE ARMY,
EIGHTH U.S. ARMY, CAMP CARROLL, Waegwam, South Korea

*Docket No. 99-1023; Submitted on the Record;
Issued July 25, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that he had any disability arising from his January 2, 1996 employment injury.

On January 2, 1996 appellant, then a 51-year-old supply management officer, was working at his desk when his chair broke, causing him to fall out of his chair. Appellant claimed that he sustained injuries to his neck, back, shoulder and head. In a January 18, 1996 form report, Dr. Kang Chui Hyung, an orthopedic surgeon, noted that appellant had a history of a preexisting herniated L4-5 disc. In an April 23, 1996 letter, the Office of Workers' Compensation Programs informed him that it had accepted his claim for temporary aggravation of preexisting herniated disc. Appellant received disability retirement effective May 31, 1996 and sought compensation for the period beginning June 6, 1996. In a May 29, 1998 decision, the Office denied appellant's claims for continuing compensation and for chronic upper and lower back pain, lumbar disc disease, and right shoulder ankylosis on the grounds that the evidence of record did not establish that these conditions were causally related to appellant's January 2, 1996 employment injury. In an August 7, 1998 letter, appellant requested reconsideration. In a December 30, 1998 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and therefore insufficient to warrant review of the prior decision.

The Board finds that appellant has not met his burden of proof in establishing that he had any disability or further medical conditions causally related to the January 2, 1996 employment injury.

A person who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim. Appellant has the burden of establishing by reliable, probative and substantial evidence that his medical condition was

¹ 5 U.S.C. §§ 8101-8193.

causally related to a specific employment incident or to specific conditions of employment.² As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.³ The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁴ Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.⁵

In a January 23, 1996 report, Dr. Hyung indicated that appellant had a history of falling off his chair on December 1, 1995, when he leaned back too far and injured his neck and back. He also gave a history of the January 2, 1996 employment injury. Dr. Hyung reported that appellant had neck pain, referred pain to the interscapular area, the right shoulder and right arm, and constant low back pain with muscle spasms. He noted that appellant had a fracture of the C2 odontoid process in 1978 and had a C1-2 fusion performed at that time. Dr. Hyung diagnosed internal disc disruption of the lower cervical discs, herniation at L5-S1, internal disc disruption of lower lumbar discs and profound depression.

In a January 28, 1996 report, Dr. Jae Do Kang gave a history of the December 1, 1995 and January 2, 1996 injuries. He stated that appellant had an incomplete fusion of C1-2, noted that the fixed wires between the vertebrae were broken. Dr. Kang commented that the aggravation was the cause of pain and motion limitation of the neck and shoulders. He indicated appellant had a compression fracture of T11 with degenerative and osteoporotic changes. Dr. Kang noted appellant had constant pain and numbness of the thoracic region. He reported appellant had pain in the right shoulder due to myofascitis or tendinitis. Dr. Kang stated that appellant had aggravated his herniated L5-S1 disc with disc degeneration showed on magnetic resonance imaging (MRI) scans. He indicated that low back pain and radiating pain in both buttocks and the thigh might be aggravated by kyphotic thoracolumbar spine.

In a February 12, 1996 report, Dr. J.M. Vaughn, a chiropractor, gave a history of the December 1, 1995 and January 2, 1996 injuries, and reported appellant slipped on ice and fell on February 2, 1996, sustaining injuries to his head, neck and back on each occasion. He diagnosed cervical and lumbar intervertebral disease with degeneration of those sections of the spine, cervicalgia, myalgia, cervical and lumbar spondylosis, intercostal neuralgia, lumbar facet syndrome and muscular spasm.

In a March 4, 1996 report, Dr. Casey K. Lee, a Board-certified, orthopedic surgeon, noted that appellant had chronic neck and back problems since 1978 when he was involved in an automobile accident. He gave a history of the December 1, 1995 and January 2, 1996 injuries. Dr. Lee diagnosed chronic lumbosacral and cervical strain.

² *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

³ *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁴ *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

⁵ *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

In an April 24, 1996 report, Dr. Hyung diagnosed C2 odontoid process fracture, postoperative state with C1-2 fusion, cervical spondylosis, old T11 compression fracture with mild anterior wedging, lumbar disc disease with disabling low back pain and past history of right scapula fracture. He concluded that appellant had a 71.2 percent disability due to these conditions.

In a November 26, 1996 report, Dr. Joselito T. Dychioco, an orthopedic surgeon, gave a history of appellant's May 1978 injury and noted he had a history of multiple cervical strains. He noted appellant complained of constant moderate pain in the neck, upper back, lower back and right shoulder. Dr. Dychioco reported muscle weakness of the right finger flexers, adductors and abductors, and hypesthesia of the right arm, hand and feet. He diagnosed odontoid process fracture, status post C1-2 posterior fusion, cervical spondylosis, old compression fracture of T11, lumbar disc disease associated with severe low back and leg pain, and healed scapular fracture with partial ankylosis of the right shoulder. Dr. Dychioco repeated Dr. Hyung's calculation of appellant's 71.2 percent disability rating. In a February 17, 1997 report, Dr. Dychioco gave a history of the December 1, 1995 and January 2, 1996 injuries and noted appellant had chronic pain of his right shoulder, thoracic and lumbar regions of the spine, neck, legs and buttocks. He repeated the diagnoses he had previously given. Dr. Dychioco stated appellant's pain and suffering had not ceased but had increased. He commented that it was not known when the aggravation and pain would cease. Dr. Dychioco repeated this information in a November 28, 1997 report, stating that appellant aggravated his neck, right shoulder and lower back conditions when he fell off his chair on two occasions. In a January 27, 1998 report, Dr. Dychioco repeated the disability rating calculation originally given by Dr. Hyung.

In a February 18, 1997 report, Dr. Rowina R. Lapid, a physiatrist, stated appellant had a long history of chronic neck and lower back pain with right shoulder pain. She commented that these conditions were aggravated by the December 1, 1995 and January 2, 1996 falls. Dr. Lapid repeated the diagnoses of chronic upper and lower back pain, old T11 compression fracture, lumbar disc disease, odontoid fracture at C1-2 with cervical fusion, old scapular fracture and right shoulder ankylosis. She repeated the disability rating of 71.2 percent and added that appellant had a psychiatric disability of 80 percent. Dr. Lapid noted that appellant's pain was increasing. She repeated this information in reports dated January 5 and May 5, 1998.

In an April 5, 1998 report, Dr. Lapu-Lapu M. Arucan stated that appellant had a history of chronic, recurrent neck, lower back and right shoulder pain since the January 2, 1996 employment injury. He commented that appellant's conditions were apparently aggravated by the two separate falls of December 1, 1995 and January 2, 1996. Dr. Arucan diagnosed chronic lower back and upper back pain probably secondary to cervical spondylosis and lumbar disc disease.

In a May 6, 1998 report, Dr. Esmeraldo V. DeGuzman, Jr. stated that appellant was being treated for chronic pain of the neck, right shoulder and lower back. He diagnosed old compression fracture at T11, cervical spondylosis, lumbar disc disease and right shoulder ankylosis.

The medical reports submitted by appellant indicate that he had a T11 compression fracture, cervical spondylosis, prior cervical fusion, lumbar disc disease and right shoulder

ankylosis, all of which preexisted his January 2, 1996 employment injury. Several physicians, including Drs. Dychioco and Lapid, stated that appellant's conditions were aggravated by his falls on December 1, 1995 and January 2, 1996. These reports, however, present only summary, unratinalized conclusions. None of the physicians gave a physiological explanation on how the employment injuries aggravated appellant's preexisting conditions to the point that he was disabled for work. The medical evidence therefore has little probative value has it does not provide a detailed explanation that related appellant's disability after May 31, 1996 to any employment-related aggravation of his preexisting conditions. Appellant therefore has not met his burden of proof.

The decisions of the Office of Workers' Compensation Programs dated December 30 and May 29, 1998 are hereby affirmed.

Dated, Washington, D.C.
July 25, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member