

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACK C. CARRELL and DEPARTMENT OF THE NAVY,
LOGISTICS DEPARTMENT, Camp Lejeune, NC

*Docket No. 99-1024; Submitted on the Record;
Issued July 24, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a wrist injury in the performance of duty.

On November 6, 1997 appellant, then a 53-year-old traffic manager, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that on October 28, 1997, while preparing a reconciliation report which included bending and lifting of files, he injured his left arm, hand, finger and shoulder. He stopped work on October 29, 1997 and returned on December 15, 1997.

In support of his claim, appellant submitted emergency room treatment notes, a disability slip from a physician, a surgical cost quotation and statements from coworkers. The emergency room treatment notes dated October 29 through 31, 1997 document shoulder and neck pain. These notes reported that there was no known injury. An emergency room note dated October 30, 1997 diagnosed a neck strain.¹ The surgical cost quotation notes that appellant underwent surgery on November 7, 1997. The disability note prepared by Dr. Thomas E. Melin, a neurosurgeon, indicated appellant would be off work indefinitely beginning November 6, 1997. The statements from the coworkers document that appellant was experiencing discomfort of the neck and arm on October 28, 1997.

In a letter dated December 16, 1997, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested he submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

¹ The signature of the physician preparing this note is illegible.

In response to the Office's request, appellant submitted progress notes from Dr. Melin, numerous x-ray reports and a response to the questionnaire from the Office. The progress notes dated November 4 through December 8, 1997 indicated that appellant was diagnosed with a left C7 radiculopathy secondary to disc herniation and underwent cervical surgery and was successfully recuperating. The x-ray reports dated October 30 through November 17, 1997 include x-rays of the spine and chest and a magnetic resonance imaging (MRI) of the spine. The MRI indicated a lateral disc herniation at level C6-7.

In a decision dated January 20, 1998, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his condition was caused by the alleged injury on October 28, 1997 as required by the Federal Employees' Compensation Act.² The Office noted that none of the medical reports submitted documented a relationship between any work injury or activities and the diagnosed condition.

By letter dated February 17, 1998, appellant requested reconsideration and submitted additional medical evidence. A progress note dated November 3, 1997 from Dr. Charles Nance, a Board-certified orthopedic surgeon, documented appellant's complaints of neck and left shoulder pain which began suddenly on October 28, 1997. Appellant told Dr. Nance that he was sitting at his desk when he experienced a sudden onset of left scapular area pain. The progress note indicated that there was no history of an accident. Appellant also submitted progress notes from Dr. Melin dated December 8, 1997 and February 9, 1998 which document appellant's progress posthemilaminotomy and discectomy surgery. Dr. Melin's report dated February 9, 1998 stated appellant did not mention to him that his condition resulted as a consequence of a lifting injury at work. However, appellant mentioned his assistant who documented it in her notes. Nevertheless, Dr. Melin provided an opinion that appellant's on-the-job injury of October 28, 1997 directly contributed to the development of the disc herniation and the development of appellant's neck and left arm pain.

By merit decision dated March 17, 1998, the Office denied modification of its prior decision. The Office found that Dr. Melin failed to give a history of the injury or medical reasoning for his opinion supporting causal relationship.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act 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 and/or specific condition for which compensation is claimed are causally related to the employment injury."³ These are the essential

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵ In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.⁶ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁷ A consistent history of the injury, as reported on medical reports to the claimant's supervisor and on the notice of injury, can also be evidence of the occurrence of the incident.⁸

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁹

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹⁰

In this case, it is not disputed that appellant was moving files on October 28, 1997. However, the medical evidence is insufficient to establish that the incident caused an injury. The

⁴ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁸ *Id.* at 255-56.

⁹ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

¹⁰ *James Mack*, 43 ECAB 321 (1991).

only report supporting a causal relationship between appellant's employment and his diagnosed condition is Dr. Melin's report dated February 9, 1998 in which he diagnosed a disc herniation at level C6-7 which he attributed to appellant's on-the-job injury of October 28, 1997. However, he noted that appellant did not specifically mention to him that his injury had resulted as a consequence of a lifting injury at work, but appellant mentioned this to the doctor's assistant. Dr. Melin did not provide any further explanation or rationale for the conclusion he reached. For example, he did not explain how and why specific work activities would have caused or aggravated the claimed condition. This is particularly important where the most contemporaneous medical evidence indicated that there was no known injury. Such report is insufficient to establish causal relationship.¹¹ Therefore, this report is insufficient to meet appellant's burden of proof.

The remainder of the medical evidence fails to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.¹²

The decisions of the Office of Workers' Compensation Programs dated March 17 and January 20, 1998 are hereby affirmed.

Dated, Washington, D.C.
July 24, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ See *id.*; *Lucrecia M. Nielsen*, 42 ECAB 583, 594 (1991).

¹² With his appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; see 20 C.F.R. § 501.2(c). Furthermore, the Office, on February 8, 1999 issued a decision denying modification of its prior decision. This decision is null and void as the Office and the Board may not have concurrent jurisdiction over the same issue in a case. *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).