

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELISE T. BOUTIN and DEPARTMENT OF VETERANS AFFAIRS,
CANTEEN SERVICE MEDICAL CENTER, Grand Island, NE

*Docket No. 99-457; Submitted on the Record;
Issued June 21, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that her claimed cervical condition was causally related to her employment injury of September 13, 1996.

The Board finds that appellant failed to establish that her cervical condition was causally related to her employment injury of September 13, 1996.

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,² that the claim was timely filed under the Act,³ that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is being claimed is causally related to the employment injury.⁴ An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.⁵ Causal relationship must be established by rationalized medical opinion evidence.⁶

In the instant case, the Office of Workers' Compensation Programs accepted that appellant sustained a left shoulder strain as a result of her September 13, 1996 employment

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8101(1); *see James A. Lynch*, 32 ECAB 216 (1980).

³ 5 U.S.C. § 8122.

⁴ *See Melinda C. Epperly*, 45 ECAB 196 (1993); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

injury.⁷ Appellant returned to light duty shortly after the September 13, 1996 employment incident, however, she subsequently ceased working on January 22, 1997 based on the advice of Dr. Steven L. Mason, an orthopedic surgeon. Dr. Mason initially examined appellant on January 21, 1997 for complaints of neck and right arm pain. He noted a history of injury on September 13, 1996 when appellant attempted to lift a lid onto a pan and while rotating to place the lid on the pan, she reportedly felt an immediate pop and onset of right arm pain and numbness. Dr. Mason further commented that appellant had been plagued with symptoms since the time of her September 13, 1996 injury and that she had not experienced severe neck problems prior to the incident. He diagnosed cervical radicular pain syndrome. Dr. Mason also noted a disc herniation at C4-5 and he discussed with appellant the possibility of surgical intervention.⁸

The Office referred the file to its medical adviser to determine whether appellant's cervical condition was causally related to her September 13, 1996 employment injury, and if so, whether the proposed surgery was medically necessary. In a report dated February 24, 1997, the Office medical adviser expressed the opinion that it was doubtful that appellant's cervical condition was causally related to the September 13, 1996 employment injury. The Office medical adviser placed particular significance on the fact that appellant's cervical condition was asymptomatic for approximately four months following the September 13, 1996 employment injury.⁹ The Office medical adviser further advised against authorizing surgical intervention for appellant's cervical condition.

The Office determined that a conflict of medical opinion existed based on the reports of the Office medical adviser and Dr. Mason, and therefore, the Office properly referred appellant to an impartial medical examiner.¹⁰ Appellant was examined by Dr. Anil K. Agarwal, a Board-certified orthopedic surgeon on October 29, 1997. In a similarly dated report, Dr. Agarwal indicated that appellant sustained a right shoulder strain as a result of her September 13, 1996 employment injury. He further noted that appellant's cervical disc herniations were not work related. In support of his opinion, Dr. Agarwal explained that cervical disc herniations are often idiopathic and that the single episode reported on September 13, 1996 was not likely sufficient to cause appellant's herniated discs. He further noted that appellant was found to have no neck pain as of December 19, 1996; more than three months after her September 13, 1996 employment injury. Additionally, Dr. Agarwal indicated that appellant's

⁷ On her September 13, 1996 Form CA-1, appellant, then a 36-year-old food service worker, indicated that she sustained an injury to her right shoulder area when she quickly reached up to catch a pan that was falling from an overhead shelf. Appellant was initially treated by Dr. Philip M. Cahoy for acute rotator cuff strain.

⁸ The recommended anterior cervical microdiscectomy and fusion at C4-5 and C5-6 was subsequently preformed by Dr. Mason on February 14, 1997.

⁹ A review of Dr. Cahoy's treatment records revealed that appellant advised the doctor on September 13, 1996 that she was "not having any neck pain whatsoever." And as recently as December 19, 1996, Dr. Cahoy reported "no neck pain."

¹⁰ The Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

February 14, 1997 surgery was neither medically necessary nor causally related to the September 13, 1996 employment incident.

In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹¹ In its April 3, 1998 decision, the Office relied on Dr. Agarwal's opinion in determining that appellant's cervical condition, her subsequent surgery and her disability beginning January 23, 1997 were not causally related to the September 13, 1996 employment injury. The Board finds that the impartial medical examiner's report dated October 29, 1997 is sufficiently well rationalized and based upon a proper factual background. Dr. Agarwal not only examined appellant, but also reviewed appellant's medical records. He also reported accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to Dr. Agarwal's findings.

The April 3, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
June 21, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ Gary R. Sieber, 46 ECAB 215, 225 (1994).