

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN A. MIKLOS and DEPARTMENT OF THE ARMY,
ARMY DEPOT, Tobyhanna, PA

*Docket No. 98-2039; Submitted on the Record;
Issued September 20, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant established that her central herniated C5-6 disc and associated surgery, consisting of an anterior cervical discectomy and fusion, were causally related to her May 11, 1994 accepted employment injury.

On May 26, 1994 appellant, then a 38-year-old packer, filed a notice of traumatic injury alleging that she pulled her stomach and back muscles on May 11, 1994 while pulling a heavy pallet with a pallet jack in the course of her federal employment. The Office of Workers' Compensation Programs subsequently accepted the claim for an abdominal and a lumbar strain.

On July 7, 1994 Dr. John H. Presper, a Board-certified neurosurgeon, reviewed appellant's history, and noted that appellant was seen for a flexion injury of her neck in 1988, which responded to nonoperative treatment, and he recorded that appellant stated that she injured herself at work in May 1994 pulling pallets. He stated that pain was present in the posterior neck, mid-thoracic area and under the shoulder blade, and that there was some numbness radiating down the left lower extremity associated with pain. On examination, Dr. Presper noted a limitation of movement of the neck in right and left rotation. He reviewed a magnetic resonance imaging (MRI) scan of the cervical spine and found a centrally herniated C5-6 disc. Consequently, Dr. Presper diagnosed cervical and radicular problems probably secondary to the herniated disc. On July 26, 1994 he repeated his diagnosis.

On November 29, 1994 Dr. Michael J. Fox, a Board-certified internist, reviewed the history of appellant's injury in May 1994, noting that appellant was diagnosed with an abdominal muscle strain and left hip strain. Dr. Fox stated that appellant was treated on May 18, 1994 for continued lower abdominal pain and hip pain, but that she had also developed lower back pain. He indicated that appellant complained of severe back pain on May 23, 1994 and that she also complained of cervical neck pain. Dr. Fox stated that on May 31, 1994 appellant complained of pain in the lower abdomen, lower back, but that there was "a cervical component to her pain...." He stated that a June 14, 1994 MRI scan of the cervical spine showed, "a

moderate-sized posterior central disc herniation at the level of C5-6.”¹ He stated that Dr. Presper subsequently performed an anterior cervical fusion.

On March 13, 1995 Dr. Fox recorded that appellant told him that she was injured at work while pulling a pallet. He also noted a motor vehicle accident on May 14, 1988 in which appellant suffered a whiplash injury. Dr. Fox checked “yes” to indicate that appellant’s status post anterior fusion of the cervical spine and lumbosacral strain were caused or aggravated by her May 11, 1994 injury.

By decision dated May 11, 1995, the Office denied appellant’s claim because the evidence failed to demonstrate a causal relationship between appellant’s claimed cervical condition and disability, and her work injury of May 11, 1994.

Appellant subsequently requested a review of the written record.

On July 14, 1995 Dr. Presper indicated that he first saw appellant in 1988 for a flexion extension injury of her neck, which responded to nonoperative treatment. He indicated that in 1994 appellant was referred by Dr. Fox for neck and back pain. Dr. Presper recorded that appellant injured herself at work pulling some pallets in May 1994 and several days later experienced total body pain. He stated that appellant still had pain in the posterior neck area, mid-thoracic area and under her shoulder blade. Dr. Presper indicated that there was numbness radiating down the left upper extremity associated with pain. His examination revealed limitation of her movement of the neck with right and left rotation. Dr. Presper stated that he interpreted an MRI scan of appellant’s cervical spine to show a central herniated C5-6 disc. He stated that, “[M]y impression at the time that I saw her was she had cervical radicular symptoms probably secondary to a herniated C5-6 disc. Dr. Presper stated that appellant underwent an anterior cervical discectomy and fusion to the C5-6 level on July 25, 1994. He indicated that appellant’s cervical condition was related to the May 11, 1994 injury.

On September 1, 1995 Dr. Presper indicated that “there was a causal relationship between the patient’s previously described accident and the problems she has had with her neck.” He noted that in his previous report that appellant did relate her neck injury to her work injury. Dr. Presper stated that, “[I]f this was not clear, then I would state again that, based upon the information provided to me in her history, there is a direct causal relationship between the problems that I treated her for and the work injury which she related to me. Specifically, she states that she injured herself pulling palettes in May 1994.”

By decision dated November 13, 1995, an Office hearing representative affirmed the Office’s May 11, 1995 decision denying benefits.

On February 15, 1996 Dr. Fox stated that the incident involving the heavy pallet led to a weakening of the annulus fibrosis and subsequent disc herniation approximately 12 days after

¹ Although the record is devoid of a June 14, 1994 MRI scan of appellant’s cervical spine, a June 20, 1994 MRI scan interpreted by Dr. Grace K. Boyle, a Board-certified radiologist, indicated that appellant had a moderate-sized posterior central disc herniation at the level of C5-6.

the initial incident. He noted that Dr. Presper told him that this was not an unusual event because it occurred within two to four weeks of the initial injury.

On November 8, 1996 Dr. Presper stated that "...it is my belief that there is a causal relationship between the accident she describes and her herniated disc and her need for surgical intervention."

On November 11, 1996 appellant's representative requested reconsideration.

By decision dated January 29, 1997, the Office reviewed the case on its merits and found that the evidence was not sufficient to warrant modification of the prior decision.

On April 22, 1997 Dr. Presper stated again that it was reasonable to conclude that appellant's neck problems were related to her accepted employment injury. He noted the trauma appellant experienced and that the diagnosed neck condition was very often associated with such trauma.

On May 5, 1997 appellant's representative requested reconsideration.

By decision dated July 7, 1997, the Office reviewed the merits of the case and found that the evidence was not sufficient to warrant modification of the prior decision.

Appellant subsequently submitted a March 5, 1997 report from Dr. Paul Wiegand, an internist, and Dr. Kalyan S. Krishnan, who noted appellant's complaints of left-side head, chest, back, leg and foot pain. They noted the whiplash injury appellant sustained in 1987 and the work-related injury in May 1994. The physicians also reviewed Dr. Presper's July 1994 report. Following a physical examination, they diagnosed postsurgical neck pain with a radicular component, low back pain with a radicular component status post neck surgery and possible early onset of reflex sympathetic dystrophy. The physicians relied on an MRI scan performed by Dr. Marta J. Carleton, a Board-certified radiologist, showing a postsurgical change of the vertebral bodies of C5-6 and left lateral scar tissue involving the left neural foramen at the C5-6 level.

On June 24, 1997 Dr. Krishnan examined appellant and diagnosed post-traumatic reflex sympathetic dystrophy or complex regional pain syndrome Type 1 status post whiplash type of neck injury.

On September 9, 1997 appellant's representative requested reconsideration.

On September 16, 1997 the Office reviewed the merits of the case and found that the evidence was insufficient to warrant modification of the prior decision.

On December 3, 1997 appellant's representative requested reconsideration. In addition to evidence already submitted, appellant's representative submitted medical evidence relevant to appellant's hospitalization following the May 11, 1994 work incident.

By decision dated March 9, 1998, the Office reviewed the merits of the case and found that the evidence was not sufficient to warrant modification of the prior decision.

The Board finds that appellant established that her central herniated C5-6 disc and associated surgery, consisting of an anterior cervical discectomy and fusion, were causally related to her May 11, 1994 accepted employment injury.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including the fact 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 As part of this burden, the claimant must present rationalized medical evidence, based on a complete and accurate medical background showing causal relationship.⁴

In the present case, both Dr. Presper, a Board-certified neurosurgeon, and Dr. Fox, a Board-certified internist, opined that appellant's central herniated C5-6 disc and resultant surgery stemmed from her May 11, 1994 work injury. Dr. Presper based his opinion on multiple examinations, a thorough history and MRI scan. Similarly, Dr. Fox relied on a complete history, an examination and MRI scan. Moreover, Dr. Fox indicated that for appellant to experience a subsequent disc herniation approximately 12 days after the initial work injury would not have been an unusual event. The record contains no other medical evidence contrary to the opinions of Drs. Presper and Fox whose opinions support that appellant's central herniated C5-6 disc and resultant surgery stemmed from her May 11, 1994 work injury. Accordingly, the Board returns this case to the Office for the payment for all appropriate medical and surgical benefits, for periods of disability and for any continuing residuals of the employment injury.

² 5 U.S.C. §§ 8101-8193.

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

⁴ *Joseph T. Gulla*, 36 ECAB 516 (1985).

The decisions of the Office of Workers' Compensation Programs dated March 9, 1998, September 16 and July 7, 1997 are hereby reversed.

Dated, Washington, DC
September 20, 2000

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member