

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES F. MORGAN and DEPARTMENT OF THE AIR FORCE,
SCOTT AIR FORCE BASE, IL

*Docket No. 00-2814; Submitted on the Record;
Issued August 6, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant is entitled to compensation benefits after December 31, 1993 due to either his August 19, 1992 or September 23, 1993 employment injury.

This case is before the Board for the second time. Previously,¹ the Board remanded the case for a reasoned medical opinion on whether appellant sustained any periods of disability causally related to his accepted employment injuries.² The Board noted that the Office referral physician, Dr. Geralyn Friesenhahn, a Board-certified neurologist, found that appellant had no current employment-related disability but did not address the periods, if any, that appellant was disabled due to his employment injuries. The Board further noted that Dr. Friesenhahn did not provide any rationalized explanation for his finding that appellant sustained a cervical strain due to his September 23, 1993 employment injury rather than cervical disc displacement. The findings of fact and conclusions of law from the prior decision are incorporated by reference.

On remand, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. David Reisler, a Board-certified neurologist, for a second opinion evaluation. In a report dated June 26, 2000, Dr. Reisler discussed appellant's history of employment injuries in August 1992 and September 1993, reviewed the reports of record, and listed detailed findings on examination. Dr. Reisler noted that appellant claimed continuing disability following his September 23, 1993 employment injury. He stated:

“However, it appears that, while under treatment for this second injury, [appellant] developed a myelopathy, which may have been infectious in origin, or may have represented a single focus of demyelinating illness, such as [m]ultiple [s]clerosis, in the region of the cervical spine, affecting the left side of the body.

¹ *Charles F. Morgan*, Docket No. 98-2170 (issued April 13, 2000).

² The Office of Workers' Compensation Programs accepted that appellant sustained right ankle strain on August 19, 1992 and cervical disc displacement on September 21, 1993.

As indicated in the report of [Dr.] GERALYN FRIESENHAHN, dated May 18, 1998, there is no reason to connect the second injury with the development of the cervical myelopathy. There is no continuing indication of injury to the ankle; and it is my belief that he has made a complete recovery from that problem. The injury on September 23, 1993 involved a musculocutaneous strain, which has to be considered totally unrelated to his more serious cervical spinal cord problem, which seems to have developed some time after the date of work-related injury, in Sept[ember] 1993, and before termination of employment, in Dec[ember] 1993. Lumbar and cervical MRI [magnetic resonance imaging] scans had shown disc bulges but did not demonstrate nerve root compromises, which might require surgical intervention. As previously stated, lifting and muscular strain injuries cause temporary muscular discomfort and resolve themselves within a period of 6 [to] 12 months. They are not the cause of chronic radicular, or neuropathic, pain, which might be claimed by [appellant]. I would agree with the determination that [appellant] has a permanent partial disability as a consequence of the cervical myelopathy, and that he has no disability as a result of his work-related injuries.”

Dr. Reisler noted that spinal fluid findings obtained in December 1994 showed evidence of aseptic meningitis unrelated to appellant’s employment injuries. He concluded:

“Based on findings, from physical and diagnostic examination, [appellant] does have a current diagnosable condition. I do not believe it was caused, aggravated, precipitated, or accelerated by the injuries of August 19, 1993 and September 23, 1993. Such injuries are not known to be associated with the development of aseptic meningitis, transverse myelitis, or multiple sclerosis.”

“With respect to a period of disability possibly related to accepted employment[-]related injuries, I would state that the longest period of disability associated with those injuries, would amount to no more than [four] months. There [is] no reason to believe that disability experienced after Dec[ember] 1993, was in any way causally related to his injuries.”

Dr. Reisler found that appellant could return to full-time employment with limitations.

By decision dated August 17, 2000, the Office found that appellant was entitled to compensation through December 31, 1993. The Office further found that, based on Dr. Reisler’s report, appellant’s right ankle strain had resolved prior to December 1993 and that his cervical strain had resolved no later than December 1993.

The Board finds that appellant is not entitled to compensation benefits after December 31, 1993.

An employee seeking benefits under the Federal Employees’ Compensation Act³ has the burden of establishing the essential elements of his or her claim, including the fact that an injury

³ 5 U.S.C. §§ 8101-8193.

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.⁴

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury. The medical opinion must be based on a complete factual and medical backgrounds with an accurate history of the claimant's employment injury, and must explain from a medical perspective how the current condition is related to the injury.⁵

In this case, Dr. Reisler provided a thorough review of the factual and medical background of appellant's claim, and accurately summarized the relevant medical evidence. Moreover, Dr. Reisler provided a proper analysis of the factual and medical history and findings on examination, including the results of diagnostic testing, and his conclusions regarding appellant's condition comported with this analysis.⁶ Dr. Reisler concluded that appellant's condition of either aseptic meningitis, transverse myelitis, or multiple sclerosis, which he noted began prior to December 1993, was not caused or aggravated by his accepted employment injuries and provided as rationale the fact that such injuries are not associated with the development of any of the listed conditions.

The remaining evidence of record is insufficient to support that appellant had any employment-related disability after December 1993. In a report dated April 18, 1994, Dr. Steven R. Brenner, a Board-certified neurologist, noted that multiple MRIs revealed either a herniated cervical disc or multiple sclerosis. He opined that appellant had a herniated disc and was unable to work. Dr. Brenner noted that appellant's neck problems began when he worked for the employing establishment and stated that it was "likely his neck and back problems originated from his work." Dr. Brenner's opinion that appellant's neck and back condition "likely" arose during his federal employment is, without further medical justification, speculative in nature and insufficient to establish causal relationship.⁷

In a report dated March 8, 1995, Dr. Brenner noted that appellant related "back pain after a fall from some scaffolding" and that a May 19, 1994 computerized tomography scan revealed a mild central disc herniation at L4-5.⁸ Dr. Brenner further discussed the MRI findings and indicated that appellant required additional diagnostic studies. He related that "the differential

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁶ *See Melvina Jackson*, 38 ECAB 443 (1987).

⁷ *Alberta S. Williamson*, 47 ECAB 569 (1996).

⁸ In a report dated November 9, 1994, Dr. Brenner noted that appellant had limitations due to stiffness and weakness of the left hand, loss of feeling in his finger tips of the right hand and weakness of both legs. Dr. Brenner opined, "He has an undefined disease of the nervous system and may have syringomyelia -- a cyst in the spinal cord, multiple sclerosis or [a] disc herniation pressing on the spinal cord." In an unsigned report dated February 1, 1996, Dr. Daniel Scodary stated that he agreed with Dr. Jafri and Dr. Brenner "that the disc herniation is not [appellant's] problem but his progressive multiple sclerosis."

diagnosis or different diagnostic possibilities are residuals of traumatic neck and back injury, multiple sclerosis and even a tumor of the spinal cord and syringomyelia.” Dr. Brenner stated:

“With reference to how his diagnosed condition is medically connected to [his] work at the [employing establishment], [he] reported his health was good and he had no pain or weakness until he experienced a fall while he was an employee. Since there is still some question in my mind with reference to an exact diagnosis, I am hesitant to make an assessment or determination of the relationship of his symptoms to his work.”

Because Dr. Brenner declined to address whether appellant’s condition was causally related to his accepted employment injuries, his report does not support appellant’s claim for benefits.

Appellant also submitted treatment notes from Dr. Joseph W. Novinger, an osteopath. In a report dated January 16, 1996, Dr. Novinger noted that appellant had a fall in September 1993 which caused partial paralysis. He also indicated that appellant related that an MRI showed a C5-6 disc herniation. In an office visit note dated September 16, 1997, Dr. Novinger diagnosed multiple sclerosis and disc disease. Dr. Novinger did not specifically relate the diagnosed C5-6 disc herniation to appellant’s September 1993 employment injury and thus his opinion is of little probative value.⁹

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant’s belief that there is a causal relationship between his condition and his employment.¹⁰ To establish causal relationship, appellant must submit a physician’s report in which the physician reviews the factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant, state whether these employment factors caused or aggravated the diagnosed condition.¹¹ Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.

⁹ *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of diminished probative value on the issue of causal relationship).

¹⁰ *William S. Wright*, 45 ECAB 498 (1993).

¹¹ *Id.*

The decision of the Office of Workers' Compensation Programs dated August 17, 2000 is affirmed.

Dated, Washington, DC
August 6, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member