

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK E. CORDOVA and DEPARTMENT OF THE INTERIOR, NATIONAL
PARK SERVICE, CARLSBAD CAVERNS STATE PARK, Carlsbad, NM

*Docket No. 99-2116; Submitted on the Record;
Issued February 5, 2001*

DECISION and ORDER

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

The issue is whether appellant sustained an injury in the performance of duty.

On June 21, 1994 appellant, then an elevator operator, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained agonizing ear pain from the constant change in pressure from "going up and down on the elevator."

In an attending physician's report dated June 23, 1994, Dr. Richard J. Davies, an osteopath, diagnosed appellant as suffering from eustachian tube dysfunction, temporal-mandibul joint syndrome and cervical myositis. Dr. Davies believed that this condition was partially caused by appellant's employment as an elevator operator in that the constant elevation and change on the elevator is causing his symptoms. He suggested that appellant be switched to a job that does not require him go up and down the elevator frequently.

In a medical report dated July 13, 1994, Dr. Ben M. Smith, an oral surgeon, stated that when he examined appellant, the magnetic resonance imaging (MRI) scan of his left and right temporomandibular joints was read as normal, but that normal readings do not necessarily mean there is no significant pathology within the joints. Dr. Smith noted that over the ensuing two weeks appellant began to obtain some relief because he was probably not working on the elevator. In a medical opinion dated December 20, 1994, he stated as follows:

"Based on his clinical findings, he has been tentatively diagnosed with bilateral internal derangement of the left and right temporamandiblar joints. Because he was asymptomatic prior to taking this job, it can be stated that his disability is job related and that he should no longer operate an elevator at White City. It would be in his best interest to be reassigned."

In a decision dated December 20, 1994, the Office denied appellant's claim, finding that the evidence of file failed to establish that an injury was sustained as alleged.

On February 13, 1995 appellant requested an oral hearing. At the hearing held on September 25, 1997, the hearing representative issued a summary decision. The hearing representative explained to appellant that, in order for further consideration be given to his claim, the evidence must demonstrate that a specific incident or exposure occurred at the time, place and in the manner alleged, and that a medical condition was proximately caused by the accepted trauma or factors. The hearing representative found that, although appellant had established his first tier of his burden of proof, Dr. Smith failed to adequately explain the medical connection between the condition claimed and the factors of claimant's federal employment. However, the hearing representative found that the medical evidence raised an uncontroverted inference of causal relationship, sufficient to require further development by the Office. The hearing representative remanded the case and directed the district Office to prepare a statement of accepted facts, refer appellant to a specialist in the field of oral surgery and request that the physician provide a definitive diagnosis and state his or her opinion as to whether appellant's temporomandibular joint condition, as defined by Dr. Smith, was caused and/or aggravated by factors of his federal employment.

Pursuant to the hearing representative's instructions, the Office prepared a statement of facts, wherein it stated that claimant alleged that he sustained a work-related injury to his ears, and that as part of his employment, appellant operates an elevator in a building of 75 floors which makes the whole trip within 58 seconds. Furthermore, the Office referred appellant to Dr. Sandra Edwards, an oral surgeon, with instructions that she provide a definitive diagnosis and opinion as to whether appellant's temporomandibular joint condition, as defined by Dr. Smith, was caused or aggravated by factors of his employment, *i.e.*, his operation of the elevator.

In her medical report dated January 7, 1998, Dr. Edwards opined that appellant suffered from generalized myofascial pain syndrome. She opined:

"My conclusion is that the problems [appellant] exhibits are multifactorial in etiology. We know that, according to Dolwick, Helms and Katzberg, fully 75 percent of individuals suffering from this type of pain develop their problem from mal-adaptive behavior such as a boxing/clenching habit. The evidence is very strong that this is extant in [appellant's] case. This mal-adaptive behavior most generally represents an inappropriate and damaging stress-coping response. [Appellant] volunteers that he used a mal-adaptive type of technique to equalize pressure on ascent/descent of the elevator he operated. I have never known bruxism/clenching to be a useful eustachian tube clearing mechanism. I suspect that, from what I see in the physical exam[ination], it is more likely that had years of stress-related dysfunctional behavior, gradual loss of support from loss of posterior dentition, and the onset of his pain was occasioned at the same time he began to operate the elevator. The connection between the pressure equalization technique and his onset of pain may be found in some excessive force he applied to the joint apparatus while equalizing. Per his history, [appellant] has experienced other job-related injuries, and appears not to understand that routing precautions are advised when placing the body dynamic under work loads.

“Indeed, if there is ANY connection between the onset of his fascial pain and the job requirements, I would find it minimally exacerbating, and would add to that [appellant]’s suspected stress-coping mal-adaptive behavior represents a liability for him to be come injured in any work situation.”

In a decision dated January 21, 1998, the Office denied appellants claim as it found that the medical evidence did not support a causal relationship between his medical condition and the work factors.

On January 21, 1999, appellant requested reconsideration.

In a decision dated March 2, 1999, the Office denied appellant’s claim for reconsideration, noting that the evidence was not sufficient to warrant modification of the prior decision.

The Board finds that this case is not in posture for decision.

The medical evidence in this case requires further development. The opinions of Drs. Smith and Davies raised an uncontroverted inference of causal relationship. Dr. Davies believed that appellant’s condition was partially caused by his employment in that the constant elevation and change in the elevator was causing his symptoms. Dr. Smith opined that because appellant was asymptomatic prior to taking this job, it can be stated that his “disability is job related.” Although neither of these opinions were sufficient to establish a rationalized medical opinion that appellant’s job injury caused appellant’s ear problems, they were sufficient to require further development of the case, as found by the hearing representative.¹ The opinion of Dr. Edwards was insufficient to contradict these opinions. Dr. Edwards essentially appears to be saying that if appellant’s condition was related to his employment, “the connection between the pressure equalization technique and his onset of pain may be found in some excessive force he applied to the joint apparatus while equalizing.” The Board does not read this opinion as stating that appellant’s condition was not caused by his employment, merely that he used an inappropriate manner to deal with the air pressure. This is insufficient to contradict the other opinions that appellant’s condition was caused or aggravated by his employment.

Accordingly, the Board remands this case for further development of the evidence. The Office shall ask for a clarification from Dr. Edwards as to whether appellant’s federal employment caused or aggravated his temporomandibular joint condition. If necessary, the Office should also refer this case to an impartial medical examiner.

¹ See *Shirley A. Temple*, 48 ECAB 404 (1997).

The decision of the Office of Workers' Compensation Programs dated March 2, 1999 is set aside and this case is remanded for further action consistent with this opinion.

Dated, Washington, DC
February 5, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member