

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARNOLD E. SMITH and DEPARTMENT OF THE NAVY,
MARINE CORPS, Parris Island, SC

*Docket No. 00-407; Submitted on the Record;
Issued January 24, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that he sustained a cervical condition causally related to his August 24, 1995 employment injury.

Appellant filed a traumatic injury claim alleging that he sustained a left shoulder injury while lifting in the performance of duty on August 24, 1995. The Office of Workers' Compensation Programs accepted the claim for a left shoulder strain and arthroscopic surgery in October 1995. By decision dated September 28, 1998, the Office determined that appellant had not established a cervical condition as employment related. In a decision dated July 22, 1999, an Office hearing representative affirmed the prior decision.

The Board has reviewed the record and finds that appellant has not established a diagnosed cervical condition as causally related to his employment injury.

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, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.²

As noted above, the Office accepted a left shoulder strain as causally related to the August 24, 1995 employment incident. The contemporaneous medical evidence does not discuss a cervical condition. In a treatment note dated August 19, 1996, Dr. H. Kevin Jones, an orthopedic surgeon, reported that appellant was having left sided neck pain and appellant

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

“actually reports having neck pain when he originally injured the shoulder.” He noted a recent incident in which appellant strained his neck, but the neck pain had returned to baseline since then. A September 23, 1996 note from Dr. Jones diagnoses disc herniations based on a myelogram. In a report dated October 7, 1996, Dr. Eugene A. Eline, Jr., an osteopath, diagnosed cervical degenerative disc disease, with cervical spondylosis secondary to C5-6 and C6-7 osteophytes. In a report dated November 5, 1996, he diagnosed cervical degenerative disc disease with a left sided C4-5 and C5-6 foraminal stenosis.

With respect to causal relationship with the August 24, 1995 employment injury, however, the evidence is of little probative value. In a report dated January 15, 1997, Dr. Eline indicated that appellant had multilevel disc disease and osteophyte formation and despite extensive conservative treatment, he remained in pain. He stated, “it appears as though there is no residual pain from his previous shoulder operation and that this represents an exacerbation of his neck injury brought on by the initial injury to both his neck and his arm.” The Board finds that this report is not sufficient to establish causal relationship between a diagnosed neck condition and the employment injury. Dr. Eline refers to an initial injury to the neck, but does not clearly explain how the lifting incident caused a neck injury and what specific cervical condition he believed was initially caused by the employment incident.³ Moreover, he does not explain the nature and extent of any exacerbation and its relationship to the August 24, 1995 employment injury. Medical opinions that are speculative and not supported by medical rationale are generally entitled to little probative value and are insufficient to meet appellant’s burden of proof.⁴

In an April 9, 1999 report, Dr. Eline briefly states his opinion that “working outside of his medically recommended physical limitations could certainly have worsened his condition and, in fact, did.” To the extent that appellant is alleging that a neck condition is causally related to continuing employment activities, this would constitute a new occupational disease claim.⁵ The issue in this case is whether appellant has submitted sufficient medical evidence to establish a diagnosed cervical condition as causally related to his August 24, 1995 lifting incident. The medical evidence does not contain a reasoned medical opinion, based on a complete factual and medical background, on this issue. Accordingly, the Board finds that appellant has not met his burden of proof in this case.

³ In a report dated October 28, 1998, Dr. Eline reports in his history that the lifting incident caused “an acute side bending injury to [appellant’s] neck,” without further explanation.

⁴ *Carolyn F. Allen*, 47 ECAB 240 (1995).

⁵ 20 C.F.R. § 10.5(q).

The decision of the Office of Workers' Compensation Programs dated July 22, 1999 is hereby affirmed.

Dated, Washington, DC
January 24, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member