

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONARD G. BARNES and TENNESSEE VALLEY AUTHORITY,
PARADISE FOSSIL PLANT, Drakesboro, KY

*Docket No. 00-624; Submitted on the Record;
Issued January 26, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury causally related to his federal employment.

On August 12, 1998 appellant, then a 48-year-old heavy equipment operator, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that on July 17, 1998 he injured his neck while operating a scraper machine on a clean pile of coal. He stated that the machine "hit a window and bounced hard and my neck gradually became sore." Appellant explained in further statements that he had previously experienced a sore neck after working on this piece of machinery, but that the pain had gone away; however, this time the pain did not improve.

Appellant initially submitted two medical reports one from Dr. John Huffman dated August 12, 1998, stating that appellant should "hold off duty for two weeks," and a note from Caritas Medical Center dated August 11, 1998, also stating that he should be released from work for two weeks due to medical problems.¹ Appellant eventually underwent surgery on September 10, 1998 for "C4[-]5 and C5[-]6 anterior dis[c] herniation."

On August 14, 1998 appellant contacted the plant health station and changed the date of the injury on the CA-1 form from July 17, 1998 to July 10, 1998.

On August 24, 1998 the Office of Workers' Compensation Programs received a letter from appellant's plant manager, which stated that appellant did not notify his supervisor of the alleged incident and did not file an injury report until August 12, 1998. He also stated that appellant changed the date of injury several times, the most recent date being July 10, 1998, and that appellant last performed the activity he stated caused the incident on July 2, 1998.

¹ The doctor's signature from Caritas Medical Center is illegible.

On September 8, 1998 the Office advised appellant that additional information was needed to make a determination regarding his claim for compensation and that he will be afforded 30 days to submit the requested information.

By decision dated October 9, 1998, the Office denied appellant's claim for compensation stating that the evidence received was insufficient to establish that he experienced the claimed accident at the time, place and in the manner alleged because he initially claimed that his injury occurred on July 17, 1998 and then later changed the date of injury to July 10, 1998.

By letter dated November 4, 1998, appellant requested an oral hearing before the Office which was held on May 19, 1999.

On August 4, 1999 the hearing representative affirmed the Office's October 9, 1998 decision. The representative accepted that appellant experienced a traumatic incident at work in early July 1998, yet ultimately denied appellant's claim stating that the medical evidence submitted was insufficient to establish that appellant's employment was the cause of his condition. The representative's acceptance of the incident was based on two statements that were submitted subsequent to the Office's October 9, 1998 decision, the first a statement from appellant's plant supervisor stating that appellant did work on Friday, July 10, 1998 and reported discomfort in his neck on the following Monday and the second from appellant's coworker stating that appellant had complained of neck pain sometime in July.

The Board finds that the case is not in posture for decision and requires further development by the Office.

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 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 and/or specific condition, for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

In the present case, the hearing representative accepted that an injury occurred at the time, place and in the manner alleged, but stated that the medical evidence submitted was insufficient to establish that appellant's diagnosed conditions of herniated disc, cervical disc degeneration and stenosis were caused by his employment. The Board finds, however, that there is sufficient medical evidence in the case record supporting appellant's contention that his condition was caused by his employment to require further development of the record.

² 5 U.S.C. §§ 8101-8193.

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

⁴ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

It is well established that proceedings under the Act⁵ are not adversarial in nature⁶ and while the claimant has the burden to establish entitlement to compensation the Office shares responsibility in the development of the evidence.⁷ The Office has an obligation to see that justice is done.⁸

The record contains medical evidence from appellant's physician supporting appellant's claim⁹ that his diagnosed conditions were caused by his employment. While the medical opinion of record is not consistent as to whether a traumatic event or multiple traumas caused the conditions, medical rationale has been provided in support of a finding that appellant's employment caused his condition. Although the medical evidence submitted by appellant is not sufficient to meet appellant's burden of proof, the medical evidence of record raises an uncontroverted inference of causal relationship between his conditions and his employment duties.¹⁰

On August 11, 1998 Dr. Thomas E. Vaughn, a radiologist, diagnosed appellant as having "degenerative disease with foraminal narrowing." On August 26, 1998 Dr. Lawrence F. Jelsma, a Board-certified neurosurgeon, diagnosed appellant with "cervical degenerative disc disease and nerve root compression C4-5, left with cervical degenerative disc disease and foraminal stenosis at C5-6."

In another report dated November 12, 1998, Dr. Gregory B. Nazar, a Board-certified neurosurgeon, stated:

"[Appellant] is a gentleman who injured himself at work while operating heavy equipment. His job involves frequent turning of his neck, particularly to the right. In addition, there is quite a bit of bouncing and jostling while operating this equipment, particularly with his neck. This lead to the production of a large cervical disc herniation at C4-5 and other degenerative changes in his neck, such that he required a two-level cervical disc and fusion operation...."

"This is obviously related to his work situation. I would feel that due to the nature of his job and the amount of neck movement and jostling that is involved, that approximately 70 percent of the disability from this should be apportioned to his work, 30 percent to natural history."

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *Id.*

⁹ *Horace Langhorne*, 29 ECAB 820 (1978).

¹⁰ *Rebel L. Contrell*, 44 ECAB 660 (1993).

In a report dated May 14, 1999, Dr. Nazar stated:

“[Appellant] is a 48-year-old gentleman who, in September of last year, underwent a two-level anterior cervical discectomy (C4-5 and C5-6) and fusion for cervical, degenerated and herniated discs causing severe neck and radicular arm pain. The patient did not respond to nonsurgical management prior to the surgery. From his history and evaluating the type of work that he does, it is clear that the disc herniation are work related.

“His job involves operating heavy equipment and he is constantly being turned, twisted and ‘jerked about’ particularly with his neck resulting in considerable amount of neck strain and disc-related pressure precipitating his symptoms.”

In an affidavit signed by Dr. Nazar dated June 3, 1999, he, however, opined that appellant’s condition was traumatic by stating:

“It is my opinion based upon the realm of reasonable medical probability or certainty that [appellant’s] interbody disc at the level C4-5 herniated due to a traumatic event, which by history occurred on or about July 10, 1998 while working at the [employing establishment] while operating a heavy piece of equipment. The disc herniation at C4-5 was not caused by an occupational disease or mini-traumas caused by years of operating heavy equipment. The surgical intervention at C4-5 clearly demonstrated to me that there was a disc herniation which was more likely than not caused by a traumatic event consistent with the patient’s history.”

Even though Dr. Nazar in his June 3, 1999 statement opined that appellant’s condition was due to a traumatic injury, the majority of the medical evidence stated that appellant’s disc condition was degenerative in nature that developed over a period of time.

On remand the Office shall request a second opinion from an appropriate specialist with a request to evaluate the evidence and provide a rationalized opinion on the issue of whether appellant’s work-related injury was traumatic or occupational in nature.

The decision of the Office of Workers' Compensation Programs, dated October 9, 1998, is hereby set aside; the case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
January 26, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member