

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PETER GALLAGHER and U.S. POSTAL SERVICE,
POST OFFICE, Kenmore, NY

*Docket No. 00-2205; Submitted on the Record;
Issued July 6, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant sustained recurrences of disability causally related to the accepted cervical strain on December 11, 1998.

On December 12, 1998 appellant, then a 43-year-old letter carrier filed a traumatic injury claim alleging that he was injured on December 11, 1998 after being rear-ended by an automobile in the performance of duty. The Office of Workers' Compensation Programs accepted the claim for a cervical strain. Appellant did not stop work but began limited duty on December 12, 1998 and then returned to full duty on December 17, 1998.

On January 2 and March 9, 1999 appellant filed two notices of recurrence of disability alleging a cervical condition and disability from work causally related to his original employment injury. He alleged that after returning to work following the original injury, he continued to experience tingly and cold sensations in both his arms and legs and still suffered from headaches, pain and limited motion in his neck. Appellant further alleged that he experienced cold sweats with dizziness and continual ringing in both ears, with occasional loss of movement in his right arm. He indicated that he stopped work due to his alleged recurrence on March 9, 1999 and did not return. Appellant claimed disability from work from January 2 through February 4, 1999 and total disability beginning March 9, 1999 attributed to the original employment injury.

A medical note of record dated December 12, 1998 indicated that appellant had been treated the day after the motor vehicle accident for numbness to both upper arms and mild tenderness to the cervical muscles. He was diagnosed with mild cervical strain. A magnetic resonance imaging (MRI) scan performed on January 23, 1999 showed that appellant had normal vertebral alignment with no evidence of fracture deformity or sUBLUXATION and the disc spaces and neural foramina were found to be intact.

A medical report from Dr. Malti Patel, an attending physician dated March 3, 1999, indicated that appellant experienced cervical and thoracic muscular strain following the automobile accident in December 1998 when he was rear-ended by a car going about 40 miles per hour. He reported that appellant's neurological examination was nonfocal except for the subjective paresthesias in the extremities and decreased pinprick sensation in the cervical paraspinal region, left worse than right. Dr. Patel then recommended an MRI to rule out the possibility of a spinal cord injury.

A disability slip with an illegible signature dated April 6, 1999 noted that appellant was disabled from work on January 2 and 16, 1999 and also from January 20 to February 3, 1999 because of severe neck pain due to the accepted injury of December 11, 1998.

A medical note from Dr. Young Paik, an attending physician dated March 9, 1999, indicated that appellant had been seen that day for severe back pain but was able to return to work on March 15, 1999.

In an April 14, 1999 report, Dr. Patel reported that the MRI taken from the neck extending from C3 to T1 on March 29, 1999 was completely normal. He stated, however, that appellant's girlfriend described him as having headaches, persistent symptoms of pressure sensation in the neck and radiating symptoms of tingling and numbness going into both upper extremities with crackling sensation in the neck. She also described that appellant had episodes of sudden onset diaphoresis, becoming pale and complaining of numbness in the fingertips. Dr. Patel related that the pressure sensation appellant experienced in the neck and head pains were severe enough that he was unable to function or concentrate. He further reported that appellant had a cardiac evaluation which was unremarkable. Dr. Patel stated: "Considering the persistent episodic symptoms of diaphoresis, associated with paresthesias and pallor and shortness of breath.... The spells are atypical for the radicular symptoms or a myelopathy, however, the possibility of anxiety attacks may need to be considered with the underlying unremarkable cardiac evaluation." Dr. Patel indicated that appellant was on temporary total disability due to the several recurrent spells.

In a May 12, 1999 report, Dr. Patel recommended an MRI of the head to rule out an inflammatory or vascular process involving the posterior fossa. The MRI report from Dr. Henry Rose, dated May 20, 1999 indicated that a computerized tomography scan of the head was performed and yielded normal results.

In Form CA-20 reports dated May 5 and 12, 1999, Dr. Patel indicated that appellant was disabled from March 3 through April 14, 1999 and totally disabled beginning April 14, 1999 due to post-traumatic stress disorder of the motor vehicle accident on December 11, 1998.

By decision dated August 10, 1999, the Office denied both claims for a recurrence of disability on the grounds that appellant failed to provide medical evidence establishing a causal relationship between the claimed condition and disability and the original employment injury of December 11, 1998. Appellant disagreed with the decision and requested an oral hearing, which was held on January 27, 2000.

Appellant submitted additional evidence in support of his claim. In an August 28, 1999 report, Dr. James Teter, attending physician, reported that appellant complained at that time of numbness in the arms resulting from the vehicular accident on December 11, 1998 where he suffered a whiplash like injury to the spine. He reported that appellant almost immediately began to experience numbness in the arms and legs and neck pain; and that appellant continued to have constant numbness of the hands and forearms, intermittent numbness of the lower extremities and ringing in his ears since the event occurred. Dr. Teter reported that his symptoms suggest the possibility of cervical radiculopathy and or median neuropathy at the wrist level. He reviewed the MRI report and found minor disc bulges and otherwise fairly normal results.

In a December 23, 1999 report, Dr. Teter indicated that appellant was evaluated for having passed out a couple weeks prior. He noted that in the past, appellant had high blood pressure and high cholesterol levels, had been overweight and had an anxiety disorder. Dr. Teter further noted his previous symptoms of numbness in the upper extremities.

By decision dated April 21, 2000, the Office hearing representative found that the evidence was insufficient to support that appellant sustained the claimed recurrences of disability related to the accepted work injury and affirmed the August 10, 1999 decision.

The Board finds that appellant failed to establish a causal relationship between his December 11, 1998 accepted cervical strain and his alleged recurrences of disability sustained in 1999.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, the employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.¹ Such proof must include medical evidence from a physician, who on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.² An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.³

The medical evidence submitted to support appellant's recurrence claims does not establish a causal relationship between his 1999 alleged recurrences of disability and his December 11, 1998 accepted employment injury. The reports of Drs. Paik and Patel merely discussed appellant's complaints of tingling and numbness of both upper extremities with radiating neck pain and did not conclude that appellant's condition was causally related to his original cervical strain. Dr. Teter in his August 28, 1999 report, reported that appellant's constant numbness of the hands and forearms, intermittent numbness of the lower extremities and ringing in his ears had continued since the accepted employment incident. However, he did

¹ *Jose Hernandez*, 47 ECAB 288, 293-94 (1996).

² *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996).

³ *See id.*

not provide a rationalized medical opinion explaining how appellant's claimed symptoms can be attributed to the accident on December 11, 1998, which resulted in a cervical strain or address appellant's claimed periods of disability from work attributed to the original work injury. Dr. Teter reported that appellant's symptoms suggest the possibility of cervical radiculopathy and or median neuropathy at the wrist level, however, every diagnostic test conducted since the 1998 accident yielded essentially normal results. Dr. Patel indicated in an earlier report that appellant's symptoms were atypical of radicular symptoms or a myelopathy and stated that anxiety attacks might be considered as a factor. He later diagnosed appellant with post-traumatic stress disorder related to the automobile accident, a condition, which has not been accepted by the Office and found that he was disabled from work as a result. Dr. Teter later acknowledged in a report that appellant had suffered from anxiety attacks and had other medical conditions including high blood pressure and cholesterol levels and weight concerns. His December 23, 1999 report discussed a condition not attributed to the accepted injury and thus failed to address the issue of whether appellant's claimed condition was causally related to his December 11, 1998 employment injury. No other evidence of record establishes a causal relationship between appellant's alleged recurrences of disability and his December 11, 1998 employment injury.

The decisions of the Office of Workers' Compensation Programs dated April 21, 2000 and August 10, 1999 are affirmed.

Dated, Washington, DC
July 6, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member