

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND THOMPSON and DEPARTMENT OF VETERANS AFFAIRS,
FORT SAM HOUSTON NATIONAL CEMETERY, San Antonio, TX

*Docket No. 00-1388; Submitted on the Record;
Issued June 21, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a neck condition causally related to factors of his federal employment.

On August 10, 1998 appellant, then a 48-year-old laborer, filed an occupational disease claim alleging that his upper neck condition resulted from several mishaps at work. On the claim form, appellant alleged that on July 6, 1998 he left the employing establishment to seek medical treatment. He stated that his physician advised him to return on July 7, 1998 for x-rays of the "right side of neck/spinal bone." Appellant stopped work on July 20, 1998, accepted a light-duty job offer on August 12, 1998 and was terminated effective September 25, 1998.

To support his claim, appellant submitted reports and progress notes, dated April 7 to August 19, 1998, recording appellant's complaints and diagnosing recurrent headaches, leg and arm numbness, left-side neck tenderness, possible cervical strain with radiculopathy, myofascial pain, trapezius strain, anxiety and hypertension. A note dated August 17, 1998 reported that appellant did not identify a specific injury but recalled three separate incidents in which he hit his head and fell but did not experience acute pain.

Appellant submitted a September 4, 1998 progress note in which Dr. Michelle V. Conde, a Board-certified internist, noted that appellant complained of left neck pain with associated pain and numbness in his left shoulder. Dr. Conde diagnosed hypertension, radiculopathy, "HM," "RTC," and "H/O."

In a statement dated August 10, 1998, appellant alleged that he had a mishap in April or May 1998, about 50 days after he began work at the employing establishment. He alleged that he reported the mishaps to his supervisor, Fred C. Magee, but did not file reports because he was able to complete his work assignments. Appellant stated that he slipped into a grave with "plywood and all (hard hat)," walked into the equipment shield door opening and jammed his head with a hard hat against the top of earth-moving equipment. He stated that "you kind of overlook lots of mishaps" and that he clearly remembered these three incidents.

By decision dated March 5, 1999, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the medical evidence of record was insufficient to establish that his neck condition was causally related to factors of his federal employment.

By letter dated March 19, 1999, appellant requested an oral hearing, which was held on September 22, 1999. Appellant described his work history and job responsibilities. He testified that he hit his head on a shed door and subsequently informed Mr. Magee of the incident but did not file a report because he felt "all right." Appellant further testified that, in a separate incident, he jammed his helmet on the top of a steel ramp and became dizzy. He stated that he told his boss about the incident but did not file a report because he did not feel that his injuries would prevent him from performing his assigned tasks. Appellant testified that, in a third incident, he lost his balance and fell into a grave when the surrounding ground caved in. He stated that his hard hat fell off and that he scraped his head as he fell. Appellant alleged that he reported that incident but did not inform his boss that he was experiencing dizzy spells because he presumed they were due to high blood pressure.

Appellant alleged that after he returned to regular duty work he lost his balance and fell numerous times and that he stopped work because he could not perform his regular duties. Appellant stated that his claim included medical benefits and lost wages from about August 12, 1998 through the end of his temporary contract in January 1999.

By decision dated December 6, 1999, the Office hearing representative affirmed the Office's March 5, 1999 decision on the grounds that the medical evidence of record failed to establish that appellant's neck condition was causally related to factors of his federal employment.

The Board finds that appellant failed to establish that his neck condition was causally related to factors of his federal employment.

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 and/or specific condition for which compensation is claimed are causally related to the employment injury.² Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.³

In an occupational disease claim, it must be established that a condition was sustained in the performance of duty by submitting the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Ronald K. White*, 37 ECAB 176, 178 (1985).

or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴

The medical evidence required to establish a causal relationship between the occupational disease or condition and the identified employment factors is, generally, rationalized medical opinion evidence.⁵ The opinion of a physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the relationship between the diagnosed condition and the employment factors identified by the claimant.⁶

In this case, the record is devoid of rationalized medical opinion evidence establishing a causal relationship between appellant's neck condition and factors of his federal employment. Progress notes and urgent care dismissal instructions dated April 7 to September 4, 1998 note appellant's complaints and state various diagnoses, but do not include a physician's opinion on the issue of whether appellant's neck condition is causally related to the alleged series of employment incidents.

The December 6 and March 5, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
June 21, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

⁴ *Victor J. Woodhams*, 41 ECAB 345, 352.

⁵ *Id.*

⁶ *Thomas L. Hogan*, 47 ECAB 323, 329 (1996).