

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN YARBROUGH and U.S. POSTAL SERVICE,
POST OFFICE, Jacksonville, FL

*Docket No. 99-2456; Submitted on the Record;
Issued June 27, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has a cervical condition that is causally related to his accepted employment injury of August 12, 1988.

On August 12, 1988 appellant, then a 49-year-old postal clerk, injured his lower left leg and ankle when he attempted to stop a mail cart from rolling down a hill. The record indicates that appellant fell into the path of the rolling container and the right wheel caught his lower left leg dragging him down a hill. He was transported by an airport rescue team to an emergency room with compound fractures of his lower left leg and a fractured left ankle with several large abrasions on his arm and left knee. The Office of Workers' Compensation Programs accepted the claim for a left tibia fracture and bimalleolar fracture of the left ankle.¹ Appellant underwent surgery on August 12, 1998 consisting of an open reduction, internal and external fixation of the segmental fracture of the left tibia, fasciotomy of the anterior, posterior and personnel compartments and open reduction and internal fixation of the bimalleolar fracture. He was off work from August 12, 1988 until January 11, 1990, when he was approved for limited duty and began working four hours per day.

On September 9, 1991 appellant underwent a magnetic resonance image (MRI) of the cervical spine that revealed "probable nonfused fracture of the C6 spinous process." It was noted that appellant had marked bony degenerative changes with bone encroachment into the neural foramina bilaterally at C4-5 and C5-6.

In a report dated July 10, 1992, Dr. William M. Haycock, a Board-certified neurologist, noted that appellant had been under his care since July 17, 1991 for "a work-related injury." Dr. Haycock diagnosed cervical strain, muscle contracture, headaches and cervical spondylosis. He opined that appellant had disability of 12 percent.

¹ In a decision dated April 15, 1991, the Office issued appellant a schedule award for 14 percent permanent loss of use of the left leg.

On September 8, 1997 appellant filed a CA-7 claim for a schedule award.

By letter dated October 3, 1997, the Office advised appellant of the medical and factual evidence required establishing a causal relationship between his diagnosed cervical condition and the accepted employment injury.

On November 18, 1997 appellant submitted a statement alleging that, since the date of his work injury on August 12, 1988 he had experienced left arm numbness. He noted that Dr. Jones had thought he had hit his “funny bone.” Appellant questioned why he was not given a chest and neck x-ray since he also complained about his neck hurting, “from the time I started walking with crutches.” He also noted that he had been treated by Dr. Jones in 1996 for a whiplash injury that he received in an automobile accident. Appellant stated: “That was the first accident I was injured in since [August 12, 1988].”

In a July 20, 1998 decision, the Office denied compensation on the grounds that the medical evidence was insufficient to establish a causal relationship between appellant’s cervical condition and the August 12, 1988 employment injury.

Appellant requested a hearing, which was held on February 23, 1999.

In a decision dated May 7, 1999, an Office hearing representative affirmed the Office’s July 20, 1998 decision.

The Board finds that appellant failed to establish that he sustained a cervical condition causally related to his employment injury of August 12, 1988.

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 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 essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

The medical evidence required to establish causation, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the 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

² 5 U.S.C. §§ 8101-8193; *see* 20 C.F.R. §§ 10.115, 10.116 (1999).

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton* 40 ECAB 1143 (1989).

⁴ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

In the present case, appellant was injured on August 12, 1988 when he was hit by a rolling mail cart. The Office accepted that appellant's fractures of the left tibia and ankle for which he underwent surgery. Almost 10 years later, appellant alleges that he has a cervical condition that is also causally related to his work injury.

Although appellant contends that he experienced pain in his cervical region at the time of his work accident, there is no contemporaneous medical evidence of record to support his allegations. Appellant's treating physician has never mentioned that appellant sustained a cervical injury at the time of the work injury on August 12, 1988. He was not diagnosed with a cervical condition until three years after the work injury when he underwent a cervical magnetic resonance imaging scan on September 9, 1991.

The Office advised appellant of the medical evidence necessary to establish his claim but he failed to submit a rationalized medical opinion to support a causal relationship between his diagnosed cervical condition and the August 12, 1988 work injury. This is particularly important since the record indicates that appellant was involved in a car accident during 1996, at which time he sustained whiplash in the cervical region. This nonrelated-work injury constitutes an intervening event.

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. As is noted by Larson in his treatise on workers' compensation, once the work-connected character of any injury has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause and so long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable under the circumstances.⁶

Because appellant has failed to submit a rationalized medical opinion fully addressing the factual background of appellant's work injury and any intervening injury he sustained after August 12, 1988, the Board finds that the Office properly denied compensation for the cervical condition.

⁵ *Id.*

⁶ See *Charlett Garrett Smith*, 47 ECAB 562 (1996); *Stuart K. Stanton*, 40 ECAB 859 (1989); Larson, *The Law of Workers' Compensation* §§ 13.00 and 13.11.

The decision of the Office of Workers' Compensation Programs dated May 7, 1999 is hereby affirmed.

Dated, Washington, DC
June 27, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member