

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLENE KING and DEPARTMENT OF AGRICULTURE, FOOD
SAFETY INSPECTION SERVICE, Southwest City, MO

*Docket No. 01-726; Submitted on the Record;
Issued November 20, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a left arm and cervical spine condition causally related to previously accepted work injuries.

On May 31, 2000 appellant, then a 54-year-old poultry slaughter inspector,¹ filed a notice of occupational disease alleging that her cervical spine and left arm conditions were causally related to an accepted September 16, 1992 incident resulting in a cervical subluxation, and an accepted August 14, 1996 incident which caused a torn left medial meniscus.² She described stiffness, numbness and paresthesias of the left arm, neck pain and severe headaches.³

In a December 22, 1999 report, Dr. Horace Rex Petersen, an attending osteopath and orthopedic surgeon, noted intermittent, severe spasms around the left scapula and paresthesias of the left hand since the September 16, 1992 injury. His findings were consistent with cubital and carpal tunnel syndromes on the left, with possible cervical nerve root impingement.

¹ In a October 17, 2000 letter, the employing establishment noted that appellant's position as a poultry slaughter inspector required repetitive fine manipulation at the rate of 30 times per minute for 75-minute periods, with three 10-minute breaks and two 30-minute breaks per shift.

² The Office accepted claim No. 110120118, a September 16, 1992 cervical subluxation sustained when appellant was struck by a falling fluorescent light fixture. Appellant returned to regular duty effective October 8, 1992. The Office also accepted claim No. 110151397, an August 14, 1996 left meniscus tear sustained when appellant tripped and fell over forklift tines. Appellant complained of intermittent right shoulder pain during physical therapy for her knee. These claims are not before the Board on the present appeal.

³ In an August 11, 2000 report, the Office advised appellant of the type of factual and medical evidence needed to establish her claim, including a rationalized physician's report explaining the causal relationship of the claimed condition to work factors.

In a March 24, 2000 report, Dr. Petersen diagnosed degenerative disc disease at C5-6, myofascial pain syndrome of the left shoulder musculature and cervical spondylosis.⁴ He performed a left shoulder reconstruction on June 29, 2000.

In an August 11, 2000 report, Dr. Petersen noted a history that appellant fell in August 1996 injuring her left shoulder and left knee.⁵ He diagnosed “thoracic outlet syndrome secondary to shoulder subluxation.” Dr. Petersen held appellant off work through October 6, 2000, when he released her to light duty with no overhead work or heavy lifting.

In a September 23, 2000 report, Dr. Petersen noted treating appellant since December 1995 for “chronic headaches, upper back and neck pain,” with a history of the September 16, 1992 cervical subluxation and the August 14, 1996 left knee injury, subsequent left knee arthroscopy, and progressive numbness and tingling in the left arm. Dr. Petersen opined that the “combined neck and shoulder injuries ... have been part of the same issue with the left upper extremity problem.”

By decision dated October 19, 2000, the Office denied appellant’s claim for left shoulder and cervical spine conditions on the grounds that the medical evidence did “not adequately describe how the duties or work activities” caused her condition.

The Board finds that appellant has not established that she sustained a cervical spine and left arm condition in the performance of duty.

When an employee claims a new injury or condition causally related to an accepted employment injury, he or she has the burden of establishing that the newly alleged condition, and any related period of disability, are causally related to the accepted injury. It is not sufficient merely to establish the presence of a condition. In order to establish his or her claim, appellant must also submit rationalized medical evidence, based on a complete, accurate factual and medical background, showing a causal relationship between the employment injury and the claimed conditions.⁶

As applied to this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed cervical spine and left shoulder conditions and the September 16, 1992 and August 14, 1996 injuries.⁷ The medical opinion must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and

⁴ March 10, 2000 cervical x-rays showed mild degenerative disc disease at C5-6. A March 10, 2000 cervical magnetic resonance imaging (MRI) scan showed “right posterolateral bulging of the C5-6 disc with mild impression upon the thecal sac.”

⁵ There is no evidence of record that the Office accepted a left shoulder injury related to the August 1996 incident.

⁶ See *Armando Colon*, 41 ECAB 563 (1990).

⁷ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

the specific employment factors identified by the claimant.⁸ An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's belief of causal relation unsupported by the medical record.⁹

In reports from December 22, 1999 through September 23, 2000, Dr. Petersen diagnosed a variety of conditions and mentioned the September 16, 1992 cervical subluxation and August 1996 torn left meniscus. He noted that appellant attributed her "chronic headaches, upper back and neck pain" to the two accepted incidents and opined that the "combined neck and shoulder injuries ... have been part of the same issue with the left upper extremity problem." However, Dr. Petersen did not explain how and why either the September 16, 1992 or the August 14, 1996 incident, or any other factors of appellant's federal employment, would cause any of the diagnosed conditions. While Dr. Petersen mentioned in his September 23, 2000 report that the August 19, 1996 incident also precipitated a shoulder problem, the record does not indicate that the Office accepted a shoulder injury related to this incident. Therefore, Dr. Petersen's opinion is insufficiently rationalized to establish causal relationship in this case.¹⁰

Consequently, appellant submitted insufficient rationalized medical evidence to establish a pathophysiologic causal relationship between the accepted injuries or other factors of her employment, and the claimed cervical spine and left upper extremity conditions.¹¹ Therefore, she has failed to meet her burden of proof.

⁸ *Charles E. Burke*, 47 ECAB 185 (1995).

⁹ *Ausberto Guzman*, 25 ECAB 362 (1974).

¹⁰ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

¹¹ Following issuance of the Office's October 19, 2000 decision, appellant submitted additional medical and factual evidence. The Board, however, cannot consider this evidence, since the Board's review of the case is limited to the evidence of record which was before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office with a formal request for reconsideration; *see* 20 C.F.R. § 501.7(a).

The decision of the Office of Workers' Compensation Programs dated October 19, 2000 is hereby affirmed.

Dated, Washington, DC
November 20, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member