

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGIL L. DAVIS and NATIONAL AERONAUTICS & SPACE
ADMINISTRATION, KENNEDY SPACE CENTER, FL

*Docket No. 01-306; Submitted on the Record;
Issued October 22, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained a neck and back injury in the performance of duty causally related to factors of his federal employment.

On December 2, 1997 appellant, then a 52-year-old electronic design engineer, filed a claim alleging that he sustained neck and back injuries as a result of a coworker hitting him in the neck with a magazine. Appellant stopped work on December 4, 1997 and returned on December 5, 1997.

Accompanying appellant's claim was a back injury survey dated December 2, 1997, an employing establishment record of injury dated December 4, 1997 and progress notes from Dr. Hani El. Kommos, a specialist in orthopedics, dated December 18, 1997. The back injury survey indicated that appellant was injured when a coworker hit him in the back of the head with a magazine. The employing establishment record of injury noted a history of appellant's injury and his symptomology including neck, shoulder and lower back pain. The progress notes from Dr. Kommos indicated a history of appellant's injury and noted appellant's complaints of head and neck pain. He noted x-rays were taken, which revealed arthritis at level C5-6 and C6-7. Dr. Kommos indicated that appellant was neurologically "entirely normal" with full range of motion. He noted that appellant's symptomologies were related to arthritic changes.

In a letter dated April 21, 1999, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office particularly requested that the appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

In response to the Office's request appellant submitted employment establishment medical records from December 1997 to January 1998, a duty status report dated December 18, 1997 prepared by Dr. Kommos, a mishap report dated January 6, 1998, a magnetic resonance imaging (MRI) scan dated October 3, 1998 and a note from Dr. Charles Smallwood, a Board-

certified internist, dated May 14, 1999. The employment establishment medical records from December 1997 to January 1998 noted that appellant was being treated for pain on the left side of the neck as a result of an injury that occurred at work when appellant was hit with a newspaper. The notes indicate that appellant's symptoms improved and he was being referred to an orthopedic physician. The duty status report prepared by Dr. Kommos indicated that appellant was able to work full time without restrictions. He further noted that additional treatment for appellant's injury was not necessary. The mishap report documented a history of appellant's injury and noted appellant was prescribed a neck brace. The MRI scan revealed no evidence of disc herniation or disc bulge but a straightening of the cervical spine possibly related to muscle spasm. The note from Dr. Smallwood indicated that appellant was treated on December 4, 1997 for an occupational injury to his neck. He indicated that appellant's injury aggravated arthritic changes in his neck and that the arthritic changes could be attributed to an old neck injury.

On June 14, 1999 the Office issued a decision and denied appellant's claim for compensation under the Federal Employees' Compensation Act.¹ The Office found that the medical evidence was not sufficient to establish that his medical condition was caused by employment factors.

By letter dated May 29, 2000, appellant requested reconsideration of the June 14, 1999 decision of the Office. Appellant submitted additional medical evidence including a report from Dr. Kenneth J. Myers, Board-certified in emergency medicine, dated August 9, 1999. Dr. Myers provided a summary of appellant's visit on December 4, 1997 and indicated appellant was being treated for an occupational injury, in which appellant was hit in the neck with a newspaper. He indicated appellant's past medical history was notable for previous cervical disease. Dr. Myers noted an essentially normal physical examination, except for a slight decrease of reflexes on the left side from a prior neurologic injury. X-rays were taken which revealed calcification anteriorly demonstrating degenerative changes at the C-5, C-6, C-7 spaces. He diagnosed appellant with degenerative joint disease of the c-spine with possible fracture of the spinous process of unknown age, cervical radiculopathy symptoms and possibility of cervical disc disease and soft tissue/ligamentous.

By decision dated July 17, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification of the prior decision.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty, causally related to factors of his federal employment.

An employee seeking benefits under the Act 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 the 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

¹ 5 U.S.C. §§ 8101-8193.

related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.⁵ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁶ A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.⁷

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁸

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 nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁹

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Elaine Pendleton*, *supra* note 2 at 1145.

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁷ *Id.* at 255-56.

⁸ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁹ *James Mack*, 43 ECAB 321 (1991).

In the instant case, it is not disputed that appellant was hit in the neck with a newspaper while at work. However, he has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the employment incident and that any alleged cervical condition is causally related to the employment incident. On April 21, 1999 the Office advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit any medical report from an attending physician addressing how the specific employment incident may have caused or aggravated his neck.

The note from Dr. Smallwood indicated appellant was treated on December 4, 1997 for an occupational injury to his neck. He noted appellant's symptomology continued through May 1999. However, Dr. Smallwood only offered speculative support for causal relationship by opining that the "it appears that this injury has aggravated arthritic changes in his neck ... " and further noted the "arthritic changes could be contributed to an old neck injury." The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.¹⁰ Finally, Dr. Smallwood's report did not include a rationalized opinion regarding the causal relationship between appellant's neck condition and the incidents of employment believed to have caused or contributed to such condition.¹¹ Therefore, this report is insufficient to meet appellant's burden of proof.

Dr. Myers' report dated August 9, 1999, noted an essentially normal physical examination, except for a slight decrease of reflexes on the left side from a prior neurologic injury. He noted x-rays were taken which revealed calcification anteriorly demonstrating degenerative changes at the C5, C6 and C7 spaces. Dr. Myers diagnosed appellant with degenerative joint disease c-spine with possible fracture of the spinous process of unknown age; cervical radiculopathy symptoms and possibility of cervical disc disease and soft tissue/ligamentous. However, he did not provide a rationalized opinion regarding the causal relationship between appellant's neck condition and the employment incident believed to have caused or contributed to such condition.¹² For example, Dr. Myers did not explain how the act of hitting appellant in the neck with a newspaper would cause or aggravate appellant's condition nor did he explain how appellant's preexisting cervical neck condition may have affected his condition. Even though Dr. Myers noted that appellant was experiencing symptoms of his neck condition which was exacerbated by this incident, without any further explanation or rationale, such report is insufficient to establish a causal relationship.¹³ Therefore, these documents are insufficient to meet appellant's burden of proof.

Moreover, Dr. Kommos examined appellant on December 18, 1997 and found that appellant was neurologically "entirely normal" and "has full range of motion." He found no

¹⁰ Speculative and equivocal medical opinions regarding causal relationship have no probative value; *see Alberta S. Williamson*, 47 ECAB 569 (1996); *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Paul E. Davis*, 30 ECAB 461 (1979).

¹¹ *See Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

¹² *Id.*

¹³ *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

evidence to attribute appellant's condition to the December 2, 1997 injury. Dr. Kommos opined appellant's symptomologies were related to arthritic changes and noted x-ray results in support of this contention which revealed arthritis involving C5-6 and C6-7. He opined appellant's symptomologies were related to arthritic changes not to an employment-related injury. These notes are insufficient to meet appellant's burden of proof.

The remainder of the medical evidence fails to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹⁴ Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied appellant's claim for compensation.

The July 17, 2000 and June 14, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
October 22, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

¹⁴ See *Victor J. Woodhams, supra* note 3.