

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HENRY HOLLOWAY and GENERAL SERVICES ADMINISTRATION,
FEDERAL PROTECTIVE SERVICE, Philadelphia, PA

*Docket No. 01-168; Submitted on the Record;
Issued April 9, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained a cervical injury as a result of his accepted injury of January 20, 1993.

On January 21, 1993 appellant, then a 41-year-old physical security specialist, filed a notice of traumatic injury and claim for compensation/continuation of pay (Form CA-1), alleging that, on January 20, 1993, he walked into a table and bruised his left inner thigh at the groin level. The claim was accepted for a left groin strain and left hip strain.

Appellant's treating physician for this injury was Dr. Michael Martin Cohen, a Board-certified neurologist. In a letter dated January 10, 1997, Dr. Shailen Jalali, who is Board-certified in anesthesiology and pain management, informed Dr. Cohen that a magnetic resonance imaging (MRI) scan of appellant revealed a very large disc herniation at the C3-4 level and a large herniated disc at the C4-5 level. In a medical report dated March 14, 1997, Dr. Donald L. Myers, a Board-certified neurosurgeon, recommended that appellant undergo a cervical discectomy and fusion at both the C3-4 and C4-5 levels. In a medical report dated May 7, 1997, Dr. Cohen reviewed the records, examined appellant and concluded:

“In reviewing my records it is evident that there were complaints of neck pain either directly after or shortly after the work[-]related injury. It is my opinion given the type of injury that we must conclude that the cervical disc disease is related to the original injury. There is no history to my knowledge of preexisting cervical symptomatology. As there is no way to prove with certainty whether or not the cervical discs are related and as the degree of spinal stenosis is quite severe I would have to agree with the proposed surgery by Dr. Myers and give the opinion that it is directly related to his accepted work[-]related condition.”

Dr. Cohen elaborated on this opinion in a medical report dated June 18, 1997, wherein he stated:

“There is evidence of a neck injury due to the accepted work-related injury of January 20, 1993. This is documented both in my own records as well as those of Dr. Jalali. For example, in my September 27, 1993 note, I note that his neck pain was unchanged. I do feel that because of the severity of his leg injury, that his neck injury and pain was simply overshadowed. Nevertheless, the type of injury that he had is certainly capable of producing or exacerbating the cervical discs, which are quite large at C3-4 and C4-5 levels. Since there is no evidence of previous cervical disease or injury prior to the work-related injury of January 20, 1993, it is my firm opinion that there is a direct relationship and that his cervical radiculopathy and cervical disc disease should be accepted as part of the work-related injury of January 20, 1993.”

Dr. Cohen reiterated this opinion in a letter dated August 13, 1997.

By letter dated August 19, 1997, the Office of Workers’ Compensation Programs medical adviser referred appellant to Dr. Paul M. Shipkin, a Board-certified neurologist, for a second opinion with regard to appellant’s cervical condition. In an opinion dated September 26, 1997, Dr. Shipkin noted that appellant had significant cervical spine disease evidence on his MRI scan but noted that appellant moved his head and neck “with full range of movement and no apparent discomfort.” He further opined, “The etiology for his considerable cervical spine disc disease is unclear and I seriously doubt all of these findings are attributable to his alleged incident during January 1993.” Dr. Shipkin recommended, *inter alia*, a neurosurgical opinion regarding his cervical spine disease.

In order to resolve the conflict in the medical opinions, appellant was referred to Dr. Richard H. Bennett, a Board-certified neurologist, for an impartial medical examination. In a medical report dated November 17, 1997, Dr. Bennett stated:

“The cervical MRI [scan] changes are noted. The report and my personal review of the cervical MRI scan reveal significant changes, particularly at C3-4, suggesting dis[c] herniation. However, as noted, the dis[c] herniation would be degenerative in nature and has not resulted in any signs of neurological deterioration. There is no clinical evidence of cervical myelopathy or radiculopathy at this point, although there is no question that from a radiographic standpoint a significant lesion does exist. More importantly, this lesion has absolutely nothing to do with the injury which was sustained on January 20, 1993. The cervical MRI [scan] changes represent an independent unrelated condition that has nothing to do with [appellant’s] previous work accident.... It is, therefore, my opinion in regards to this condition that [appellant] does not suffer from a work[-]related cervical injury in reference to the work injury of January 20, 1993. That accident in question resulted in a contusion of the left thigh and absolutely no injury to the cervical region. The changes noted on the MRI [scan] of the cervical spine are independent and unrelated to that event.”

By decision dated January 29, 1998, the Office denied appellant's claim for a cervical condition as it found that the condition was not work related based on the opinion of the impartial medical examiner, Dr. Bennett.

Appellant filed several requests for reconsideration. In support of his request for reconsideration dated May 4, 1998, appellant submitted a report by Dr. Cohen dated August 13, 1997, wherein he stated: "[I]t is my opinion that the cervical disc disease is related to the work[-]related injury of January 20, 1993." Appellant also submitted a January 19, 1998 report that made no mention of the cause of appellant's cervical disc disease. By decision dated July 22, 1998, the Office denied modification of the prior decision.

By letter dated March 4, 1999, appellant again requested reconsideration. In support thereof, appellant submitted additional reports by Dr. Cohen dated August 13, 1998, February 9, May 4 and 9 and June 8 and 20, 1999, which did not address the issue of the cause of appellant's cervical condition. Appellant also submitted a November 17, 1998 report by Dr. Cohen who reiterated his opinion that appellant's cervical and lumbosacral symptoms were directly related to his January 20, 1993 injury. He reasoned: "There certainly may have been preexisting clinical cervical spine disease, but the patient had absolutely no symptoms in the cervical region attributable to cervical radicular involvement prior to the work-related injury. On the other hand, he has been symptomatic since that time." By decision dated June 14, 1999, the Office denied modification of the prior decisions.

By letter dated August 31, 1999, appellant again requested reconsideration. In support thereof, appellant submitted handwritten notes by Dr. Clarence Martin, a Board-certified internist, dated January 22, September 8 and 22, 1993. These indicate that appellant did complain of neck stiffness on September 22, 1993. This request for reconsideration was denied as the evidence was insufficient to warrant modification on October 7, 1999.

Finally, by letter dated March 12, 2000, appellant again requested reconsideration and in support thereof, submitted a January 14, 2000 report by Dr. Martin wherein he stated that appellant was in good health until January 20, 1993 when he injured his left groin and suffered a "whiplash injury" to his neck and lower back and that this impact injury resulted in excessive groin pain, cervical neuropathy and sciatica. By decision dated June 15, 2000, the Office again denied appellant's request, as sufficient evidence had not been submitted to establish modification.

The Board finds that appellant has not established that his cervical condition was causally related to the accepted work injury of January 20, 1993.

An employee seeking benefits under the Federal Employees' Compensation Act,¹ 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

¹ 5 U.S.C. § 8101 *et seq.*

for which compensation is claimed are causally 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

Because of a conflict in medical opinion evidence between Drs. Cohen and Shipkin, the Office referred appellant to an impartial medical examiner, Dr. Bennett, a Board-certified neurologist. In his report, Dr. Bennett opined that appellant's cervical changes represented an "independent unrelated condition that has nothing to do with [appellant's] previous work accident." He noted that the MRI scan demonstrated that the disc herniation was degenerative in nature and had not resulted in any signs of neurological deterioration, that the lesion shown on objective testing was unrelated to the employment injury and that such changes were representative of an independent unrelated condition that had nothing to do with appellant's previous work accident and that the only injury that occurred on January 20, 1993 was a contusion of the left thigh. Dr. Bennett stated that appellant did not suffer from a cervical injury causally related to the work injury of January 20, 1993. In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical examiner for the purpose of resolving the conflict, the opinion of such examiner, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁴ Accordingly, the Office properly gave decisive weight to the well-rationalized opinion of Dr. Bennett and denied benefits for appellant's cervical condition.

Dr. Cohen's more recent reports merely reiterated his earlier opinion that there was a causal relationship between appellant's cervical condition and the accepted work injury. The Board notes that Dr. Cohen was one of the physicians whose opinion helped to create the conflict that was resolved by Dr. Bennett. As he resolved the conflict in medical opinions, the additional report of Dr. Cohen was insufficient to overcome the weight accorded the report of the impartial medical specialist.⁵ The reports by Dr. Martin are similarly of insufficient probative value to outweigh the well-rationalized opinion of the impartial medical examiner. With regard to the 1993 progress notes that appellant indicates are from Dr. Martin, there is no signature on these notes as to who the author is. Furthermore, the only indication with regard to appellant's neck was in the September 22, 1993 note wherein it is indicated that appellant was complaining of neck stiffness; no further explanation is given. With regard to Dr. Martin's January 14, 2000 medical report, although this report is more comprehensive, Dr. Martin failed to provide a well-rationalized medical opinion as to causal relation sufficient to contradict the well-rationalized opinion of the impartial medical examiner. Accordingly, the Office properly denied appellant's claim that his cervical condition was causally related to the accepted employment injury.

² *Ronelle Smith*, 47 ECAB 781 (1996); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

⁴ *Jack R. Smith*, 41 ECAB 691, 701 (1990).

⁵ *Thomas Bauer*, 46 ECAB 257, 265 (1994); *Virginia Davis Banks*, 44 ECAB 389 (1993).

The June 15, 2000 and October 7, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 9, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member