

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL L. SCHWOCHERT and DEPARTMENT OF AGRICULTURE,
Fort Morgan, CO

*Docket No. 02-667; Submitted on the Record;
Issued August 9, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation and medical benefits effective July 17, 2000.

On October 26, 1999 appellant, then a 46-year-old supervisory veterinary medical officer, filed a claim for a traumatic injury on October 25, 1999 when he suddenly turned his head while performing inspections on the meat processing line. The Office accepted his claim for a neck sprain.

By letter dated June 15, 2000, the Office advised appellant that it proposed to terminate his compensation and medical benefits on the grounds that the weight of the medical evidence established that he had no remaining disability or medical condition causally related to his October 25, 1999 employment injury.

By letter dated July 12, 2000, appellant stated his disagreement with the proposed termination of compensation and medical benefits.

By decision dated July 17, 2000, the Office terminated appellant's compensation effective July 17, 2000 on the grounds that the weight of the medical evidence established that appellant had no disability or medical condition causally related to his October 25, 1999 employment injury.

By decision dated March 2, 2001 and finalized March 5, 2001, an Office hearing representative affirmed the Office's July 17, 2000 decision terminating appellant's compensation and medical benefits.

By decision dated November 6, 2001, the Office denied modification of its July 17, 2000 decision.¹

The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.² The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.³

In notes dated October 26, 1999, Dr. Bruce R. Overturf, appellant's attending Board-certified family practitioner, stated that appellant turned his head rapidly at work and developed acute shoulder and neck pain. He diagnosed a strain and sprain of the right shoulder and neck.

In notes dated October 28, 1999, Dr. Overturf stated that x-rays of appellant's spine were negative. He diagnosed myofasciitis of the trapezius and neck muscles.

In notes dated November 8, 1999, Dr. Overturf released appellant to return to regular work.

In a report dated November 23, 1999, Dr. Hans C. Coester, a neurosurgeon, stated that appellant had pain in the neck and shoulders. He noted that a magnetic resonance imaging (MRI) scan and x-rays revealed degenerative disc disease and very minor bulging at C4-5 and C5-6. Dr. Coester recommended physical therapy and medication.

In a report dated December 20, 1999, Dr. Thomas Boylan stated that an October 26, 1999 x-ray revealed some disc degeneration at C5-6 and C6-7 along with degenerative arthritis and a November 22, 1999 MRI revealed disc bulging at C4-5 and C5-6.

In a report dated January 27, 2000, Dr. David L. Ewing, a neurologist, noted that an electromyogram revealed significant myofascial pain in the neck and shoulder but there was no evidence of radiculopathy or of neck or shoulder entrapment.

In notes dated April 17, 2000, Dr. Overturf stated that the previous weekend appellant was pulling up tree stumps using a motor vehicle and injured his chest and face when trying to

¹ The record contains additional evidence that was not before the Office at the time it issued its November 6, 2001 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

² *See Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

³ *See Wiley Richey*, 49 ECAB 166, 168 (1997).

pull a stump imbedded in concrete. The vehicle came to a sudden stop and he hit the steering wheel. Dr. Overturf diagnosed a closed chest injury, upper lip contusion and chronic neck pain. He stated: "Accident is important because of possible aggravation of his preexisting condition secondary to [employment] injury."

In a report dated April 26, 2000, Dr. George J. Guidry, a Board-certified neurosurgeon, stated that appellant had injured his neck at work in October 1999 when he suddenly turned his head. Appellant experienced neck pain that subsided for a short period of time but then escalated and had persistent neck pain and headaches since then. About a month after the injury, appellant developed a radiation of pain into his right arm and other symptoms that appeared to be cervical radiculopathy. Dr. Guidry noted that an MRI scan performed the previous year showed some foraminal stenosis on the left at C5-6, which might be causing his arm pain. Flexion and extension x-rays taken April 26, 2000 showed C4 and C5 spinous processes abutting against each other in extension, possibly causing pain and headaches.

In a report dated May 30, 2000, Dr. Guidry stated that an enhanced cervical computerized axial tomography (CAT) scan appeared to show foraminal stenosis bilaterally at C5-6 of a moderate degree and "I think this possibly is causing his symptoms, although I cannot be certain of this." He indicated that surgery might be helpful.

In a report dated June 12, 2000, Dr. Richard Talbott, a Board-certified orthopedic surgeon and an Office referral physician, provided a history of appellant's condition, a review of the statement of accepted facts, medical evidence and diagnostic tests, and physical findings on examination. He noted appellant's complaints of pain in the right side of his neck and in the suboccipital area on the right as well as right shoulder pain. Dr. Talbott diagnosed multiple subjective complaints and obesity. He stated that there were no objective findings of any residual disability or medical condition causally related to the October 25, 1999 employment injury. Dr. Talbott stated his opinion that appellant had experienced a temporary aggravation of his degenerative disc and degenerative joint disease in his cervical spine and a mild strain of cervical spine musculature on October 25, 1999. He indicated that appellant had no remaining disability or medical condition causally related to his October 25, 1999 employment injury.

In a report dated July 12, 2000, Dr. Overturf stated that the development of arthritic changes over a period of time could have caused cervical disc disease that was aggravated with the sudden move at work on October 25, 1999. He indicated that appellant was unable to work due to neck and arm pain and his disability was due to the October 25, 1999 employment injury. Dr. Overturf noted that appellant had no neck complaints until the October 25, 1999 employment injury.

In a supplemental report dated July 17, 2000, Dr. Talbott stated that appellant had a temporary aggravation of his preexisting back condition that ended within four to six weeks of the October 25, 1999 employment injury.

In a report dated March 7, 2001, Dr. Guidry stated that on July 6, 2000 appellant underwent a cervical operation for decompression of the C6 nerve root at the C5-6 bilaterally. He indicated that, after reviewing his reports and Dr. Talbott's report, his opinion was that he treated appellant for symptoms related to his October 25, 1999 employment injury. Dr. Guidry

stated: "Assuming there [were] no preexisting complaints similar to the complaints that he had at the time I treated him, I am convinced that his symptoms are related to that job injury.

In a report dated March 23, 2001, Dr. Overturf stated his opinion that appellant was totally disabled from his job at the employing establishment which required line work that stressed the shoulder, back and neck. He stated:

"Even if [appellant] had a preexisting condition he easily could have had aggravation of this condition with the line work he was performing. In the past I have had several patients who sustained stress fractures of their ribs simply from line work and the pulling it requires.

"I do not feel it is unrealistic to presume that [appellant's] job definitely aggravates his cervical arthritis or disc disease. It is documented in his chart that he has failed to respond to all modes of therapy and surgery at this time. I would anticipate that [appellant will never be able to return to his present position with its current job description."

In a report dated April 27, 2001, Dr. Boylan indicated that he had treated appellant on December 20, 1999 regarding his October 25, 1999 employment injury. He stated his opinion that appellant had a permanent injury of the right upper cervical spine based on his initial evaluation, the chronicity of the injury and appellant's lack of response to appropriate medical management.

In a report dated June 13, 2001, Dr. Christopher B. Ryan, a Board-certified physiatrist, provided a history of appellant's condition, a review of the medical evidence, and findings on examination. He noted that appellant experienced immediate relief of his neck pain following surgery on July 6, 2000. Dr. Ryan noted that appellant had been injured in three airplane crashes in 1982 with injuries to his hips and low back and a right-sided cranial contusion. In 1997, he fell asleep while driving a motor vehicle at an estimated 75 miles per hour and sustained a worsening of his hip condition after being thrown from the vehicle. Dr. Ryan diagnosed a history of cervical degenerative arthritis, probably due to the multiple vehicle accidents, neck pain probably due to an irritation of the cervical facet at C5-6 with the resultant myofascial condition overlaying it and causing a myofascial thoracic outlet syndrome on the right side. He stated his opinion that the October 1999 employment injury (which he felt was a cervical facet syndrome, not a cervical strain) aggravated his preexisting cervical arthritis.

The Board finds that the Office met its burden of proof in terminating appellant's compensation based on the opinion of Dr. Talbott that appellant had no residual disability or medical condition causally related to his October 25, 1999 employment injury.

In his June 12 and July 17, 2000 reports, Dr. Talbott, a Board-certified orthopedic surgeon and Office referral physician, conducted a review of the medical evidence and the statement of accepted facts and performed a thorough physical examination of appellant that included multiple subjective complaints but no objective findings to support those complaints. He found that appellant had a mild cervical sprain and a temporary aggravation of his preexisting degenerative disc and degenerative joint disease on October 25, 1999 and the aggravation had

ceased. Based on a complete and accurate factual background and supported by medical rationale, Dr. Talbott provided his opinion that appellant had no residuals from his October 25, 1999 employment injury.

In his reports dated July 12, 2000 and March 23, 2001, Dr. Overturf opined that the October 25, 1999 employment injury aggravated appellant's cervical disc disease and caused ongoing symptoms but he did not provide sufficient medical rationale for his opinion. His basis for finding causal relationship to appellant's October 25, 1999 employment injury was that appellant had no neck symptoms prior to the employment injury. However, the Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to establish causal relationship.⁴

In his reports dated April 26 and May 30, 2000, Dr. Guidry diagnosed foraminal stenosis. However, stenosis is not an accepted condition in this case and Dr. Guidry did not opine as to whether the foraminal stenosis was aggravated by the October 25, 1999 employment injury. In his March 7, 2001 report, Dr. Guidry stated that appellant's cervical condition was causally related to his October 25, 1999 employment injury if appellant was asymptomatic prior to the employment injury. However, as noted above, an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to establish causal relationship.

In his report dated April 27, 2001, Dr. Boylan stated his opinion that appellant had a permanent cervical spine injury due to his October 25, 1999 employment injury but provided insufficient medical rationale in support of his opinion.

In his report dated June 13, 2001, Dr. Ryan reviewed the medical records and concluded that appellant had a history of cervical degenerative arthritis, probably due to several airplane accidents and a motor vehicle accident, and the repetitive actions performed in his job. He also stated that appellant had an acute aggravation of cervical spondylosis, probably a right-sided cervical facet syndrome, when he twisted his neck on October 25, 1999. However, Dr. Ryan provided insufficient medical rationale explaining how appellant's cervical facet syndrome in 2001 was causally related to the October 25, 1999 employment injury.

The medical reports from Dr. Overturf contemporaneous to appellant's October 25, 1999 employment injury indicated only a muscle sprain and strain with negative x-rays and Dr. Overturf returned him to full duty on November 8, 1999. Drs. Overturf, Guidry, Boylan and Ryan do not provide sufficient rationale to explain how appellant's continuing neck problems are due to the October 25, 1999 employment injury.

⁴ See *Thomas D. Petrylak*, 39 ECAB 276, 281 (1987).

The decisions of the Office of Workers' Compensation Programs dated November 6 and March 5, 2002 are affirmed.

Dated, Washington, DC
August 9, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member