

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LILLIAN B. BROOKS and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Cleveland, OH

*Docket No. 01-2129; Submitted on the Record;
Issued June 3, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that disc disease of the cervical spine is causally related to employment factors or an October 29, 1989 employment injury.

On July 28, 2000 appellant, then a 59-year-old flat sorter machine clerk, filed an occupational disease claim, alleging that factors of employment caused a herniated disc. In support of her claim, she submitted medical evidence and a copy of a CA-1 form, claim for compensation, dated October 29, 1989, in which she stated that she was injured when the gate from a mailage fell and hit her on the back of the head.¹ By letter dated August 16, 2000, the Office of Workers' Compensation Programs informed appellant of the type of evidence needed to support her claim. In response, she submitted additional medical evidence.²

By decision dated October 30, 2000, the Office denied appellant's July 2000 claim on the grounds that the medical evidence failed to establish that the claimed condition was caused by factors of her employment. Following appellant's request, a hearing was held on April 18, 2001 at which time she testified that the pain in her neck had gradually worsened from the 1989 employment injury and was aggravated by her employment duties and that she was finally diagnosed with a herniated disc in April 1991. In a July 23, 2001 decision, an Office hearing representative affirmed the prior decision. The instant appeal follows.

¹ This claim, adjudicated by the Office under file number A9-0337995 was accepted for post-concussive-contusion sequelae from head trauma and cervical myofascitis.

² The record also contains a copy of an occupational disease claim submitted by appellant on February 21, 2000 in which she alleged that arthritis in her chest wall cavity was caused by employment factors. This claim was adjudicated by the Office under file number A9-0465399 and is not part of the instant claim, which was adjudicated by the Office under file number A9-0469088.

The Board finds that appellant did not establish that her cervical disc disease was causally related to federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim⁴ including the fact that the individual is an "employee of the United States" within the meaning of the Act,⁵ that the claim was timely filed within the applicable time limitation period of the Act,⁶ 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.⁷ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

Causal relationship is a medical issue⁹ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.¹⁰ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

The relevant medical evidence¹² includes an emergency room treatment note from Brentwood Hospital dated October 31, 1989 in which a benign head contusion was diagnosed. In treatment notes from Brentwood Hospital dated November 23 and December 14, 1989, benign head trauma with persistent headache was diagnosed. In a report dated June 19, 1990, Dr. Teran diagnosed musculoskeletal neck pain. A Brentwood Hospital note dated November 2, 1990

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.110.

⁵ See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

⁶ 5 U.S.C. § 8122.

⁷ See *Melinda C. Epperly*, 45 ECAB 196 (1993).

⁸ See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *Mary J. Briggs*, 37 ECAB 578 (1986).

¹⁰ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, *supra* note 8.

¹¹ *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

¹² Appellant also submitted medical evidence that had no relevance to the instant claim regarding cervical disc disease or did not meet the standard of a medical report by a physician under the Act.

contained a diagnosis of migraine headache and in a Brentwood Hospital treatment note dated November 14, 1990, cervical spine x-rays were read as negative and diagnoses of acute torticollis and chronic neck pain were made. By report dated April 16, 1991, Dr. S. Scarberry¹³ noted a history of head, neck and arm pain since the 1989 employment injury. He recommended that studies be performed. In a report dated June 6, 1991, Dr. Scarberry, noted that computerized tomography scan of the brain was normal, that a magnetic resonance imaging (MRI) scan revealed disc herniation at C5-6 with mild cord compression and disc protrusion at C3-4 and C4-5 without evidence of cord compression. Dr. Scarberry opined that, although the condition “could be due to an injury it may also be normal changes [secondary] to aging wear and tear.”

An MRI scan of the cervical spine dated May 17, 2000 revealed disc bulges at C3-4 and C4-5 with central disc protrusion at C5-6 and some effacement of the cerebrospinal fluid. Duty status reports dated June 1 and July 26, 2000 indicated that appellant could work with restrictions.¹⁴ In a report dated August 30, 2000, Dr. Andres Sabio, a general practitioner, noted that appellant repeated a history of an injury on October 29, 1989 when an iron cage fell on the back of her neck at work. He noted that the MRI scans and findings on physical examination with restricted range of motion and no neurological deficits. Dr. Sabio opined that appellant’s bulging disc was causally related to the October 29, 1989 employment injury.

In an October 19, 2000 report, Dr. Ben Ortega, a Board-certified neurosurgeon, noted the history of injury and MRI scan findings. He also diagnosed mild carpal tunnel syndrome based on abnormal electrodiagnostic studies. Regarding the cause of her condition, Dr. Ortega stated:

“I do not have in my possession any documentation of when the degenerative osteophytes appeared. In my opinion, within reasonable medical certainty, there appeared to be a permanent aggravation related to [appellant’s] injury.”

The Board finds the medical evidence insufficient to establish appellant’s claim. While Dr. Ortega advised that appellant’s neck condition appeared to be a “permanent aggravation related to her injury,” he also stated that he did not have a complete medical history. The Board has held that medical opinions that are based upon an incomplete history are of little probative value.¹⁵ Furthermore, Dr. Ortega provided no rationale to support his conclusion.¹⁶ The record also contains a June 6, 1991 report in which Dr. Scarberry noted MRI scan findings of a herniated disc at C5-6 and opined that it could be due to either the employment injury or the natural aging process. The Board finds this report to be equivocal and, likewise, of little probative value.¹⁷ The Board therefore, concludes that as appellant did not provide the necessary medical evidence to establish that employment factors caused her neck condition, the Office properly denied her claim.

¹³ Neither Dr. Teran’s nor Dr. Scarberry’s credentials are known.

¹⁴ The physicians’ signatures on these reports are illegible.

¹⁵ *Patricia M. Mitchell*, 48 ECAB 371 (1997).

¹⁶ *Gary L. Fowler*, *supra* note 10.

¹⁷ *Jennifer L. Sharp*, 48 ECAB 209 (1996).

The decision of the Office of Workers' Compensation Programs dated July 23, 2001 is hereby affirmed.

Dated, Washington, DC
June 3, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member