

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS LUBY and DEPARTMENT OF THE TREASURY,
CUSTOMS SERVICE, Laredo, TX

*Docket No. 02-572; Submitted on the Record;
Issued November 1, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability causally related to an accepted January 13, 1992 employment injury.

On January 13, 1992 appellant, then a 42-year-old canine enforcement officer, filed a notice of traumatic injury alleging that a large gas tank fell on him and struck his head near his right eye. The Office of Workers' Compensation Programs accepted appellant's claim for head contusion.

On March 8, 2001 appellant filed a notice of recurrence of disability. By letter dated January 24, 2001, he stated that he had recurring neck and shoulder pain and believed that his condition was a result of the accepted employment injury in 1992.

Dr. Warren F. Neely, a Board-certified neurological surgeon, examined appellant on May 2, 1996 and stated:

"About two years ago, the patient began to develop occasional neck pain. He would wake up with a stiff neck on occasion. At times, this would radiate into his right shoulder. Arm pain was not associated with any pain episode until this year. About six weeks ago, he developed severe pain in the posterior aspect of his neck. This radiated into the superior medial scapular border. He also noted pain diffusely in his right arm."

Dr. Neely stated that the plain x-rays of appellant's cervical spine were normal. He indicated that an April 20, 2000 magnetic resonance imaging (MRI) scan of the cervical spine revealed degenerative disc disease at levels C5-6 and C6-7 with compromise of the right C6 nerve root in the foramen on the right at C5-6.

In a report dated December 9, 1996, Dr. Neely found that appellant had no significant neck, shoulder or arm pain and had full range of motion in his neck.

In a report dated February 27, 2001, Dr. Ananthal Kalantri stated:

“This 51-year-old, right hand dominant veteran who is a U.S. customs officer referred for electrodiagnostic study because of intermittent neck pain and decreasing right hand grip strength. He states that he had head and neck injury with a cervical vertebral fracture in 1992 while on active duty. He was treated conservatively without any surgical interventions. He did well until the year 1998-1999 when he had recurrence of neck pain, which was worse than before. His pain gradually subsided and became an intermittent level, but right hand grip started to get weak.”

By decision dated June 14, 2001, the Office denied appellant’s claim for recurrence finding that the evidence failed to establish that his claimed consequential injuries were causally related to the accepted employment injury.

By letter dated July 9, 2001, appellant requested reconsideration. He submitted a June 14, 2001 report from Dr. Neely and a June 21, 2001 report from Dr. Georgia White Roth, a Board-certified family practitioner. Dr. Neely stated:

“In your letter, you addressed the question as to whether or not a blow to your head from a falling 200 pound gas tank from a height of approximately two feet above your head could cause the problem. My response to that would be affirmative. There certainly is a possibility that a blow to the head and neck complex could cause an injury which would produce the symptomatology and clinical presentation we saw on your exam[ination] on May 2, 1996.”

Dr. Roth stated: “I realize the crux of this issue is whether or not the original on-the-job injury is responsible for the patient’s current debility. He denies any other injuries or accidents. I believe there is certainly a reasonable possibility that the event in 1992 is causing the patient’s symptoms.”

By decision dated October 16, 2001, the Office denied appellant’s request for modification of the previous decision.

The Board finds that appellant has not met his burden of proof to establish that his condition is causally related to the accepted employment injury in 1992.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.¹

In this case, appellant has not submitted rationalized medical evidence establishing that his current cervical condition was caused by the accepted January 13, 1992 employment injury. The only medical evidence of record, which addressed a causal relationship between appellant’s

¹ *Louise G. Malloy*, 45 ECAB 613 (1994).

current cervical condition and his accepted employment injury, is the June 14, 2001 report from Dr. Neely and the June 21, 2001 report from Dr. Roth. In the June 14, 2001 report, Dr. Neely answered appellant's question of whether a blow to the head from a falling gas tank could cause his current condition. Dr. Neely answered: "affirmative." He stated that there certainly was a "possibility" that a blow to the head and neck complex could cause his condition. Dr. Roth indicated in the June 21, 2001 report that she believes there is certainly a "reasonable possibility" that the event in 1992 is causing appellant's current symptoms. The Board has held that, while the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,² neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment, and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.³ Inasmuch as Drs. Neely and Roth's opinions are both speculative as to the relationship between appellant's current cervical condition and his January 13, 1992 employment injury and they both fail to provide any medical rationale to support their opinions, they are of limited probative value.⁴

Because appellant has failed to submit rationalized medical evidence establishing that his current cervical condition is causally related to the accepted January 13, 1992 employment injury, the Board finds that appellant has not met his burden of proof.

The decisions of the Office of Workers' Compensation Programs dated October 16 and June 14, 2001 are hereby affirmed.

Dated, Washington, DC
November 1, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

² *Kenneth J. Deerman*, 34 ECAB 641 (1983).

³ *Phillip J. Deroo*, 39 ECAB 1294 (1988).

⁴ *Jennifer Beville*, 33 ECAB 1970 (1982).