

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH A. CAPODICE and DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT, Gunnison, CO

*Docket No. 01-1272; Oral Argument Held July 18, 2002;
Issued September 6, 2002*

Appearances: *Steven E. Brown, Esq.*, for appellant; *Thomas G. Giblin, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that his herniated disc condition at C6-7 is causally related to the June 2, 1994 employment incident.

On August 22, 1994 appellant, then a 48-year-old wildlife biologist, filed a traumatic injury claim, alleging that on June 2, 1994 he had injured his neck by pounding a sledgehammer while he was constructing a fence. He did not stop work. On January 22, 1999 he filed a recurrence claim,¹ stating that the recurrence was "ongoing," and submitted medical evidence. He did not stop work. By letter dated February 4, 1999, the Office informed appellant of the type of evidence needed to support his claim, and in response he submitted additional medical evidence.

By decision dated March 16, 1999, the Office denied appellant's claim on the grounds that, while the work event of June 2, 1994 occurred, the medical evidence was insufficient to establish that his current neck condition was causally related to the accepted work incident. On April 15, 1999 appellant requested a review of the written record and submitted additional medical evidence. In a decision dated August 5, 1999 and finalized August 12, 1999, an Office hearing representative affirmed the prior decision.

On October 1, 1999 appellant requested reconsideration and submitted additional medical evidence. In an October 20, 1999 decision, the Office denied modification of the prior decision. By letter dated October 20, 2000, appellant, through counsel, requested reconsideration and

¹ The record indicates that claimant's traumatic injury claim filed in 1994 was not submitted to Office of Workers' Compensation Programs until 1999, when it was submitted along with the recurrence claim.

submitted additional medical evidence. In a January 12, 2001 decision, the Office again denied modification of the prior decision. The instant appeal follows.

The Board finds that appellant did not meet his burden of proof to establish that his herniated disc condition at C6-7 is causally related to the June 2, 1994 employment incident.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.² This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³ Causal relationship is a medical issue 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.⁴

The relevant evidence includes reports of Dr. Jay M. Wolkov, an osteopathic physician, dating from July 21, 1994 when he diagnosed a stiff neck of one month's duration. A December 22, 1998 x-ray of the cervical spine demonstrated degenerative changes at C5-6 and bilateral C5 foraminal encroachment. Magnetic resonance imaging (MRI) was recommended. A January 3, 1999 MRI of the cervical spine demonstrated a large herniated nucleus pulposus at C6-7 and spinal stenosis due to multiple factors at C6-7. In a February 18, 1999 report, Dr. Wolkov noted the history of injury in 1994 and the MRI findings and opined that the 1994 incident caused the herniated disc. On July 22, 1999 electromyographic studies were reported as normal.

Dr. Larry D. Tice, a Board-certified neurosurgeon, provided reports dated July 20 and September 14, 1999 and October 18, 2000 in which he noted the history of injury in 1994, the MRI findings and findings on examination. He diagnosed significant cervical spondylosis with osteophyte C5-6, large left C6-7 herniated disc, small central C4-5 disc and mild left cervical radiculopathy and advised that appellant's neck condition was related to the June 1994 employment incident. Dr. Donald S. Harder, a Board-certified orthopedic surgeon, provided an October 12, 2000 report in which he noted the history of injury in 1994, the MRI findings and findings on examination and opined that appellant's herniated disc was related to the 1994 injury.

² *Ronald C. Hand*, 49 ECAB 113 (1997).

³ *Helen K. Holt*, 50 ECAB 279 (1999).

⁴ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

The Board finds that, while the June 2, 1994 employment incident occurred, appellant has not established that the employment incident resulted in his current condition. The Board has previously held that, when diagnostic testing is delayed, uncertainty mounts regarding the cause of the diagnosed condition, and a question arises as to whether that testing in fact documents the injury claimed by the employee. The greater the delay in testing, the greater the likelihood that an event not related to employment has caused or worsened the condition for which the employee seeks compensation. When the delay becomes so significant that it calls into question the validity of an affirmative opinion based at least in part on the testing, such delay diminishes the probative value of the opinion offered.⁵

In the instant case, after the June 2, 1994 incident, appellant resumed work and took no time off. In order for him to demonstrate that his claimed condition was caused, precipitated, accelerated or aggravated by the accepted injury, medical evidence of bridging symptoms between his present condition and the accepted incident must support the physician's conclusion of a causal relationship.⁶ Physicians are called upon to express an opinion on the relationship between the injury claimed by the employee and specific factors of the employee's federal employment, and in many instances the physician will conduct diagnostic testing to help identify the current state of the employee's condition. When the physician conducts diagnostic testing immediately after an alleged injury, the physician is better able to determine whether that testing documents the injury described by the employee's history. It must of course be acknowledged that even immediate testing carries with it a degree of uncertainty. Such testing does not, by reason of its promptness, necessarily document the injury claimed by the employee, who might well have sustained the condition before the date of the alleged injury and under circumstances not covered by the Act. When the physician delays diagnostic testing, the uncertainty mounts and a question arises as to whether that testing in fact documents the injury claimed by the employee.⁷ Indeed, the greater the delay in testing, the greater the likelihood that an event not implicated by the employee has worsened the injury claimed or has caused the condition for which the employee seeks compensation. As in this case, when the delay becomes so significant that it calls into question the validity of an affirmative opinion based at least in part on that testing, such a delay diminishes the probative value of the opinion offered. The delay here between the June 1994 incident and the January 1999 MRI was four and a half years, and there is no bridging evidence indicating a neck problem between 1994 and the December 1998 cervical spine x-ray. The Board therefore finds that, as appellant has not submitted the necessary rationalized medical evidence to substantiate that his neck condition is causally related to the June 2, 1994 employment incident, he has not met his burden of proof in this case.

⁵ *Linda L. Mendenhall*, 41 ECAB 532 (1990).

⁶ *See Ricky S. Storms*, 52 ECAB ____ (Docket No. 00-1721, issued April 24, 2001).

⁷ *Linda L. Mendenhall*, *supra* note 5.

The decision of the Office of Workers' Compensation Programs dated January 12, 2001 is hereby affirmed.

Dated, Washington, DC
September 6, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member