

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLEN L. OLSON and DEPARTMENT OF THE AIR FORCE,
St. Paul, MN

*Docket No. 02-2302; Submitted on the Record;
Issued February 19, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant's disabling degenerative disc disease is causally related to his November 30, 1978 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's February 21, 2002 request for reconsideration.

On December 6, 1978 appellant, then a 55-year-old personal flight equipment outfitter, filed a claim alleging that he sustained an injury on November 30, 1978 when he fell backward over some equipment at work. The Office accepted his claim for contusion to the left posterior thigh and left hip, "stiff" neck, low back sprain and contusion to the right elbow.

Appellant was also diagnosed with mechanical back syndrome and probable facet joint disease. Dr. Charles D. Ray, a consulting neurosurgeon, reported the following on February 21, 1979: "Because of the mechanical nature of the patient's back problem, that is, it seems to hurt him particularly in certain postures and in certain motions, we feel that his difficulty really lies in disorder of his facet joints in the lumbar region. This is very likely related to the accident which he had." Dr. Ray noted the possibility in the near future of doing a denervation of the facet joints in the back.

The Office asked its medical adviser whether appellant's complaints of back pain were causally related to the injury on November 30, 1978. On June 1, 1979 the medical adviser noted concurrent conditions of hypertrophic changes in the lumbar and thoracic spines. He observed:

"Since there is no report of hypertrophic changes in the original x-rays, the question arises as to whether or not arthritis was present at that time. But it probably was. Arthritis is present long before bony changes can be detected.

"As I reconstruct this case, claimant was injured by trauma to the leg, elbow and spine. In addition to the distress any person would suffer under the circumstances, the previously present and known or unknown arthritis was

‘stirred up.’ The question now arises as to when the effects of trauma cease and the pain of arthritis takes over. Impossible to answer.

“Since the back has caused trouble since the trauma and since we have no cut-off date for the backache it is incumbent on us to authorize treatment at the Sister Kenny foundation. If, in the opinion of the Kenny Institute, the backache is now due to arthritis, then after due notification, treatment should no longer be at [f]ederal expense.”

On or after June 1, 1979 the Office expanded its acceptance of appellant’s claim to include mechanical facet disease.

The Office authorized appellant’s hospitalization at the Sister Kenny Institute on August 2, 1979 for a radio frequency percutaneous coagulation of facet nerve procedure. Appellant’s discharge diagnoses were lumbar degenerative disc disease, mechanical back syndrome and probable facet joint disease.

In subsequent reports, Dr. Ray indicated that these diagnoses were due to the November 30, 1978 employment injury. On December 4, 1979 Dr. Ray described appellant’s work limitations.

In a decision dated May 7, 1980, the Office reduced appellant’s compensation for wage loss to reflect his capacity to earn wages as a telephone solicitor.

Dr. Ray referred appellant back to the local physician, Dr. Myron G. Anderson, who reported the following on July 28, 1982:

“[Appellant] does have a work-related disability. He was injured on November 30, 1978 when he fell backwards over a good deal of Air Force equipment. He was at that time employed by the Air Force Civilian Service. The patient has had disabling pain since the date of the injury. The patient has had very extensive physiotherapy, both at the Air Force Clinic in Minneapolis and at the Sister Kenny Institute in Minneapolis. He has had percutaneous radio frequency facet denervation with poor results. The patient has a great deal of pain with nearly any activity and difficulty in sleeping. The patient impresses me as not being a functional nor hypochondriacal patient. I believe he has true distress and I believe at this time he is not capable of any gainful physical activity. Lumbosacral spine x-rays were taken and a moderate amount of osteoarthritis of the fourth and fifth lumbar vertebra[e] is noted. The objective findings on the x-rays are not marked enough to be the primary cause of his disability.”

The Office asked another medical adviser whether the condition or disability reported by Dr. Anderson was precipitated, accelerated, aggravated or proximately caused by the accepted injury or conditions of employment. On August 10, 1982 the medical adviser expressed doubt as to causal relationship but recommended a referral to determine the causal relationship of any objective work-related condition.

The Office referred appellant, together with the case record and a statement of accepted facts, to Dr. John A. Dowdle, Jr., a Board-certified orthopedic surgeon. The Office asked Dr. Dowdle whether appellant's current condition was causally related to the employment incident of November 30, 1978 and whether appellant had recovered from the effects of the employment incident.

On May 17, 1983 Dr. Dowdle related appellant's history of injury, symptoms and findings on physical examination. He noted that x-rays revealed multiple levels of degenerative changes in the lumbar spine. Dr. Dowdle diagnosed degenerative spondylosis of the lumbar spine, calcification of the abdominal aorta and early osteoarthritis right hip. He saw no need for further medical or chiropractic treatment and described appellant's work limitations.

Dr. Dowdle continued to see appellant for repeat evaluations. On March 18, 1985 he noted appellant's restricted range of motion with discomfort. Dr. Dowdle diagnosed degenerative spondylosis of the lumbar spine and status post subacromial bursitis, right shoulder. On the issue of causal relationship he stated: "Assuming the patient's history to be correct, his current symptom levels particularly with forward bending are related to his work injury sustained in November 1978."

On May 29, 1986 the Office requested that Dr. Dowdle submit a narrative report including his opinion, supported by medical reasoning, on the relationship of the diagnosed condition to the employment injury. Dr. Dowdle advised that he had already furnished the Office with that information and indirectly referenced his report of March 18, 1985.

Dr. Dowdle continued to see appellant for repeat evaluations. On April 21, 1986 he reported that his examination of appellant and x-rays gave objective findings of a mechanical low back pain secondary to degenerative disc disease of the lumbar spine. Dr. Dowdle did not think further treatment was necessary other than job modification to allow appellant to live within his restrictions.

On April 20, 1987 Dr. Dowdle reported:

"It is my opinion that this patient is not capable of sitting on a full[-]time basis and would only be capable of sitting on a two to three hour a day basis. At that point he would have to be up and moving about. There is no change in his present status compared to previously. He continues to have substantial mechanical lower back pain with restricted range of motion."

On July 7, 1987 Dr. Dowdle reported:

"He is seen for his back. I have discussed with him his current work status and also his previous office visit of April 20, 1987. At that point it was my opinion that the patient was not capable of working on a full[-]time basis sitting and would be capable of sitting one to two to three hours at a time on a daily basis. He worked on a part[-]time basis beginning in January 1987 and has told me that he was unable to continue this work and applied for a medical retirement on January 8, 1987. He was seen April 20, 1987 and had continued mechanical back

pain with restricted range of motion. This was a result of an injury in November 1978. I have not and did not at the time recommend full[-]time employment.

“He has continued ongoing medical problems relative to his back. I am not recommending any further treatment at this time and we will plan to see him back as necessary.”

On March 23, 1993 Dr. Dowdle diagnosed: (1) mechanical low back pain secondary to degenerative disc disease, multiple levels lumbar spine, chronic; (2) mechanical neck pain secondary to degenerative disc disease, cervical spine, chronic; (3) degenerative acromioclavicular joints, bilaterally, with shoulder pain related to those joints. He reported:

“At this point, I am not recommending any further care or treatment. His back condition is related to his employment and relative to the injury in 1979. At this point, it is my opinion that the patient is unable to do sustained gainful employment because of the necessity to be moving about and changing positions, and laying down on occasion. It is my opinion the patient is permanently and totally disabled.”

Dr. Dowdle reported thereafter, that appellant’s condition was injury related and that he remained permanently and totally disabled.

On April 22, 1997 the Office asked Dr. Dowdle the following: “Is [appellant’s] current condition a result of the contusions and sprain from 1978, or are his current complaints a result of his nonwork-related underlying degenerative disc changes and acromioclavicular joint changes, and/or the natural aging process? Please provide the detailed medical basis for your opinion.” Dr. Dowdle responded on May 9, 1997:

“[Appellant] continues to be under my care. [Appellant] sustained a number of injuries on November 30, 1978, including an injury to the left posterior thigh, left hip, neck and low back, and also a contusion to his right elbow. He continues to have signs and symptoms that are consistent with those conditions, in that he has stiffness in the neck. He has decreased range of motion, stiffness, degenerative changes in the back and neck that are objective and show this to be a continued ongoing disease process.

“The original contusion and sprain have left a permanent residual in that he continues to have mechanical symptoms with his back and neck that have persisted. It is my opinion that his current condition is the result of the contusion that occurred in 1978, and which aggravated the underlying degenerative changes and made those worse on a permanent basis. He also has some acromioclavicular joint changes.”

On March 1, 2000 appellant advised that he was seeking compensation for total disability effective to when he became “permanently and totally” disabled due to his employment injury. The Office advised him to file a claim of recurrence and to have his doctor address exactly how the accepted contusions and sprain had worsened to the point that he was totally disabled.

On April 19, 2000 Dr. Dowdle reported:

“[Appellant] was seen in the office today for follow-up. He is a long[-]standing patient of mine. He has no new injuries. He continues to be unable to work due to his previous back problem. He has been off of work since 1998 and still has a good deal of mechanical back symptoms. He has degenerative changes in his back with restricted range of motion, problems in his right knee and he has bilateral shoulder pain and acromioclavicular joint problems.

“He has objective findings including restricted range of motion of his neck and degenerative changes on his scan. He also has degenerative changes in his neck and also on the plain film x-rays of the shoulders. He is unable to sit or stand for any length of time and he is unable to perform his regular job. He still is taking anti-inflammatory medicines and is restricting his activities. His medical condition has n[o]t changed. He continues to be unable to do any sustained gainful employment. That has been my opinion for years. His current condition is the result of his contusion that occurred in 1978 which aggravated his underlying degenerative changes and made those worse on a permanent basis. At this point I am not anticipating any further care or treatment.”

The Office advised appellant that Dr. Dowdle did not provide a complete explanation of his opinion that appellant was disabled as a result of a worsening of his work-related condition.

On December 19, 2000 appellant alleged that he sustained a recurrence of disability in 1993 as a result of his November 30, 1978 employment injury. The medical evidence, he asserted, had worsened and now precluded any employment, including that of telephone solicitor.

The Office advised appellant that he must submit medical evidence that his work-related conditions had worsened from March 1993 so that he could no longer perform the requirements of the job of telephone solicitor: “Your doctor must explain exactly and with objective evidence how these conditions worsened to the point where you are totally disabled. His report should include results of any tests performed since 1993.”

Appellant submitted copies of Dr. Dowdle’s previous reports.

In a decision dated May 7, 2001, the Office denied appellant’s claim of recurrence. The Office found that the medical evidence appellant submitted in support of his claim duplicated evidence already in the file and did not explain how his work activities were causally related to the worsening of his back conditions. The Office found that the evidence was insufficient to establish that appellant sustained a material and spontaneous worsening of his work-related condition resulting in total disability from all work beginning in 1993, as alleged.

On May 7, 2001 the Office received an April 25, 2001 report from Dr. Dowdle, who reported that appellant continued to need to change positions with sitting and standing so that he

is not in any one position for any period of time: “This is a consistent finding since last seen in 1993.” Dr. Dowdle added:

“My opinion give in 1993 was that he was unable to sustain gainful employment, and I am still of that same opinion. There is some question about him being a telephone solicitor which would require him to be in one position beyond his limitations, and it is my opinion that this job is inappropriate due to his neck and low back condition. It continues to be my opinion that he is permanently and totally disabled and unable to sustain gainful employment because of the restrictions in his physical abilities and the need for changing positions. His medical condition has continued to worsen as he has more restrictions as far as movement is concerned in his neck and low back than was previously seen in 1993. He has a well[-]known degenerative disc condition that ... certainly does not improve and will worsen over time.”

On May 14, 2001 appellant requested reconsideration. He sent another copy of Dr. Dowdle’s report.

The Office reviewed the merits of appellant’s claim and, in a decision dated August 16, 2001, denied modification of its May 7, 2001 decision. The Office found that Dr. Dowdle offered nothing new in his April 25, 2001 report, except to say that appellant’s condition had continued to worsen because of age and that he had knee surgery: “He did not explain how your current condition was related to your prior injury. He did not explain how your degenerative disc disease and arthritis were related to your accepted back and neck strains. He did not provide analysis of how and why working as a telephone operat[or] would require you to be in one position. Nor did he explain what he meant by ‘one position.’” The Office denied appellant’s claim because he failed to establish a causal relationship between his disability and the accepted work-related injury.

On November 6, 2001 appellant requested reconsideration and submitted an October 23, 2001 report from Dr. Dowdle, who stated:

“This gentleman had an injury in 1978. He became symptomatic with his neck and low back. That has persisted since that time. It is my opinion that was a permanent aggravation of his neck and low back. With further testing it has been shown that he has degenerative disc disease in his neck and low back. It is unclear as to whether that is causally related to the 1978 injury specifically and whether the 1978 injury actually caused the disc degeneration in his neck or low back or whether in fact this was an aggravation of an underlying preexisting condition to his neck and low back. Subsequent to the injury November 30, 1978 he has had persistent ongoing symptoms to his neck and low back which decrease his range of motion and decrease his abilities to function. It is my opinion that based on the 1978 injury that he aggravated his neck and low back and has had a permanent ongoing medical condition with care and treatment for that condition subsequent to that date.

“I have also taken him off the telephone operator solicitor job and I have talked about having him avoid prolonged single position type activities. It is my experience with [appellant] he is able to sit or stand for 5 [to]10 minutes at a time and then he needs to change positions. Any type of job activities would have to have the ability to alter those positions every 5 to 10 minutes and at some point within an hour or so he would have to lay down because of the persistent symptoms in his neck and low back. It is my opinion this [sic] has not sustained gainful employment and I took him off of work because I did not believe he was capable to doing sustained gainful employment because of his neck and low back condition. That removal from work activities was in 1993.

“There is a notation about whether I did not explain what ‘one position’ is. That is generally either sitting or standing for a prolonged period of time, 10 minutes or so and then with necessitating the change in position. He would not be capable of doing a job where he would be on a [tele]phone in a sitting position for a prolonged period of time as I have indicated above.

“It is my opinion that his current neck and low back condition is in part related to age[-]related changes in those areas with degenerative disc disease and again this is either causally related to the 1978 injury or permanently aggravated by the 1978 injury of an underlying condition.”

In a decision dated January 25, 2002, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. The Office found that the medical evidence lacked a well-rationalized and reasoned medical opinion to support that appellant’s condition materially worsened to cause him to be totally disabled in 1993 as a result of the 1978 injury. The Office found Dr. Dowdle’s statements to be equivocal and found that he failed to provide medical reasons on how the work injury caused or aggravated appellant’s degenerative disc disease to cause the disability claimed. The Office also found that Dr. Dowdle failed to discuss appellant’s other nonwork-related conditions and the role they played in his disability from all gainful employment.

On February 21, 2002 appellant requested reconsideration and submitted a January 30, 2002 report from Dr. Dowdle, who stated:

“[Appellant] is seen back. His medical condition is unchanged from previously. He still has mechanical back pain secondary to degenerative disc disease at multiple levels. He also has neck pain. This has been going on for a long time. I have seen him for over 10 years now. In 1993, based on his degenerative disc changes in his low back and also his neck acromioclavicular joints bilaterally I placed him on permanent and total disability. I continue to be of that opinion. The reason he is permanently and totally disabled is because of the employment activities relative to an injury in 1979. Since 1993 he has been unable to function, unable to go back to work because of this work injury in 1979. At this point his exam[ination] is unchanged. He still has restricted range of motion of his neck and low back and still has significant limitations in his daily activities due to his back and neck problems, also bilateral shoulder pain.

“At this point I am not anticipating any further care or treatment. He is nearly 80 years old and it is my opinion he is unable to return back to gainful employment based on his work-related injury in 1979 and he has been permanently and totally disabled.”

In a decision dated May 29, 2002, the Office denied appellant’s request for reconsideration on the grounds that the evidence submitted in support thereof was cumulative and insufficient to warrant a review of the prior decision.

The Board finds that this case is not in posture for decision. Further development of the medical opinion evidence is warranted on whether appellant’s disabling degenerative disc condition is causally related to his November 30, 1978 employment injury.

A claimant seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of proof to establish the essential elements of his claim by the weight of the evidence,² including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.³

The Office accepts that appellant sustained an injury in the performance of duty on November 30, 1978. The Office accepted appellant’s claim for contusion to the left posterior thigh and left hip, “stiff” neck, low back sprain and contusion to the right elbow. The Office also accepted his claim for “mechanical facet disease.”⁴ The question for determination is whether appellant’s disabling degenerative disc disease is causally related to his November 30, 1978 employment injury.

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant’s employment injury and must explain from a medical perspective how the current condition is related to the injury.⁵

The medical opinion evidence in this case generally supports causal relationship. When the Office first developed the issue in 1979, its medical adviser reported that hypertrophic changes in the lumbar and thoracic spines were probably present at the time of the original x-rays because arthritis is present long before bony changes can be detected. Noting that appellant was injured by trauma to the leg, elbow and spine, the medical adviser concluded that appellant’s

¹ 5 U.S.C. §§ 8101-8193.

² *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ As appellant was diagnosed with mechanical back syndrome and probable facet joint disease, it appears the Office accepted these two conditions under one label.

⁵ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

arthritis was “stirred up.” Further, because appellant’s back had caused trouble since the trauma and because “we have no cut-off date for the backache,” the medical adviser reported that it was incumbent on the Office to authorize treatment at the Sister Kenny Institute.

The Office subsequently authorized hospitalization at the institute. Appellant’s discharge diagnoses included lumbar degenerative disc disease. Appellant’s local physician, Dr. Anderson, reported on July 28, 1982 that lumbosacral x-rays showed a moderate amount of osteoarthritis of the fourth and fifth lumbar vertebrae, but he noted that the objective findings on the x-rays “are not marked enough to be the primary cause of his disability.”

The Office further developed the issue of causal relationship by asking a second medical adviser whether the condition or disability reported by Dr. Anderson was precipitated, accelerated, aggravated or proximately caused by the accepted injury or conditions of employment. The medical adviser expressed doubt as to causal relationship and this doubt stands as the only medical opinion on causal relationship that is not supportive of appellant’s claim. The medical adviser recommended, however, that the Office obtain a second opinion on the issue of causal relationship.

The Office referred appellant to Dr. Dowdle for a second opinion. Although the Office asked Dr. Dowdle whether appellant’s current condition was causally related to the employment incident of November 30, 1978, he did not address the issue in his May 17, 1983 report and the Office did not seek a supplemental report. Appellant continued to see Dr. Dowdle for follow-up examinations. On March 18, 1985 he addressed the issue of causal relationship for the first time: “Assuming the patient’s history to be correct, his current symptom levels particularly with forward bending are related to his work injury sustained in November 1978.”

Dr. Dowdle thereafter reported that appellant’s November 30, 1978 employment injury had permanently aggravated, if not precipitated, appellant’s degenerative disc disease, which worsened to the point in 1993 that he was permanently and totally disabled for gainful employment, including employment as a telephone solicitor.

The Office has denied compensation for total disability on the grounds that Dr. Dowdle has not provided sufficient medical reasoning to establish that the work injury of November 30, 1978 caused or aggravated appellant’s disabling degenerative disc disease. Indeed, the medical opinion evidence does not soundly distinguish an injury-related aggravation versus the natural progression of an underlying disease process. Statements that the trauma “stirred up” appellant’s existing arthritis or that his current symptom levels are related to his work injury or that appellant continues to have mechanical symptoms with his back and neck that have persisted, appear to offer little if any medical basis for concluding that a causal relationship exists. Dr. Dowdle has offered no real explanation of the pathophysiologic process that he believes took place and he has pointed to no medical evidence demonstrating to a reasonable medical certainty that such a process actually occurred in appellant’s case.

Although the evidence in this case does not discharge appellant's burden of proof, the Board finds that it is sufficiently supportive of his claim that further development is warranted.⁶ Given appellant's continuous back complaints, the consistency of medical opinion supporting his claim and the absence of any other noted trauma, the Board finds that the record raises an uncontroverted inference of causal relationship. On remand the Office should obtain a well-reasoned medical opinion on whether the incident that occurred on November 30, 1978 caused or aggravated appellant's degenerative disc disease, and if so, whether and when the disease disabled appellant for the position of telephone solicitor. A detailed description of what occurred on November 30, 1978 is crucial to an informed opinion, as are appellant's complaints, findings, and diagnoses thereafter and a full description of the physical requirements of the position of telephone solicitor. Following such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim for compensation for total disability.

The January 25, 2002 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.⁷

Dated, Washington, DC
February 19, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁶ See *John J. Carlone*, 41 ECAB 345, 358 (1989) (finding that the medical evidence was not sufficient to discharge the claimant's burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship).

⁷ The Board's disposition of the causal relationship issue renders the Office's May 29, 2002 denial of a merit review moot.