

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLIFFORD D. MAHALA and U.S. POSTAL SERVICE,
POST OFFICE, Kennett Square, PA

*Docket No. 03-1054; Submitted on the Record;
Issued November 13, 2003*

DECISION and ORDER

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

The issue is whether appellant established that his cervical condition is causally related to his November 27, 1995 work-related injuries.

The Office of Workers' Compensation Programs accepted appellant's November 27, 1995 claim for a left shoulder and left cervical sprain/strain.

On April 20, 2000 appellant filed an occupational disease claim, alleging that his November 27, 1995 neck injury remained symptomatic with pain. By decision dated June 19, 2000, the Office denied appellant's claim. Following appellant's request, a hearing was held on January 23, 2001 at which time appellant submitted a July 18, 2000 report from Dr. H. Keith Weiss, an osteopathic physician. By decision dated April 13, 2001, an Office hearing representative remanded the case to the Office for referral to a second opinion physician to determine whether appellant's neck condition was causally related to his employment injury.

On May 10, 2001 the Office referred appellant, together with a statement of accepted facts, a set of questions and the medical record for a second opinion evaluation.¹ In a report dated June 7, 2001, Dr. Steven J. Valentino, an osteopathic physician, advised that appellant's cervical sprain had resolved and that he could return to work without limitation.

By decision dated July 16, 2001, the Office denied appellant's claim that his current cervical sprain was causally related to his November 27, 1995 injury. Appellant, through counsel, again requested a hearing. By decision dated November 23, 2001, an Office hearing representative remanded the case to the Office to obtain a supplemental report from the second opinion physician to address whether appellant's cervical sprain condition was "in any way related to his duties over time as described in the statement of accepted facts."

¹ The statement of accepted facts noted that appellant has degenerative disc disease and arthritis.

In a letter dated December 12, 2001, the Office referred appellant back to Dr. Valentino to determine whether his degenerative condition was in any way related to his work duties over time.

In a report dated January 10, 2002, Dr. Valentino advised that he had examined appellant on that date. He noted the history of the November 27, 1995 employment injury and his review of the medical records. Dr. Valentino stated that appellant had recovered from his work injury without residuals and without need for continuing care. He noted that appellant's degenerative disc disease was not causally related to the work-related injury because appellant's records revealed no evidence of a neurological deficit and his recent electromyogram (EMG) showed no evidence of cervical radiculopathy.

By decision dated January 17, 2002, the Office denied appellant's claim. On January 23, 2002 appellant, through counsel, requested an oral hearing and submitted a December 3, 2001 report from Dr. Marc P. Oliveri, an osteopathic physician. A hearing was held on August 28, 2002 and appellant subsequently submitted a report dated September 17, 2002 from Dr. Oliveri.

In a decision dated December 9, 2002, an Office hearing representative affirmed the January 17, 2002 decision denying appellant's claim for compensation.

The Board finds that appellant has not established that his continuing cervical condition is causally related to his employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition was causally related to the employment factors identified by the claimant.²

The medical evidence required to establish a causal relationship generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between 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 factors identified by claimant.³

In a report dated July 18, 2000, Dr. Weiss stated that appellant was treated on June 29, 1999 for left shoulder and neck pain which appellant advised was based on a November 27, 1995

² *Donna L. Mims*, 53 ECAB ____ (Docket No. 01-1835, issued August 13, 2002).

³ *Allen C. Hundley*, 53 ECAB ____ (Docket No: 02-107, issued May 17, 2002).

work-related injury. He noted that a 1999 magnetic resonance imaging (MRI) scan revealed a disc bulge at C5-6 and degenerative disc disease. Dr. Weiss noted that appellant did not comply with an orthopedic evaluation that he had scheduled, although he ultimately returned for treatment in February 2000. With respect to the causal relationship of appellant's condition and his employment, Dr. Weiss advised that "more than likely" appellant's disc bulge was caused by the 1995 work-related injury. He diagnosed chronic cervical pain, C6-7 cervical disc bulge and a narrowing of the C6-7 disc space without frank herniation. Dr. Weiss recommended an orthopedic referral, sedentary work, rigorous physical therapy, pain medication and better compliance with recommended treatment. Dr. Weiss' opinion on causal relationship is of diminished probative value because it was based on an MRI scan taken almost four years after appellant's 1995 injury. He did not provide a rational explanation explaining how the November 1995 shoulder and cervical strain and sprain would continue for four years during which time appellant was returned to duty.⁴

In his December 3, 2001 report, Dr. Oliveri advised that he initially treated appellant on January 23, 1998 for left-sided pain. He noted that appellant's 1999 MRI scan and EMG revealed a left-sided cervical disc protrusion at C6-7 and mild carpal tunnel syndrome. Dr. Oliveri opined that appellant required a new cervical spine MRI scan and a new EMG of the upper extremities. He advised that appellant's prognosis was not excellent in that he had been working for the past several years and remained symptomatic with pain in the neck and left upper extremity. Dr. Oliveri noted that appellant's left-sided cervical protrusion, cervical disc disease and carpal tunnel syndrome "can contribute to both neck pain and upper extremity radicular pain." He further advised that appellant's November 1995 work-related injury could have "significantly contributed to his ongoing problem." In his September 17, 2002 report, Dr. Oliveri advised that appellant's 1999 MRI scan revealed a slap-sided cervical disc herniation and left-sided carpal tunnel syndrome which was more than a cervical sprain/strain. However, Dr. Oliveri's reports fail to establish a causal relationship between appellant's current medical condition and the 1995 work-related injury. Dr. Oliveri merely speculated that, since appellant related pain since his 1995 work-related injury, it could have been caused by disc protrusions at C5-6. The Board has long held that, although the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁵ Dr. Oliveri offered no explanation for why appellant's cervical disc, observed on a 1999 MRI scan, was causally related to a 1995 sprain/strain. In this instance, appellant failed to submit rationalized medical opinion evidence establishing a causal relationship between his November 1995 employment injury and his claimed cervical sprain.

In a June 7, 2001 report, Dr. Valentino, the Office's second opinion physician, advised that he was familiar with appellant's history of injury and noted findings. He noted that appellant's 1995 left shoulder x-ray was normal and that a 1995 cervical x-ray revealed chronic, early and longstanding degenerative changes. Dr. Valentino noted a November 11, 1996 report from Dr. Pushkarewicz that appellant had full range of motion of the neck and shoulders with a

⁴ In a report dated March 11, 1996, Dr. Michael J. Pushkarewicz, appellant's treating physician, released him to return to full-time duty.

⁵ *Ricky S. Storms*, 52 ECAB 349 (2001).

normal neurological examination and that appellant was released to return to full duty. Appellant's August 13, 1999 MRI revealed no spinal cord impingement and no disc herniation, although some degenerative changes were noted. Dr. Valentino advised that the October 29, 1999 computerized tomography scan revealed protrusions at C5-6 and C6-7. Upon examination, he found a normal spinal examination and indicated that appellant had a full range of motion throughout all aspects of his spine. Dr. Valentino also reported normal neurological and sensory examinations with no evidence of myelopathy. Dr. Valentino advised that appellant's degenerative cervical changes were not caused by the work-related injury. Dr. Valentino found that appellant had reached maximum medical improvement and that he could return to work in a light-duty capacity followed by a return to full duty. In an attached work capacity evaluation, he advised that appellant could work eight hours per day with no limitations as a result of the November 27, 1995 employment injury. In a January 10, 2002 supplemental report, Dr. Valentino repeated his earlier findings and advised that appellant had recovered from his work-related injuries. He added that appellant's degenerative condition was not related to his work duties over time because his medical history revealed no evidence of a neurological deficit. Dr. Valentino added that a June 30, 1999 EMG revealed no evidence of cervical radiculopathy.

In assessing medical evidence, the Board has stated:

"[T]he weight of such evidence is determined by its reliability, its probative value, its convincing quality. The opportunity for and thoroughness for examination, the accuracy and completeness of the doctor's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the doctor's opinion are factors which enter into such evaluation."⁶

Dr. Valentino's reports are based upon a complete and accurate history of injury, medical and work history. He carefully evaluated the diagnostic evidence of record and appellant's physical examination findings and thereafter explained his conclusions that appellant no longer had any objective findings relative to the accepted employment injury or to other factors of his employment. Dr. Valentino concluded that appellant had no residuals of his left shoulder and left cervical sprain/strain and that his current condition was not related to his work-related injury. The Board concludes that the report of Dr. Valentino is reliable, probative and convincing and constitutes the weight of the medical evidence.

⁶ *Joan F. Burke*, 54 ECAB ____ (Docket No. 01-39, issued February 14, 2003).

The decision of the Office of Workers' Compensation Programs dated December 9, 2002 is affirmed.

Dated, Washington, DC
November 13, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member