

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARYL W. HICKS and U.S. POSTAL SERVICE,
POST OFFICE, New Britain, CT

*Docket No. 03-1561; Submitted on the Record;
Issued September 10, 2003*

DECISION and ORDER

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

The issue is whether appellant sustained a cervical condition or a recurrence of disability on October 31, 2001 causally related to his January 10, 1994 employment injury.

On January 10, 1994 appellant, then a 31-year-old letter carrier, filed a traumatic injury claim alleging that he sustained a right shoulder injury while trying to close the door of his mail truck. His claim was accepted for a right shoulder strain and subsequent arthroscopy and decompression of the right shoulder. Appellant sustained a recurrence of disability on October 7, 1994 and underwent further shoulder surgery.¹

By decision dated October 27, 1997, the Office of Workers' Compensation Programs denied authorization for cervical spine surgery on the grounds that the evidence of record failed to establish that appellant's cervical condition was causally related to his January 10, 1994 employment injury.

On December 4, 2001 appellant filed a claim for a recurrence of disability on October 31, 2001. He indicated that he had been experiencing discomfort in his shoulder, arm and hand.

By decision dated March 22, 2002, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that he sustained a recurrence of disability on October 31, 2001 causally related to his January 10, 1994 employment injury. The Office again found that appellant had not established a cervical condition causally related to the January 10, 1994 employment injury.

Appellant requested a hearing and submitted additional evidence. A hearing was held on November 21, 2002 at which time appellant testified.

¹ The Office also accepted appellant's claim for right carpal tunnel syndrome sustained on February 25, 1999 and the cases were consolidated.

By decision dated February 19, 2003, an Office hearing representative affirmed the Office's March 22, 2002 decision.

The Board finds that appellant failed to establish that he sustained a cervical condition or a recurrence of disability on October 31, 2001 causally related to his January 10, 1994 employment injury.

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 disability for which compensation is claimed is causally related to the accepted injury.² This burden includes the necessity of 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 supports that conclusion with sound medical rationale.³

The accepted injury with respect to the January 10, 1994 employment incident is a right shoulder strain and subsequent surgery. Appellant filed a notice of recurrence of disability as of October 31, 2001. He also claimed that, in addition to the right shoulder injury, he sustained a cervical injury causally related to his federal employment. The Office has not accepted a cervical condition, and it is appellant's burden of proof to establish causal relationship. In order to establish causal relationship, a physician's opinion must be based on a complete factual and medical background, 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 activities.⁴ An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁵

The record shows that, at the time of appellant's January 10, 1994 employment-related right shoulder strain, he did not report any cervical problems to his physicians, nor did he claim any cervical problems when he filed his claims for a recurrence of disability on October 7, 1994 and October 31, 2001. The record shows that appellant first reported cervical symptoms on March 13, 1997 when he was examined by Dr. Richard L. Froeb who stated that appellant was having pain and discomfort in his neck and right shoulder, arm and hand. Dr. Froeb provided findings on examination and indicated his belief that appellant had a cervical disc syndrome.⁶ He did not opine as to the cause of the cervical condition.

² *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

³ *Lourdes Davila*, 45 ECAB 139 (1993); *Mary S. Brock*, 40 ECAB 461 (1989).

⁴ *Gary L. Fowler*, 45 ECAB 365 (1994).

⁵ *Walter D. Morehead*, 31 ECAB 188 (1979).

⁶ An April 11, 1997 magnetic resonance imaging (MRI) scan indicated a herniated disc at C4-5.

In a report dated April 30, 1997, Dr. Joseph Aferzon, appellant's attending neurosurgeon, stated that he had right shoulder and arm pain exacerbated with extension of the neck and rotation toward the right side. In notes dated December 3, 2001, Dr. Aferzon stated that a November 27, 2001 MRI scan⁷ revealed a herniated disc at L4-5. He recommended an anterior cervical discectomy and fusion. However, Dr. Aferzon did not explain how appellant's cervical condition was causally related to his January 10, 1994 employment injury, nor did he provide an opinion that appellant was disabled as of October 31, 2001 due to an accepted employment injury.

Dr. Aferzon diagnosed a herniated cervical disc in duty status reports dated December 11, 2001 and January 31, 2002 and indicated by checking the block marked "yes" that the condition was causally related to appellant's January 10, 1994 employment injury. However, the Board has held that an opinion on causal relationship which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.⁸ Without any explanation or rationale, such a report is insufficient to establish causal relationship.⁹ Therefore, these reports from Dr. Aferzon are not sufficient to establish that appellant sustained a cervical condition or a recurrence of disability on October 31, 2001 causally related to his January 10, 1994 employment injury.

Dr. Aferzon indicated in notes dated April 25, 2002 that he was aware when he saw appellant on April 30, 1997 that he had no cervical symptoms at the time of his 1994 employment injury. He stated:

"My feeling in 1997 was that the symptoms were from nerve impingement, and my opinion at that time was that [appellant's] report of his symptoms was consistent ever since his accident in 1994, and I felt that clearly his arm pain was related to a work injury of 1994.

"I still maintain that [appellant's] cervical pain and radicular nature of his symptoms are clearly related to the accident of 1994 based on the information available to me...."

However, Dr. Aferzon did not provide sufficient medical rationale explaining why he believed that appellant's cervical condition, first reported in 1997, was causally related to the January 10, 1994 employment injury. Such rationale is particularly important in light of the fact that appellant did not report any cervical problems between January 10, 1994 and March 13, 1997. As appellant did not provide a rationalized medical report explaining how his cervical condition or his October 31, 2001 recurrence of disability were causally related to his January 10, 1994 employment injury, he did not meet his burden of proof.

⁷ It appears that the November 27, 2001 MRI scan is not of record.

⁸ *Debra S. King*, 44 ECAB 203 (1992); *Donald W. Long*, 41 ECAB 142 (1989).

⁹ *Id.*

The Board notes that an Office referral physician and an Office medical adviser found no causal relationship between appellant's January 10, 1994 employment injury and his cervical condition in 1997 and claimed recurrence of disability on October 31, 2001.

In a report dated October 6, 1997, Dr. William H. Druckemiller, a neurosurgeon and an Office referral physician, provided a history of appellant's condition and findings on examination and stated his opinion that appellant's cervical condition was not causally related to his January 10, 1994 employment injury.

In a memorandum dated March 15, 2002, Dr. Barry W. Levine, an Office district medical adviser, noted that there was no evidence at the time of appellant's January 10, 1994 employment injury that he had a neck injury and that his neck pain began spontaneously in 1997. Dr. Levine stated:

“[T]here is no evidence in the medical record that the cervical disc problem is related to a work injury. It is not unusual for cervical discs to spontaneously rupture. There is no evidence that the ... accepted injury to the right shoulder caused a cervical disc herniation. Also, there is no evidence that any significant cervical injury occurred on [October 31, 2001]. Unfortunately, [appellant] has idiopathic spontaneous rupture of several cervical discs. This has been an ongoing problem since 1997 and is unrelated to any work injury.”

As noted above, neither the fact that appellant's claimed cervical condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship. Appellant failed to submit rationalized medical evidence establishing that his cervical condition or his claimed recurrence of disability on October 31, 2001 were causally related to the accepted employment injury on January 10, 1994 and therefore the Office properly denied his claim for compensation.

The decision of the Office of Workers' Compensation Programs dated February 19, 2003 is affirmed.

Dated, Washington, DC
September 10, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member