



the driver's seat of his vehicle, he reached with both hands into the passenger's seat to get his briefcase.<sup>1</sup> Appellant did not stop work.

By letter dated May 22, 2003, the Office requested a detailed medical report from appellant's attending physician regarding the relationship between any diagnosed condition and factors of his federal employment.

In an authorization for examination and/or treatment (Form CA-16) dated May 19, 2003, Dr. Thomas W. Harris, an orthopedic surgeon and appellant's attending physician, listed the history of injury as appellant twisting his back while in the front seat of a car lifting a briefcase. He noted that appellant had a preexisting herniated nucleus pulposus (HNP) at L5-S1 and diagnosed an HNP at L5-S1 with radiculopathy. Dr. Harris checked "yes" that the condition was caused or aggravated by the described employment activity and found that appellant could resume his regular employment on May 19, 2003.

In a narrative report dated May 19, 2003, Dr. Harris described the history of injury on May 11, 2003 as follows:

"When asked how the injury or the accident occurred, [appellant] states, 'as I was preparing to exit patrol vehicle I turned to the passenger seat to lift up a briefcase. I returned to my office and removed my gun belt and as I sat I experienced a tingling and numbness on the entire left side of my body, from the left side of my face, left arm, left side, left leg, and into [my] left foot.'"

Dr. Harris noted that on March 25, 2002 appellant had undergone a left L5-S1 hemilaminectomy and microdiscectomy due to a January 23, 2002 back injury. On physical examination, he noted findings of tenderness to palpation of the left S1 joint. He diagnosed S1 radiculopathy and to rule out a cerebral vascular accident, a transient ischemic attack and a possible cerebral artery injury. Dr. Harris concluded, "The aforementioned injuries are a direct result of the accident which occurred on May 11, 2003, and [appellant's] description of the mechanism of the accident as well as the findings on physical examination are consistent with the injury."

In a report dated May 20, 2003, Dr. Isaac Bakst, a Board-certified neurologist, evaluated appellant at the request of Dr. Harris to determine whether appellant had experienced a stroke. Dr. Bakst related:

"[Appellant] was injured on May 11, 2003. He was getting out of his vehicle and was seated in the driver's seat and leaned over to pick up his heavy briefcase that weighed around 25 [to] 30 pounds. This contained ammunition, flashlights, and similar equipment. He lifted it from the passenger's side over his lap, and then got out of the vehicle. In so doing ..., he did not think that he suffered any injury. However, on getting

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<sup>1</sup> Appellant noted that he had sustained a prior employment injury on January 23, 2002 to the same area of his back, assigned Office File Number A13-2046578.

inside, he took off his gun belt which was particularly heavy, at which point he felt a tingling in the left side of his face which felt like novocaine, and a similar sensation involving the entire left side of his body....”

Dr. Bakst noted that appellant had surgery on his spine on March 25, 2002 and had continuing symptoms in his left lower extremity. Dr. Bakst diagnosed a possible stroke and recommended a magnetic resonance imaging (MRI) scan study of the brain. He stated:

“[Appellant] is a 53-year-old man who developed the sudden onset of left-sided numbness on May 11, 2003. Symptoms have subsided. Just prior to that, he was involved in a twisting motion lifting a heavy briefcase. This suggests the possibility that he might have suffered a cerebral artery dissection which resulted in stroke, or ischemial. Symptoms have resolved, and the present clinical examination is normal.”

In a report dated May 21, 2003, Dr. Harris noted that “it appears that Dr. Bakst did feel that [appellant] had some tearing of the cranial contents at the time of his industrial accident.” He noted that he would evaluate appellant after his MRI scan and found that he could continue working in his sedentary employment.<sup>2</sup>

By decision dated July 3, 2003, the Office denied appellant’s claim on the grounds that he did not establish that he sustained a medical condition causally related to the identified employment factors. The Office noted that it was unclear from Dr. Harris’ report whether his diagnosis of S1 radiculopathy was due to appellant’s May 11, 2003 employment injury or his preexisting back condition. The Office further noted that the MRI scan of appellant’s brain was normal and that the record did not contain evidence relating his lifting of his briefcase to the numbness along the left side of his body.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>3</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act<sup>4</sup> and that an injury was sustained in the performance of duty.<sup>5</sup> These are essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

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<sup>2</sup> An MRI scan of the brain, obtained on May 30, 2003, was essentially negative.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *Delores C. Ellyett*, 41 ECAB 992 (1990).

## ANALYSIS

In this case, the Office accepted that appellant was a federal employee who timely filed his claim for compensation benefits. The Office further accepted that the May 11, 2003 incident occurred at the time, place and in the manner alleged. The remaining issue is whether the medical evidence establishes that appellant sustained an injury causally related to the employment incident. In order to establish causal relationship between the diagnosed condition and the employment incident, appellant must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.<sup>7</sup>

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>8</sup>

In this case, in a report dated May 19, 2003, Dr. Harris diagnosed S1 radiculopathy and a possible cerebral vascular accident, transient ischemic attack or cerebral artery injury. He found that the diagnosed conditions were “a direct result” of the May 11, 2003 employment incident and that appellant’s “description of the mechanism of the accident as well as the findings on physical examination are consistent with the injury.” In a form report of the same date, Dr. Harris diagnosed an HNP with L5-S1 radiculopathy and checked “yes” that the condition was caused or aggravated by the described employment activity, twisting in the front seat of a car to get a briefcase. Dr. Harris evaluated appellant on May 21, 2003 and noted that Dr. Bakst, to whom he had referred appellant for a neurological examination, found that appellant “had some tearing of the cranial contents at the time of his industrial accident.”<sup>9</sup>

In his reports, the Board notes that Dr. Harris provided a consistent history of injury and related appellant’s conditions of either S1 radiculopathy or a cerebral vascular condition to the May 11, 2003 employment incident. He further opined that appellant’s depiction of the accident and his findings on physical examination supported an injury occurring as described. Although none of the reports from Dr. Harris contain an established diagnosis supported by rationale sufficient to discharge appellant’s burden of proving by the weight of the reliable, substantial and probative evidence that he sustained an injury in the performance of duty on May 11, 2003, the reports raise an inference of causal relationship sufficient to require further development by the Office.<sup>10</sup>

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<sup>7</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>8</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>9</sup> Dr. Harris based his findings on a discussion with appellant of Dr. Bakst’s report as he did not have the actual report for review. In a report dated May 20, 2003, Dr. Bakst diagnosed a possible stroke. He noted that appellant’s symptoms occurred just after he twisted to lift his briefcase and that he “might have suffered a cerebral artery dissection” as a result of the incident.

<sup>10</sup> *John J. Carlone*, 41 ECAB 354 (1989).

Additionally, there is no opposing medical evidence in the record. The case will therefore be remanded to the Office for further development of the medical evidence to determine whether appellant sustained an injury resulting from the May 11, 2003 incident, and if so, the exact diagnosis and the nature and extent of any disability resulting therefrom.

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 3, 2003 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: January 30, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member