

**United States Department of Labor
Employees' Compensation Appeals Board**

ANDREW L. AMARAL, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New Smyrna Beach, FL, Employer**

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**Docket No. 04-1786
Issued: November 4, 2004**

Appearances:
Ronald S. Webster, Esq., for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On July 6, 2004 appellant filed a timely appeal of an Office of Workers' Compensation Programs' decision dated May 19, 2004, finding that appellant had not established a back or neck condition as causally related to a January 23, 1998 employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of the claim.

ISSUE

The issue is whether appellant has established a cervical, lumbar or other condition as causally related to his January 23, 1998 employment injury.

FACTUAL HISTORY

The case was before the Board on a prior appeal with respect to this issue.¹ The salient facts are that the Office accepted a left shoulder contusion/strain when appellant fell over a

¹ Docket No. 01-907 (issued September 20, 2001).

telephone wire at work on January 23, 1998. Appellant worked light duty and then full duty as of January 30, 1998; he worked part time in March 1998 and stopped working April 14, 1999. Although the Office found that appellant was not entitled to wage-loss compensation due to the accepted injury, the Board found that evidence from Dr. Alyn Benezette, an osteopath, was sufficient to require further development. Dr. Benezette had opined that the January 23, 1998 injury had aggravated degenerative disc disease in the lumbar and cervical spine, with radiculopathy and upper extremity neuropathy. The case was remanded to the Office for further development of the evidence.

On remand the Office referred appellant to Dr. Perry W. Greene, an orthopedic surgeon. In a report dated January 16, 2002, Dr. Greene provided a history and results on examination. He noted that an April 1999 magnetic resonance imaging (MRI) showed marked degenerative changes in the cervical spine; he stated that there was no specific injury to account for these changes and the neck problem was caused by the natural aging process, not the January 23, 1998 injury. With respect to the back, Dr. Greene stated that there was no evidence of significant degenerative disc disease and any lower back problems were not related to the employment injury. Dr. Greene reported that most of appellant's problems at the present time were due to a peripheral neuropathy, but the latent period between the January 23, 1998 injury and the onset of neurological complaints suggested that the two were not related.

In a decision dated January 28, 2002, the Office determined that appellant did not establish any additional conditions as causally related to the January 23, 1998 injury. Appellant requested a hearing and submitted medical reports from Dr. Weiguo Zhao, a neurologist. In a report dated April 10, 2002, Dr. Zhao stated that he believed the beginning of appellant's symptoms were triggered by the employment injury.²

By decision dated February 13, 2003, the Office hearing representative set aside the January 28, 2002 Office decision. The hearing representative found that a conflict in the medical evidence existed between Dr. Zhao and Dr. Greene, and the Office was directed to resolve the conflict by referral to an impartial medical specialist.

The Office referred appellant, along with medical records and a statement of accepted facts, to Dr. Rodney K. McFarland, a Board-certified orthopedic surgeon. In a report dated April 17, 2003, Dr. McFarland provided a history, results on examination and review of medical records. With respect to numbness in the arms and legs, Dr. McFarland noted that appellant attributed this at least in part to Agent Orange exposure during military service. Dr. McFarland reviewed the contemporaneous medical evidence regarding the January 23, 1998 injury in detail and further stated:

“It would appear that reviewing the records in this manner, that [appellant] had a fall on his left shoulder in January of 1998, which resolved in the next few weeks and he was able to return to his regular duties. There was no evidence to suggest any significant neck injury at that time. By not significant, I mean that there was no record indicating such. A significant injury would be one that resulted in some

² The copy of the report in the record has illegible sections.

tissue injury such an anular tear, disruption of a facet joint capsule of a segment sufficient to cause some instability.”

* * *

“He then subsequently developed an acute back syndrome a month later which may have a radicular component and appears to have largely resolved. There is no suggestion that there was any low back component to the events of 23 January 1998.

“He also appears to have an incompletely defined peripheral neuropathy which developed about a year later. Many of his symptoms of pain, weakness, and numbness of the extremities could be explained by such a disorder, for which there does not appear to be a clear etiology, but may be related to toxic chemical exposure several years before.”

Dr. McFarland stated that the cervical degenerative changes were obviously of a chronic nature and too extensive to relate to a single event. He noted that degenerative disc disease is an ageing process that typically begins at age 20 in men.

By decision dated June 3, 2003, the Office determined that appellant had not established any additional conditions as causally related to the January 23, 1998 employment injury. The Office found that Dr. McFarland’s report represented the weight of the medical evidence.

Appellant requested a hearing before an Office hearing representative and a hearing was held on March 9, 2004. By decision dated May 19, 2004, an Office hearing representative affirmed the June 3, 2003 decision. The hearing representative found that Dr. McFarland represented the weight of the medical evidence.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act³ 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, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴

It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁵

³ 5 U.S.C. § 8101-8193.

⁴ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

ANALYSIS

There was a conflict in this case with respect to whether appellant had any additional conditions causally related to the January 23, 1998 injury. As the Board indicated in its prior decision, Dr. Benezette opined that appellant's lumbar radiculopathy, cervical degenerative changes, as well as a peripheral neuropathy, were causally related to the employment injury. In addition, Dr. Zhao opined that appellant's continuing symptoms were employment related. On the other hand, the second opinion orthopedic surgeon, Dr. Greene, opined that the lumbar, cervical and neurological conditions were not causally related to the employment injury. Section 8123(a) of the Act provides that, when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.⁶

The Office selected Dr. McFarland to resolve the conflict in the medical evidence. His April 17, 2003 report provided results on examination and reviewed the medical evidence in detail. Dr. McFarland noted that the January 23, 1998 injury involved the left shoulder and that appellant had returned to regular duties. He noted that appellant's back complaints began a month after the incident and he found no connection between a lumbar condition and the employment injury. With respect to the neck, Dr. McFarland noted the April 1999 MRI scan showed significant degenerative changes, and he found no evidence of a significant neck injury at the time of the injury. He opined that the degenerative cervical condition was causally related to the aging process and not to a single event. With respect to the peripheral neuropathy, Dr. McFarland did not find that it was causally related to the January 23, 1998 injury; he found it to be of uncertain etiology that could be related to chemical exposure during military service.

The Board finds that Dr. McFarland provided a reasoned medical opinion, based on a complete background, that neither the lumbar, cervical or neurological conditions were causally related to the employment injury. As an impartial medical specialist, his reasoned opinion is entitled to special weight and the Board finds that it constitutes the weight of the medical evidence in this case.

CONCLUSION

The conflict in the medical evidence was resolved by Dr. McFarland, who provided a reasoned opinion that appellant did not have a lumbar, cervical or neurological condition causally related to the January 23, 1998 employment injury.

⁶ *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 19, 2004 is affirmed.

Issued: November 4, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member