

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

VERNELL MASON, Appellant

and

**DEPARTMENT OF AGRICULTURE, FOOD
SAFETY & INSPECTION SERVICE,
Minneapolis, MN, Employer**

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**Docket No. 04-1016
Issued: September 28, 2004**

Appearances:
Vernell Mason, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 8, 2004 appellant filed a timely appeal from a December 5, 2003 decision of the Office of Workers' Compensation Programs which found that he had not established that he sustained an injury in the performance of duty on July 17, 2000. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on July 17, 2000, as alleged.

FACTUAL HISTORY

On July 27, 2000 appellant, then a 46-year-old inspector, filed a traumatic injury claim alleging that on July 17, 2000 he sustained an injury when a hydraulic line came off a workstation and struck the back of his neck and left shoulder. In support of his claim, appellant submitted a September 14, 2000 report from Dr. I-Wen Tseng, an osteopath, who recommended

that appellant be referred to a neurologist for an electromyogram and nerve conduction velocity study.

By letter dated September 26, 2000, the Office requested that appellant submit further medical reports which included a physician's opinion of the relationship between the work incident and the claimed conditions or disability. Appellant submitted notes from Dr. Tseng, dated July 26, 2000, addressing appellant's treatment on that date at the Southwest Mississippi Regional Medical Center. Appellant complained of an injury at work to the back of his neck the week before, and numbness in his left arm, headaches and blurry vision. In a July 26, 2000 report, Dr. Tseng noted that appellant had degenerative joint disease of the right shoulder, hypertension and a history of low back pain.

By decision dated October 30, 2000, the Office denied appellant's claim finding that the evidence did not include a rationalized medical opinion establishing that appellant's underlying/preexisting disease process was adversely affected by the July 17, 2000 incident.

On November 27, 2000, appellant requested an oral hearing, held on June 7, 2001. Appellant testified that he was injured on July 17, 2000 when a hydraulic hose struck him in the back of the neck. The hearing representative explained that appellant must submit a medical report from a physician relating appellant's condition to the July 17, 2000 incident.

In a medical report dated July 2, 2001, Dr. Tseng discussed appellant's injury, noting that he was hit by a hydraulic hose and had experienced increasing pain. When Dr. Tseng saw appellant on July 26, 2000, he had muscle spasms of the paracervical musculature, decreased range of motion of the cervical spine, numbness, paresthesia of the left arm, headaches and blurred vision. Dr. Tseng found that the symptoms were secondary to pain appellant experienced as a result of the injury. He recommended that appellant obtain additional testing. Dr. Tseng concluded that it was unlikely appellant would fully recover from the injury which would prevent him from continuing to work on a full-time basis.

In a September 17, 2001 decision, the hearing representative found that, although the evidence established that appellant experienced the work incident of July 17, 2000, the medical evidence was insufficient to establish a causal relationship between the incident and appellant's medical condition.

By letter dated October 9, 2001, appellant requested reconsideration. Appellant wrote another letter to the Office with regard to his case on September 9, 2003.

In a decision dated December 5, 2003, the Office denied modification, finding there was no rationalized medical evidence to establish that appellant had a medical condition causally related to the alleged work incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation of the Act, that an injury was sustained in the

performance of duty as alleged and that any disability and/or specific condition, for which compensation is claimed are causally related to the employment injury.¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.³ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁴

ANALYSIS

In this case, it is not disputed that on July 17, 2000 appellant was struck by a hose in the back of the neck and shoulder, but appellant has not submitted sufficient medical evidence to establish that he sustained injury as a result of this incident. Dr. Tseng indicated that appellant had degenerative joint disease of the right shoulder, hypertension and a history of low back pain. Although he noted appellant’s complaints of an injury at work the week before his July 26, 2000 examination, Dr. Tseng did not address the causal relationship of appellant’s condition to the work incident. On July 2, 2001 Dr. Tseng described the July 17, 2000 incident and noted that since that time appellant experienced pain. However, he failed to clearly explain how the accepted incident caused appellant’s condition. This report is insufficient to establish causal relationship. There are no other medical reports of record that address causal relationship. The Office properly denied appellant’s claim for compensation.

CONCLUSION

The Board finds that appellant failed to establish a causal relationship between the July 17, 2000 incident and any medical condition. The Office properly denied his claim.

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *See Tracey P. Spillane*, 54 ECAB ____ (Docket No. 02-2190, issued June 12, 2003); *Deborah L. Beatty*, 54 ECAB ____ (Docket No. 02-2294, issued January 15, 2003).

⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 5, 2003 is hereby affirmed.

Issued: September 28, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member