

United States Department of Labor  
Employees' Compensation Appeals Board

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**ROBERT J. PRIBULA, JR., Appellant**

**and**

**DEPARTMENT OF THE INTERIOR,  
NATIONAL PARK SERVICE, Ochopee, FL,  
Employer**

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**Docket No. 05-1239  
Issued: February 17, 2006**

*Appearances:*  
*Robert J. Pribula, Jr., pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On May 16, 2005 appellant filed a timely appeal of the February 23, 2005 merit decision of the Office of Workers' Compensation Programs which affirmed the March 2, 2004 decision, denying his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant's cervical radiculitis and trapezial myofascitis are causally related to factors of his federal employment.

**FACTUAL HISTORY**

On September 22, 2003 appellant, then a 56-year-old human resources specialist, filed an occupational disease claim alleging that six to seven hours of daily computer work aggravated his neck and shoulder. He identified December 6, 2001 as the date he first became aware of his condition, described as cervical radiculitis and trapezial myofascitis. Appellant originally

believed his pain was the result of a deteriorating 1989 cervical fusion, but a recent magnetic resonance imaging scan showed that his fusion at C5-7 had not degenerated.

Appellant previously injured his neck on August 20, 1988 while operating a truck. The vehicle bounced on the road, throwing him into the air, which caused appellant to strike his head on the interior roof. Appellant sustained three herniated discs and in 1989 he underwent an anterior cervical fusion at C4-5, C5-6 and C6-7.

On December 6, 2001 Dr. Leslie J. Schultzel, a Board-certified orthopedic surgeon, reported that appellant developed rather severe pain “again” at the base of his neck. He also noted that appellant was having arthritic pain in the left acromioclavicular joint. Dr. Schultzel noted the absence of any recent trauma or situational stress. His impression was “activation of facet arthritis” and acromioclavicular arthritis of the left shoulder. According to Dr. Schultzel’s treatment records, appellant’s symptoms gradually resolved in December 2001, only to return in early February 2002. He referred appellant to a neurologist for a trial of cervical facet block injections. Despite treatment, appellant continued to experience severe neck pain in March 2002. On May 13, 2002 Dr. Schultzel reported that appellant was having significant pain in his neck and was currently totally disabled. He indicated that he was not a surgical candidate and recommended additional cervical facet blocks.

Dr. F. Desmond Hussey, a Board-certified neurologist, administered a series of intra-articular cervical facet blocks in May 2002. He diagnosed degenerative cervical spondylosis with mechanical cervical pain and cervical facet syndrome. Dr. Hussey subsequently administered additional facet blocks and two cervical facet rhizotomies. After the latest rhizotomy on April 10, 2003 proved unsuccessful, he referred appellant for a neurosurgical consultation. If surgical intervention proved not to be an option, Dr. Hussey surmised that appellant would have reached maximum medical improvement and he would then proceed with chronic pain management and psychiatric evaluation.

Dr. James J. Worden, a Board-certified anesthesiologist specializing in pain management, examined appellant on June 16, 2003 and diagnosed cervical spondylosis and right facet syndrome. He noted that appellant experienced pain mainly with driving.<sup>1</sup> Dr. Worden also indicated that any kind of movement, including turning his head, bothered appellant. He recommended another right-sided cervical rhizotomy. Dr. Worden also indicated that, if the rhizotomy did not work, he would consider appellant to have reached maximum medical improvement. Because his 35-mile one-way commute caused him significant pain, Dr. Worden advised appellant to remain off work unless he could find work closer to his home. He also commented that his use of the computer after his long commute aggravated appellant’s neck pain.

Dr. Worden performed the cervical facet rhizotomy on June 25, 2003. Appellant’s neck pain reportedly “diminished quite a bit” following the procedure. However, he continued to exhibit limited rotation and extension of the neck. Dr. Worden was optimistic that physical therapy would resolve appellant’s remaining complaints, thus enabling him to resume work in late August 2003. When he examined appellant on August 21, 2003, Dr. Worden reported

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<sup>1</sup> Appellant reported having to drive 35 miles to work.

continued improvement with respect to the neck, but he also noted right shoulder discomfort and a mild impingement. Appellant reported right shoulder pain when reaching forward with his computer mouse. Dr. Worden recommended an ergonomic study, an alternate work site that would require less driving, additional massage therapy and continued use of OxyContin for pain.

In a report dated September 16, 2003, Dr. Peter J. Jaffe, a Board-certified physiatrist, diagnosed chronic neck pain, trapezial myofascitis, status post anterior cervical fusion, C3-4 and C4-5 disc bulge. Dr. Jaffe did not believe that “simply looking at a computer screen for six to seven hours per day, five days a week caused [appellant’s] injuries.”<sup>2</sup>

Dr. Worden continued to treat appellant and he administered a cervical epidural steroid injection on November 11, 2003. He explained that appellant’s pain had improved with medication and rest. Dr. Worden further stated that his return to daily work in front of a computer with repetitive right hand movements aggravated his neck pain to the extent that he could not fulfill an eight- or nine-hour day. He also noted that prolonged driving was another factor and recommended that appellant be allowed to work alternate days at a site closer to home which would help control his pain sufficiently to maintain his employment.<sup>3</sup>

The Office denied appellant’s claim in a decision dated March 2, 2004. The Office found that he failed to establish that his neck and shoulder conditions were causally related to his federal employment. Appellant requested an oral hearing, which was held November 29, 2004. By decision dated February 23, 2005, the Office hearing representative affirmed the March 2, 2004 denial of the claim.

### **LEGAL PRECEDENT**

A claimant seeking benefits under the Federal Employees’ Compensation Act<sup>4</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>5</sup>

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<sup>2</sup> Dr. Jaffe initially examined appellant on August 21, 2003. He also administered nerve conduction studies and an electromyography on September 5, 2003 to rule out carpal tunnel syndrome. Dr. Jaffe found appellant’s objective studies to be normal.

<sup>3</sup> The employing establishment had already accommodated appellant by allowing him to work two days each week at an alternate site in Naples, FL. He eventually retired from federal service effective January 3, 2004.

<sup>4</sup> 5 U.S.C. § 8101 *et seq.*

<sup>5</sup> 20 C.F.R. § 10.115(e), (f) (1999); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician’s opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant’s specific employment factors. *Id.*

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying 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 diagnosed condition is causally related to the employment factors identified by the claimant.<sup>6</sup>

### ANALYSIS

Appellant claimed that his daily computer work aggravated his neck and shoulder beginning December 6, 2001. The record indicated that he previously sustained a cervical injury on August 20, 1988 for which he underwent a multi-disc anterior cervical fusion in 1989. Dr. Schultzel examined appellant in December 2001 for recurrent neck pain and diagnosed activation of facet arthritis and acromioclavicular arthritis of the left shoulder. He did not, however, attribute this condition to appellant's work. Dr. Hussey, who began treating him in May 2002 for degenerative cervical spondylosis and cervical facet syndrome also did not specifically attribute appellant's condition to his employment.

Dr. Worden was the only physician who indicated that appellant's neck and shoulder complaints were at least partially related to his employment. When he examined him on June 16, 2003, Dr. Worden diagnosed cervical spondylosis and right facet syndrome. Appellant advised him that he had a 35-mile one-way commute to work and Dr. Worden noted that appellant experienced pain mainly with driving. He also noted that his use of the computer after his long drive aggravated his neck pain. Dr. Worden's August 21, 2003 treatment notes indicated that appellant experienced right shoulder pain when using his computer mouse. He commented that he should drive less. In a November 11, 2003 report, Dr. Worden explained that appellant's return to daily computer work with repetitive right hand movements aggravated his neck pain. He also implicated his prolonged driving as a contributing factor.

Appellant's 35-mile morning commute is not a factor of his employment and, thus, any medical condition or disability attributable to driving is not compensable under the Act. Dr. Worden indicated that driving caused him pain and his subsequent computer work with repetitive right hand movements aggravated the pain. However, he did not explain how his use of a computer mouse or other nondescript "repetitive right hand movements" caused or contributed to appellant's cervical spondylosis and right facet syndrome. The fact that appellant experienced pain while performing a work-related task does not, of itself establish an employment-related injury. Dr. Worden has not provided a rationalized medical opinion on the issue of causal relationship.<sup>7</sup> Furthermore, Dr. Jaffe did not believe that "simply looking at a computer screen for six to seven hours per day, five days a week caused [appellant's] injuries." The medical evidence of record does not establish a causal relationship between his claimed conditions and his employment. As such, the Office properly denied appellant's occupational disease claim.

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<sup>6</sup> *Victor J. Woodhams, supra* note 5.

<sup>7</sup> *Id.*

**CONCLUSION**

The Board finds that appellant failed to establish a causal relationship between his claimed conditions and his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 23, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 17, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board