

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

E.K., Appellant

and

**DEPARTMENT OF DEFENSE, TRAVIS AIR
FORCE BASE, Fairfield, CA, Employer**

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**Docket No. 07-1222
Issued: September 13, 2007**

Appearances:
Appellant, 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 April 10, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 2, 2007 denying his claim for compensation. 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 has established a cervical condition causally related to factors of his federal employment.

FACTUAL HISTORY

On April 27, 2004 appellant, then a 54-year-old forklift operator, filed an occupational disease claim (Form CA-2) alleging that he sustained cervical degenerative disc disease causally related to his federal employment. He indicated that his job involved loading and unloading items, with daily twisting and turning of his back and neck. Appellant reported that he became aware of the condition on November 1, 2003. In a narrative statement, he indicated that he

began working at the employing establishment in 1986 and his job involved daily twisting, turning and shock vibration from operating a forklift.

An x-ray report dated January 7, 2004 revealed degenerative disc disease with spondylosis and foraminal narrowing at C5-6 on the left. In a report dated March 23, 2004, Dr. David Woodhouse, an internist, reviewed appellant's medical history with respect to a knee injury, hearing loss and low back pain. Dr. Woodhouse stated that appellant was seen on January 7, 2004 with left-sided chest pain and right-sided neck pain. He noted the x-ray results on January 7, 2004 and stated, "Again, these findings are felt to be due to occupational exposures."

By decision dated July 13, 2004, the Office denied the claim for compensation, finding that the medical evidence was insufficient to meet appellant's burden of proof.

Appellant requested a hearing before an Office hearing representative, which was held on May 10, 2005. He submitted a June 13, 2005 report from Dr. Woodhouse, who stated that appellant continued to have neck pain with a twisting motion. Appellant referred to his March 23, 2004 report for further information.

By decision dated August 22, 2005, the Office hearing representative affirmed the July 13, 2004 decision.

Appellant requested reconsideration and submitted an August 18, 2006 report from Dr. Thomas McDonald, a chiropractor, who reported in his history that on November 1, 2003 appellant had picked up a coffee cup and felt cervical pain. Dr. McDonald diagnosed cervical radiculopathy and cervical strain due to repetitive stress.

In a decision dated September 1, 2006, the Office reviewed the case on its merits and denied modification.

Appellant again requested reconsideration and submitted an October 25, 2006 report from Dr. McDonald who stated that radiographs taken January 7, 2004 showed a subluxation at C5-6. Dr. McDonald stated, "This subluxation with its associated degenerative changes, in my opinion, has resulted in the injury that [appellant] experienced on November 1, 2003 and is responsible for the symptomology and findings which have continued to bother him to the present time."

By decision dated February 2, 2007, the Office reviewed the case on its merits and denied modification of the September 1, 2006 decisions.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed are causally related to the employment

¹ 5 U.S.C. §§ 8101-8193.

injury.² 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.³

Section 8101(2) of the Act provides that the term "physician" ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist."⁴

ANALYSIS

Appellant alleged that his job duties as a forklift operator, including loading, unloading, twisting and turning, contributed to a cervical condition. The Office does not contest that appellant engaged in the identified activities during his federal employment. The issue is whether the medical evidence is sufficient to establish a diagnosed neck condition causally related to the identified work factors.

Dr. Woodhouse diagnosed degenerative disc disease at C5-6. He generally opined that the condition was "due to occupational exposures." Dr. Woodhouse did not provide a complete medical history or a rationalized opinion on causal relationship. His reports are of diminished probative value and are insufficient to meet appellant's burden of proof.

Appellant also submitted reports from Dr. McDonald, a chiropractor. In order to be considered a physician under the Act, there must be a diagnosis of subluxation as demonstrated by x-rays. Dr. McDonald's October 25, 2006 report does diagnose a C5-6 subluxation based on x-rays and, therefore, he is considered a physician under the Act. He does not, however, provide a rationalized medical opinion on causal relationship between a C5-6 subluxation and the identified employment factors. Dr. McDonald referred to an injury on November 1, 2003, which apparently refers to the date appellant's neck symptoms began. He did not provide a complete history with a proper factual and medical background. Dr. McDonald did not discuss the specific job duties identified by appellant and provide a rationalized medical opinion explaining how those work factors caused a cervical subluxation. The Board finds that the evidence from Dr. McDonald is of diminished probative value to the issue presented.

It is appellant's burden of proof to submit sufficient evidence to establish a diagnosed cervical condition causally related to his federal employment. The evidence of record is not sufficient to meet appellant's burden of proof.

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Gary L. Fowler*, 45 ECAB 365 (1994).

⁴ 5 U.S.C. § 8101(2).

CONCLUSION

Appellant did not submit medical evidence of sufficient probative value to establish a cervical condition causally related to his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 2, 2007 and September 1, 2006 are affirmed.

Issued: September 13, 2007
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