

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

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C.B., Appellant )

and )

**DEPARTMENT OF HEALTH & HUMAN )  
SERVICES, SOCIAL SECURITY )  
ADMINISTRATION, CENTER FOR HUMAN )  
RESOURCES, Atlanta, GA, Employer )**

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**Docket No. 08-1583  
Issued: December 9, 2008**

*Appearances:*  
*Edward Daniel, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 12, 2008 appellant, through his representative, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated February 4, 2008 finding that he did not sustain an injury due to his federal employment. 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 met his burden of proof in establishing that he sustained an employment-related neck injury on November 14, 2005.

**FACTUAL HISTORY**

On November 25, 2005 appellant, then a 40-year-old claims representative, filed a traumatic injury claim alleging that on November 14, 2005 he sustained stress and strain to his neck while working on a computer. He denied any prior neck injury.

Appellant submitted a report dated November 30, 2005 from Dr. Daryl A. Rosenbaum, a Board-certified family practitioner. He discussed appellant's preexisting spondylosis of the cervical and lumbar spine and multilevel degenerative disc disease. Dr. Rosenbaum noted that appellant's back pain had "flared-up" within the last two days. He diagnosed muscle spasm of the low back with underlying degenerative disc disease. Appellant underwent a cervical magnetic resonance imaging (MRI) scan on December 16, 2005 which revealed a small moderate right paracentral disc osteophyte complex at C5-6. Dr. Heath C. Thornton, a Board-certified family practitioner, examined appellant on November 15, 2005. He diagnosed cervical spine spondylosis with radiculopathy and indicated with a checkmark that this condition was work related.

In a narrative statement, appellant alleged that his traumatic neck injury occurred on November 14, 2005 beginning at 11:25 a.m. He used a computer mouse and moved his head back and forth to view the monitor while speaking to the person making the claim and at his desk to view papers.

On January 17, 2006 the Office requested additional factual and medical evidence from appellant. It allowed 30 days for a response.

On November 15, 2005 Dr. Thornton advised that appellant had a history of work-related spondylosis with lumbar stenosis and chronic degenerative disc disease of the cervical spine. He noted that appellant reported an "acute onset of severe neck pain and radiculopathy bilaterally" on November 14, 2005. Dr. Thornton noted that appellant was required to type, write and bend in performing his job duties which would contribute to the progression of degenerative disc disease over time. He diagnosed cervical disc disease with radiculopathy and spondylosis.

Dr. John Peter Birkedal, a Board-certified orthopedic surgeon, completed a report on February 6, 2006. He described appellant's November 14, 2005 employment incident as experiencing a "quick sharp pain that radiated to both arms/hands." Since that time, appellant experienced discomfort when he hunched his shoulders. On physical examination Dr. Birkedal found that appellant exhibited decreased cervical range of motion and tenderness over the cervical spine. He diagnosed cervical degenerative disc disease and recommended a cervical MRI scan.

Appellant submitted a February 15, 2006 narrative statement. Prior to beginning work on November 14, 2005, his neck was not bothering him. Appellant completed his first claim with no difficulty and his injury occurred at 11:25 a.m. during his second claim of the day. He noted a sudden onset of neck pain and numbness in both arms and a burning sensation in his neck and arms. Appellant described his actions as looking down at his desk and then reviewing the computer screen. He further described holding documentation in his left hand and turning his head to type the information into the computer.

A January 26, 2006 MRI scan report found vertebral spurring at C4-5 and C5-6 with foraminal stenosis and a disc herniation at C6-7. Dr. William Bell, a Board-certified neurologist, examined appellant on February 10, 2006. He stated that appellant had completely recovered following a cervical injury in 2004. On November 14, 2005 appellant developed neck pain and upper extremity symptoms while sitting at his desk typing. Dr. Bell noted that appellant had no

specific trauma, but that the position of sitting and typing seemed to exacerbate his condition. On physical examination he found appellant had limited range of cervical motion. Dr. Bell stated that the December 16, 2005 MRI scans demonstrated nerve root impingement at C5-6 not previously present.

On January 25, 2006 Dr. Thornton stated that he examined appellant on August 31, 2005 for some left upper extremity numbness, burning and neck pain. On November 15, 2005 appellant reported severe neck pain and upper extremity pain which began at work while sitting at his desk. Dr. Thornton stated that appellant's work activities on November 14, 2005 aggravated his underlying spondylosis and caused acute radiculopathy symptoms which occurred on a more frequent, though intermittent, basis.

By decision dated February 24, 2006, the Office denied appellant's claim finding that the medical evidence did not establish a causal relationship between appellant's diagnosed cervical condition and his employment activities of November 14, 2005.

Appellant, through his representative, requested reconsideration on July 19, 2006 and submitted a July 11, 2006 report from Dr. Thornton who provided a detailed description describing appellant's history of injury on November 14, 2005. He stated:

“As [appellant] was asymptomatic prior to the initiation of his work duties, as described above on November 14, 2005 and the symptoms occurred during these repetitive motions, I again conclude that the activities of his work on November 14, 2005 exacerbated his prior cervical neck pathology resulting in his current neck pain and neurologic symptoms and muscle spasming.”

By decision dated October 31, 2006, the Office denied modification of the February 24, 2006 decision finding that the medical evidence was not sufficient to establish appellant's claim.

Appellant, through his representative, requested reconsideration on October 31, 2007 and submitted additional medical evidence. Dr. John W. Ellis, a Board-certified family practitioner of professorial rank, completed a report on October 4, 2007. He described appellant's medical history, noting that appellant experienced a sudden onset of neck pain extending down both arms on November 14, 2005 while at work. Appellant had more pain in his left arm and continued to experience numbness and weakness in his left hand as well as loss of grip strength. Dr. Ellis provided his results on physical examination and stated, “Repetitive data entry at the [employing establishment] [i]n an improper nonergonomic position causing repetitive strains of the upper back, shoulders and neck, which in turn caused increased pressure on the discs of the neck causing increased pressure causing the discs to micro tear and degenerate.”

By decision dated February 4, 2008, the Office denied modification of its October 31, 2006 decisions.

### **LEGAL PRECEDENT**

The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to

time and place of occurrence and member or function of the body affected.<sup>1</sup> In order to determine whether an employee sustained a traumatic injury in the performance of duty, it begins with an analysis of whether “fact of injury” has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>2</sup> As part of an employee’s burden of proof, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relation. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician’s opinion.<sup>3</sup>

### ANALYSIS

Appellant has preexisting cervical degenerative disease for which he received medical treatment through August 31, 2005. He alleged that on November 14, 2005 he experienced an onset of cervical and upper extremity pain related to his employment duties on that date. The Office accepted that the employment incident occurred as alleged, but denied appellant’s claim on the grounds that the medical evidence was not sufficiently well reasoned in explaining how his employment activities caused or aggravated his underlying cervical degenerative disc disease.

On November 30, 2005 Dr. Rosenbaum reviewed appellant’s medical history and diagnosed muscle spasm of the low back with underlying degenerative disc disease. Dr. Birkedal completed a report on February 6, 2006 and diagnosed cervical degenerative disease. He noted a history of appellant’s November 14, 2005 employment incident. However, these reports are not sufficient to establish appellant’s claim as neither Dr. Rosenbaum nor Dr. Birkedal discussed the causal relationship between appellant’s diagnosed degenerative cervical disease and his job duties on November 14, 2005.

In reports dated November 15, 2005 and January 25, 2006, Dr. Thornton diagnosed cervical spine spondylosis with radiculopathy. He indicated with a checkmark that this condition was related to appellant’s work. However, Dr. Thornton did not explain why he believed that appellant’s spondylosis was due to his employment activities of November 14, 2005. Without medical reasoning explaining how working at a computer and desk caused or aggravated appellant’s cervical spondylosis, this report is not sufficient to meet appellant’s burden of proof. In November 15, 2005 and July 11, 2006 reports, Dr. Thornton stated that appellant’s employment activities of typing, writing and bending would contribute to the progression of degenerative disc disease and an exacerbation of his symptoms. Although he provided an accurate history of the accepted incident, Dr. Thornton did not offer any medical reasoning

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<sup>1</sup> 20 C.F.R. § 10.5(ee).

<sup>2</sup> *Steven S. Saleh*, 55 ECAB 169, 171-72 (2003).

<sup>3</sup> *James Mack*, 43 ECAB 321, 328-29 (1991).

explaining how his activities on that date would contribute to or aggravate appellant's cervical disc disease or spondylosis.

Dr. Ellis completed a report on October 4, 2007. After reviewing appellant's medical history, he stated, "Repetitive data entry at the [employing establishment] [i]n an improper nonergonomic position causing repetitive strains of the upper back, shoulders and neck, which in turn caused increased pressure on the discs of the neck causing increased pressure causing the discs to micro tear and degenerate." Dr. Ellis described appellant's duties on November 14, 2005 and stated that appellant developed repetitive strains resulting in further disc degeneration. The Board notes that appellant filed a claim for a traumatic injury occurring on November 14, 2005. The medical opinion of Dr. Ellis addressing the ergonomics of his work station implicates an occupational disease claim occurring over more than one workday or shift. Dr. Ellis refers to repetitive strains rather than a single strain of November 14, 2005 as worsening appellant's preexisting cervical condition. This report does not meet appellant's burden of proof in establishing a traumatic injury.

### **CONCLUSION**

The Board finds that appellant has not submitted rationalized medical opinion evidence to establish that he sustained a traumatic injury on November 14, 2005.

### **ORDER**

**IT IS HEREBY ORDERED THAT** February 4, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2008  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board