U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SCOTT B. DREW and U.S. POSTAL SERVICE,
POST OFFICE, North Reading, MA

Docket No. 2000-2293; Submitted on the Record;
Issued April 1, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained a cervical disc injury causally related to his accepted employment injuries.

This is the second appeal before the Board in this case. By decision and order issued December 20, 1999,[1] the Board set aside the Office's August 14, 1997 decision denying appellant's June 26, 1997 request for reconsideration. The Board found that the evidence accompanying the June 26, 1997 reconsideration request, consisting of chiropractic and acupuncture treatment records dated from April 10, 1986 to June 13, 1988, constituted new and relevant evidence. Prior to the first appeal, the Office denied the cervical injury based on the opinion of Dr. Joseph M. De Michele, a Board-certified orthopedic surgeon and impartial medical examiner. Dr. De Michele opined that the cervical condition was not related to the accepted work injuries, as appellant submitted insufficient evidence of treatment for a neck condition from 1984 through 1992. The Board held that the chiropractic and acupuncturist records were evidence of treatment during this interval and therefore sufficient to warrant a merit review. The law and the facts of the case as set forth in the prior decision and order are incorporated by reference.

Appellant submitted several reports addressing his complaints of neck pain.[2]

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[1] Docket No. 98-360. The Office of Workers' Compensation Programs accepted that on December 22, 1978 appellant, then a 23-year-old letter carrier, sustained a left shoulder contusion when he slipped and fell, landing on his shoulder, while delivering mail. The Office also accepted that on May 19, 1984 he sustained a lumbosacral strain and herniated L4-5 and L5-S1 discs when he fell down some steps. The Office also accepted an anxiety disorder secondary to chronic pain. Appellant stopped work on April 26, 1985 and did not return. He underwent hemilaminectomy at L4-5 on July 22, 1985, with a repeat procedure on June 20, 1989. In 1992, appellant asserted that he also sustained a cervical disc injury at the time of the accepted 1978 and 1984 injuries.

[2] As appellant's physician's reports, including the chiropractor's and acupuncturist's notes, were not addressed in detail in the prior decision and order, the Board includes these reports *infra*.

In a January 5, 1979 report, Dr. W. Maeger, a physician specializing in emergency medicine, noted that appellant had fallen on December 24, 1978 and complained of "pain neck [left] shoulder back and [left] leg." He diagnosed "muscle strain."

In August 5, 1983 reports, Dr. Maeger noted that appellant had "had pain in [left] side of neck since two days ago, becoming worse tonight with numbness tingling [left] arm." Dr. Maeger noted that appellant worked "in mailroom carrying heavy bags on [left] shoulder." On examination, Dr. Maeger noted that appellant's head was tilted to the right and that there was "spasm, tenderness of [left] posterior cervical muscles." An x-ray showed "[n]o evidence for fracture, dislocation or soft tissue swelling" and a "[l]oss of normal lordotic curvature of cervical spine." Dr. Maeger diagnosed "cervical sprain with torticollis" and prescribed a cervical collar and medication. He limited heavy lifting for the next five days.

In a September 19, 1984 chart note, Dr. Jeffrie Felter, an attending Board-certified orthopedic surgeon, noted appellant's telephone report of neck stiffness unrelieved by medication. Dr. Felter prescribed inpatient cervical traction. Appellant received physical therapy through October 31, 1984.

On an August 11, 1986 examination Dr. Felter noted "multiple diffuse muscle spasms from neck, upper back and lumbar region." Appellant's neck stiffness abated prior to a September 9, 1986 examination.

Dr. Felter referred appellant for acupuncture treatments on August 11, 1986. In treatment notes dated August 12, 1986 to December 5, 1988, Susan Davis, an acupuncturist, related appellant's complaints of neck and low back pain with radiculopathy into the extremities.

In an April 22, 1986 report, Dr. Robert Provasoli, a chiropractor to whom appellant was referred by Dr. Felter, noted the May 19, 1984 injury and history of treatment. He noted findings on examination and diagnosed "disc involvement" from L3 through S1 with a moderate sacroiliac sprain. Dr. Provasoli recommended chiropractic spinal manipulations. In notes dated from April 15 to August 8, 1986, he found intermittent neck pain and stiffness, treated with chiropractic manipulations.[3]

An October 31, 1991 cervical magnetic resonance imaging (MRI) scan showed a "[s]mall right-sided disc herniation at C6-7." A July 2, 1992 MRI scan showed a "[s]mall left C5-6 HNP [herniated nucleus pulposus], new since October 31, 1991" and a "[r]ight C6-C7 HNP, unchanged since October 31, 1991." Dr. Peter J. Grillo, an attending Board-certified neurosurgeon, ordered cervical traction on July 2, 1992.

Appellant underwent a C5-6 laminectomy and fusion on August 26, 1992.

[3] Appellant also underwent physical therapy from April 15 to August 8, 1986. The physical therapy notes mentions neck pain on May 9, 1986.

Following the remand of the case to the Office, appellant submitted additional medical evidence.[4]

In a February 3, 2000 report, Dr. Peter Graf, an attending Board-certified orthopedic surgeon, noted lumbar and cervical pain, left-sided lumbar radiculopathy, bladder dysfunction, paresthesias in the lower extremities and left arm, one centimeter atrophy of the left calf and a diminished infrapatellar reflex on the left. He diagnosed a change in appellant's pain pattern, and recommended imaging studies.

In a February 4, 2000 report, Dr. Grillo noted increased left neck and shoulder pain, a positive Phalen's sign in the left wrist, a positive straight leg raising test at 60 degrees on the left, a gait "lateraliz[ing] towards the left," "chronic lumbar radiculopathy" and electrodiagnostic findings indicative of left carpal tunnel syndrome. Dr. Grillo prescribed home traction and a wrist splint.

In a February 8, 2000 report, Dr. Onassis A. Caneris, a Board-certified neurologist specializing in pain management, diagnosed "[m]ultifocal pain -- largely lumbar … both back pain and multiradicular pain." He renewed appellant's pain medications.

By a March 6, 2000 letter, the Office sent Dr. De Michele copies of the chiropractic and acupuncture treatment records from 1986 to 1988, as well as copies of his prior reports and the statement of accepted facts. The Office requested that Dr. De Michele review these records and explain if the new information changed his opinion on causal relationship.

In a March 13, 2000 report, Dr. De Michele noted reviewing the records submitted to him, as well as his December 16, 1994 and July 19, 1995 notes and reports regarding appellant.[5] He stated that the chiropractic and acupuncture reports did not affect his prior stated opinion that the cervical diskectomy performed on August 26, 1992 probably was not causally related to the injury sustained in December 1978 and 1984, as such injuries did not require significant, documented medical treatment for several years, making a causal relationship improbable. Dr. De Michele noted that appellant was hospitalized from May 22 to 31, 1984, June 6 to 10 and from July 25 to August 2, 1985 for lumbar complaints, without mention of any neck problems. Dr. Provasoli's April 22, 1986 report did not mention any neck problems. Dr. Grillo's August 7,

[4] Appellant submitted reports from 1998 onward indicating his condition was unchanged and he remained permanently disabled for work. In a May 21, 1998 report, Dr. Frank Graf, an attending Board-certified orthopedic surgeon, diagnosed "[s]evere and recurrent intervertebral disc syndromes, cervical and thoracolumbar, with chronic pain and situational reactive depression."

[5] In a December 6, 1994 report, Dr. De Michele noted that, during emergency room treatment for the December 22, 1978 slip and fall, appellant complained of "pain in the neck, left shoulder, back and left leg." He opined that the August 26, 1992 C6-7 discectomy and fusion was due to "deterioration and evolution of the underlying degenerative disease of the cervical spine." Dr. De Michele opined that appellant was able to perform only "minimal sedentary work," with lifting less than 10 pounds and change of positions as needed. He noted that the work restrictions were permanent. In a July 19, 1995 report, Dr. De Michele noted reviewing records related to the December 1978 injury, diagnosed as a "muscle strain." He again stated that the August 26, 1992 cervical discectomy "probably [was] not causally related to the injuries sustained in Dec[ember] 1978 and 1984, as such injuries did not require documented, significant medical treatments, for several years, making a causal relationship improbable."

1992 report mentioned a three- to four-month history of neck pain with radiation into the right arm, but did not "acknowledge a significant preexisting problem, as a result of the injury in 1978 and 1984."[6]

By decision dated April 20, 2000, the Office denied modification of the August 31, 1995 and May 16, 1996 decisions. The Office noted that, in his July 19, 1995 report, Dr. De Michele explained that the claimed cervical condition was not related to the accepted work injury as appellant did not receive any significant treatment for a cervical condition for several years following the original injury. The Office also found Dr. De Michele's March 13, 2000 report represented the weight of the medical evidence, as it was "well rationalized and based on a complete and accurate history of injury."

On appeal, appellant contends that the medical record supported a pattern of treatment for a neck condition from the original 1978 injury onward and that his physicians were supportive of a causal relationship between his herniated cervical discs, the August 1992 laminectomy and the accepted December 22, 1978 and May 19, 1984 injuries.

The Board finds that appellant has not established that he sustained a cervical condition causally related to his accepted injuries.

When an employee claims a new injury or condition causally related to an accepted employment injury, he or she must establish by the weight of the reliable, probative and substantial medical evidence that the newly alleged condition and any related period of disability, is causally related to the accepted injury. It is not sufficient merely to establish the presence of a condition. In order to establish his or her claim, appellant must also submit rationalized medical evidence, based on a complete and accurate factual and medical background, showing a causal relationship between the employment injury and the claimed conditions.[7]

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed cervical spine conditions and the accepted December 22, 1978 and May 19, 1984 injuries.[8] Causal relationship is a medical issue.[9] The medical evidence required to establish a causal relationship, generally, is medical opinion evidence,[10] of reasonable medical certainty,[11] supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[12] An award of compensation may not be made on the basis of

[6] *See Armando Colon*, 41 ECAB 563 (1990).

[7] *See id*.

[8] *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

[9] *Mary J. Briggs*, 37 ECAB 578 (1986).

[10] *See Naomi Lilly*, 10 ECAB 560, 572-73 (1959).

[11] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[12] *See William E. Enright*, 31 ECAB 426, 430 (1980).

surmise, conjecture, speculation or on appellant's belief of causal relation unsupported by the medical record.[13]

Appellant contends that his C5-6 and C6-7 disc herniations, necessitating the August 1992 laminectomy, were caused by the accepted 1978 and 1984 injuries. While appellant submitted numerous reports relating his complaints of neck pain with muscle spasms and cervical disc herniations first diagnosed in 1991, appellant's physicians have not adequately explained how and why these findings were caused by the accepted injuries.

In a January 5, 1979 report, Dr. Maeger, an emergency room physician, noted appellant's complaints of neck, left shoulder and lumbar pain following a December 24, 1978 fall and diagnosed a "muscle strain." This report does not mention any specific, objective sign related to appellant's neck.

The next mention of record of a neck problem occurs more than four years later, in Dr. Maeger's August 5, 1983 report. He described a two-day history of neck pain which appellant related to lifting heavy sacks of mail at work. Dr. Maeger diagnosed "cervical sprain with torticollis." This report tends to negate causal relationship of appellant's neck pain to the 1978 injury, as it sets forth the intervening cause of heavy lifting.

Dr. Felter, an attending Board-certified orthopedic surgeon, submitted reports from September 19, 1984 through August 11, 1986 diagnosing cervical paraspinal muscle spasms and prescribing traction, chiropractic manipulations, acupuncture and physical therapy. However, Dr. Felter did not specifically attribute these symptoms to any factors of appellant's federal employment, including the 1978 and 1984 injuries. It is noteworthy that Dr. Provasoli, the chiropractor to whom Dr. Felter referred appellant, did not even mention neck pain in his otherwise detailed April 22, 1986 initial report.

The first mention of a herniated cervical disc occurs in an October 31, 1991 MRI scan, showing a C6-7 right-sided herniation. A July 2, 1992 MRI scan newly demonstrated a left-sided C5-6 herniation. When traction and conservative measures failed to control appellant's symptoms, he underwent a C5-6 laminectomy and fusion on August 26, 1992.

Although appellant has submitted documentation of intermittent neck symptoms beginning in 1978, he did not submit sufficient rationalized medical evidence explaining how and why the 1978 and 1984 injuries or any other factors of his federal employment, would cause any pathology of the cervical spine. Without such rationale, appellant's physicians' reports are of very little probative value in establishing causal relationship in this case.[14]

It is important to note that the mere concurrence of a condition with a period of employment does not raise an inference of causal relationship between the two. In other words, the temporal coincidence of appellant's neck symptoms and the 1978 and 1984 injuries does not establish that those symptoms or the herniated cervical discs, are related to the accepted

[13] *Ausberto Guzman*, 25 ECAB 362 (1974).

[14] *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

injuries.[15] The only way to establish causal relationship is through submitting rationalized medical evidence explaining the precise mechanisms whereby any factors of appellant's federal employment would cause the diagnosed cervical conditions.

The Board finds that the opinion of Dr. De Michele, a Board-certified orthopedic surgeon and impartial medical examiner, is sufficiently well rationalized to represent the weight of the medical evidence in this case. In his March 13, 2000 report, Dr. De Michele explained that extended gaps between treatments for cervical complaints, as well as the onset of herniated discs in 1991, seven years after the 1984 injury, made a causal relationship between the accepted injuries and the herniated C5-6 and C6-7 cervical discs highly unlikely. Also, Dr. De Michele's report is based on the complete medical record and statement of accepted facts, which lends added accuracy to his opinion, increasing its probative value. An impartial medical specialist's opinion, if based on a proper factual background and sufficiently rationalized, is entitled to special weight.[16]

Consequently, appellant has not established that he sustained a cervical disc condition causally related to work factors, as he submitted insufficient rationalized medical evidence to establish such a relationship.

The decision of the Office of Workers' Compensation Programs dated April 20, 2000 is hereby affirmed.

Dated, Washington, DC
April 1, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

[15] *Charles E. Richardson*, 34 ECAB 1413 (1983).

[16] *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).