



June 17, 2002 due to the June 13, 2001 employment incident. He noted that, after the June 13, 2001 incident, he did not try to lift items without help for several months until April 2002, when his work requirements changed. Appellant claimed his new duties required standing and looking up into monitors and experienced pain with numbness. He stated that looking up at the monitor strained his neck, shoulders and spine and caused balance problems and headaches.

In a letter dated September 30, 2002, the employing establishment noted that the claim for a traumatic injury had not been previously submitted because appellant did not lose any time from work or incur any medical expenses related to the June 13, 2001 incident.

In a report dated November 5, 2002, Dr. John D. Wilkinson, an attending Board-certified internist, reviewed appellant's history of injury, noting that appellant first reported a lifting incident occurring at work on June 13, 2001. Dr. Wilkinson noted that appellant claimed that his required viewing of monitors at work had recently aggravated his neck pain. He stated that, at a September 2002 office visit, the physical examination was not significant for any objective findings in the neurologic or musculoskeletal system and x-rays suggested mild disc disease and arthritic spurring.<sup>1</sup> Dr. Wilkinson stated a follow-up visit on October 15, 2002 revealed improvement in appellant's neck pain as a result of medication and activity restriction. He stated that he had no specific information regarding any previous injuries to similar parts of appellant's body. Dr. Wilkinson stated that the extent of disability, if any, that might be related to the current claimed neck injury "is yet to be determined." He noted that appellant had a long history of osteoarthritis and that the symptoms of cervical disc disease and cervical arthritis were very similar and overlapping.

In a letter dated October 25, 2002, appellant stated that he had osteoarthritis related to military service injuries with a disability rating of 60 percent. He stated that his doctor had treated his condition for years, but he had never experienced severe headaches, neck crunching sounds with numbness in his neck, shoulders and lower back until June 13, 2001 and the problems never went away and affected his balance. Appellant stated that the pain eased somewhat after the incident and he "just lived with it" since that time. On the morning of June 17, 2002 the pain and numbness started "so quickly and severely" that he had to sit down to keep from falling and he resumed work, after a brief period of rest.

By decision dated November 14, 2002, the Office denied appellant's claim, finding that the evidence was not sufficient to establish that he sustained an injury due to the June 13, 2001 incident. The Office found that the evidence of record supported that he experienced the June 13, 2001 incident, but the medical evidence did not establish that a condition had been diagnosed in connection with the incident.

In a letter dated December 2, 2002, appellant requested an oral hearing which was held on August 28, 2003. At the hearing, appellant's attorney contended that the medical evidence supported a causal connection between appellant's back and neck conditions and his employment and required further development of the medical evidence. Appellant explained how the June 13, 2001 incident occurred, but he delayed seeking medical treatment because he had a

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<sup>1</sup> Cervical spine x-rays dated September 23, 2002 showed mild degenerative changes, but only minimal narrowing of the foramina at C4-5 due to uncinat process spurring.

phobia of surgery and thought the pain might go away. When his job duty changed and he had to look at computer monitors, his pain became so severe he almost blacked out and felt vertigo.

In a report dated July 7, 2003, Dr. Wilkinson stated that a magnetic resonance imaging (MRI) scan showed mild, multi-focal cervical disc disease. He referred appellant to another physician who ordered a myelogram and he understood that cervical disc surgery was pending. Regarding counsel's request for his opinion regarding the cause of appellant's conditions, Dr. Wilkinson stated that these questions could not be honestly answered, especially when the symptom was not mentioned for fifteen months after the alleged incident. He stated:

“However, [appellant's] story is reasonable and it would also be reasonable to assume that his cervical discs were predisposed to injury in June 2001, such that a lifting strain could produce the symptoms described subsequently and also produce the objective findings on x-rays. It can be stated categorically at this time that appellant has a diagnosis of cervical disc disease.”

In a report dated March 10, 2003, Dr. George S. Stefanis, an attending Board-certified neurosurgeon, reviewed appellant's history of injury, noted the lifting incident at work on June 13, 2001 and the monitor incident on June 17, 2002. He indicated that, since the monitor incident, appellant felt vertigo and pain in his neck and across the tops of his shoulders. Dr. Stefanis reviewed an MRI scan which showed a disc protrusion with early cord flattening at C4-5.

In a report dated July 3, 2003, Dr. Stefanis stated that he first saw appellant on March 10, 2003 complaining of neck pain, numbness in the shoulders and arms and vertigo. It was not until he saw him on June 18, 2003, that he complained of problems with his lower back. Dr. Stefanis stated that the disc problem in appellant's neck “could very easily have occurred” with the injury described by appellant. He stated that a lumbar MRI scan on June 19, 2003 showed a degenerative problem, but no acute disc herniation and for that reason, appellant's lower back problem might have been aggravated by the incident appellant described. Dr. Stefanis stated that the low back problem was “not as clear” to him because appellant did not complain about that problem initially. He noted that appellant said that his lower back worsened in the last 12 months, which indicated that he probably had some discomfort in his lower back but not enough to mention.

In a report dated December 5, 2002, Dr. John W. Griffin, an attending Board-certified otolaryngologist, stated that appellant “could have” had a viral condition of his vestibular system on the left side. He stated that, with an injury to the neck or back, one could have difficulty with proprioception which could exacerbate an underlying vestibular weakness on one side.

In a report dated January 9, 2003, Dr. Griffin stated that appellant had a symptom of what he described as true vertigo lasting for seconds to minutes, which was worse when he looked up. He stated that an electronystagmogram (ENG) showed left-sided weakness which was “probably more related to viral injury to the bounce mechanism most likely.” Dr. Griffin stated that

individuals who have dysfunction of one of their labyrinths tend to rely on other cues to maintain balance such as vision and proprioception. He reiterated:

“With an injury such as a neck or back injury it is possible for one to have difficulty with proprioception and, therefore, exacerbate an underlying vestibular weakness. Therefore, I think [appellant’s] main problem is a dysfunction of one of his vestibular mechanisms; however, neck injuries that could affect proprioception could worsen the situation.”

A lumbar MRI scan dated June 19, 2003 showed moderate spinal stenosis at L3-4 and L4-5 due to disc bulging and endplate degenerative change with facet degenerative change and ligamentum flavum hypertrophy. A cervical MRI scan dated February 18, 2003 showed, in part, minimal central disc protrusion at C3-4, mild left paracentral disc protrusion at C4-5, mild diffuse disc bulges at C5-6 and C6-7 and no significant spinal or neural foramina stenosis.

In a decision dated November 14, 2003, the Office hearing representative affirmed the November 14, 2002 decision.

### **LEGAL PRECEDENT**

An employee who claims benefits under the Federal Employees’ Compensation Act has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.<sup>2</sup> 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.<sup>3</sup>

### **ANALYSIS**

In this case, the medical evidence appellant submitted to support his claim for a traumatic injury on June 13, 2001 is equivocal and speculative in nature. In his November 5, 2002 report, Dr. Wilkinson stated that the extent of disability, if any, that might be related to the claimed neck injury was yet to be determined. He noted that appellant had a long history of osteoarthritis and the symptoms for the cervical disease and arthritis were similar and overlapping. In a July 7, 2003 report, Dr. Wilkinson stated that questions regarding the cause of appellant’s neck and back condition could not be honestly answered, especially when the symptoms were not mentioned for 15 months after the June 13, 2001 incident. He stated, however, that it would be reasonable to assume that appellant’s cervical discs were predisposed to injury in June 2001 and the lifting strain “could produce” the symptoms appellant described and the objective findings on x-ray. The Board finds that the reports of Dr. Wilkinson are speculative on the issue of causal relationship. It is well established that medical reports which are equivocal or speculative regarding an opinion on causation are of diminished probative value.<sup>4</sup>

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<sup>2</sup> *Michelle Kunzwiler*, 51 ECAB 334, 335 (2000).

<sup>3</sup> *Id.*

<sup>4</sup> *Thomas A. Faber*, 50 ECAB 566, 569 (1999); *Connie Johns*, 44 ECAB 560, 571 (1993).

In a July 3, 2003 report, Dr. Stefanis stated that appellant's disc problem "could very easily have occurred" due to the injury he described. Based on the MRI scan, his lower back might have been aggravated by the injury. He stated that his low back problem was not "as clear" to him because appellant did not complain about that problem immediately following the June 13, 2001 incident. Although he stated that appellant continued to have problems with his neck and back, Dr. Stefanis did not explain how the condition diagnosed be related to the June 13, 2001 incident. His opinion is also equivocal and speculative on causal relationship and is lacking in medical rationale. Dr. Stefanis' opinion is of diminished probative value.<sup>5</sup>

In reports dated December 5, 2002 and January 9, 2003, Dr. Griffin referred to a neck or a back injury, but did not actually described the nature of the incidents at work as alleged by appellant. Further, he stated that with a neck or back injury, it was "possible" for one to have difficulty with proprioception and, therefore, exacerbate an underlying vestibular weakness. However, Dr. Griffin noted that it was more probable that appellant's vestibular dysfunction was due to a virus and not a traumatic incident. Dr. Griffin's opinion on causal relationship is equivocal by describing as "possible" the causal element. He did not state that appellant's condition occurred due to the June 13, 2001 incident. Dr. Griffin's opinion is of diminished probative value.<sup>6</sup>

### **CONCLUSION**

The Board finds that the medical evidence in this case is equivocal and speculative. Appellant has failed to show that his neck or back conditions are causally related to factors of his federal employment. The Board finds that the Office properly determined that appellant failed to establish his claim.

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<sup>5</sup> See *Jimmie H. Duckett*, 52 ECAB 332, 337-38 (2001); *Thomas A. Faber*, *supra* note 4.

<sup>6</sup> See *Douglas M. McQuaid*, 52 ECAB 382, 383 (2001); *Jennifer L. Sharp*, 48 ECAB 209, 212 n.7 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 14, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member