

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

A.L., Appellant)

and)

DEPARTMENT OF THE INTERIOR,)
NATIONAL PARK SERVICE, GEORGE)
WASHINGTON MEMORIAL PARKWAY,)
McLean, VA, Employer)

**Docket No. 09-1921
Issued: June 28, 2010**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 22, 2009 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated June 15, 2009 which denied modification of a decision denying his claim for an occupational disease. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

This is the second appeal in the present case.¹ In a decision dated November 14, 2005, the Board reversed the Office decision dated November 16, 2004 and remanded the case for

¹ Docket No. 05-369 (issued November 14, 2005).

appropriate development and adjudication of the claims.² The Board found that appellant timely filed his claim for an occupational disease. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.³

There was evidence submitted in the prior appeal that is relevant to the current appeal. Appellant submitted reports dated November 7, 1991 to June 26, 2002 from Dr. Charles R. Ubelhart, a Board-certified internist, who noted a history of appellant's neck condition which began after he fell from a trampoline when he was 16 years old. He reported that his symptoms worsened in the summer of 1991. In reports dated November 7 and November 21, 1991, Dr. Ubelhart opined that appellant's C3-4 cervical condition was related to his old injury. He diagnosed C4 neuropathy, old post-traumatic injury and C5-6 herniated disc. Dr. Ubelhart recommended an anterior cervical discectomy at C5-6.

Appellant submitted various medical reports from Dr. Andrew V. Panagos, a Board-certified physiatrist, who treated appellant from October 18, 1994 to May 7, 1996, for neck pain commencing when he fell off a trampoline as a child. He had a cervical fusion at C3-4 and C5-6 in December 1991 that was unsuccessful. Appellant had a C3-6 fusion in December 1994 that relieved his arm pain. On February 27, 2002 Dr. Panagos diagnosed chronic pain syndrome produced by the initial failure of the cervical fusions and secondary abscesses due to trigger point injections. He expected no recovery beyond this point and advised that appellant's cervical spine condition was stable. In an April 10, 2002 attending physician's report, Dr. Panagos noted that appellant sustained a cervical injury after falling from a trampoline in 1975 and a subsequent injury during air travel. He diagnosed chronic pain syndrome, multilevel cervical fusion and radiculopathy. Dr. Panagos checked a box "yes" that appellant's condition was caused or aggravated by an employment activity, noting air travel in 1991.

Appellant was also treated by Dr. Alexandros D. Powers, a Board-certified neurologist, from October 18, 1994 to June 6, 2002, for continued neck pain. Dr. Powers diagnosed cervical disc disease with failed fusion and compensatory hypermobility at intervening C4-5 level. In an attending physician's report dated April 24, 2002, he diagnosed cervical disc disorder and noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. Similarly, in reports dated June 6 and July 8, 2002, Dr. Powers noted that appellant sustained two neck injuries in the 1970's which left him with mild cervical discomfort. Appellant reported subsequently sustaining a cervical spine injury on a work-related trip on July 26, 1991. Dr. Powers noted that in December 1991 appellant underwent an anterior cervical discectomy and fusion which failed. He diagnosed probable failed fusion at C5-6 and recommended a corpectomy and spinal reconstruction. Dr. Powers opined that appellant's clinical history suggested that the events of July 1991 were causally related to the cervical spine symptoms that led to the initial recommendation of surgery and additional treatments.

² On March 23, 2002 appellant, then a 43-year-old former supervisory community planner, filed an occupational disease claim for aggravation of his upper back, shoulders, head and neck conditions. He also alleged a work-related aggravation of his bilateral knee and leg conditions. Appellant stopped work on October 22, 2001.

³ Appellant also alleged that he developed hearing loss due to workplace noise exposure. The Office developed his hearing loss claim. However, it has not issued a final decision on this matter such that it is not before the Board in the current appeal. *See* 20 C.F.R. § 501.2(c).

In a decision dated June 6, 2006, the Office denied appellant's claim for compensation for upper back, shoulders, head, neck, bilateral knees, legs, ankles, hands and finger conditions on the grounds that appellant failed to establish that the claimed medical conditions were related to the established work-related events.

On May 31, 2007 appellant requested reconsideration. He submitted a May 25, 2007 report from Dr. Powers, who noted a history of appellant's trampoline injury and his subsequent treatment for cervical injuries. Appellant reported that, in August 1991, he experienced excessive stress while on temporary duty which aggravated and permanently worsened his mild neck injury of 1973. Dr. Powers opined that increased physical activities such as lifting weights, repetitive movements of the head, neck and upper body, would increase appellant's cervical pain. Appellant further opined that occupational exposure to these types of forces would cause symptomology related to the vertebral column. In a March 13, 2008 report, Dr. Powers noted appellant underwent a multilevel cervical spine fusion which resulted in permanent biomechanical changes in his neck. He opined that medical literature showed that these disc changes would more likely than not be aggravated, worsened and accelerated by appellant's work duties. Appellant also submitted a January 5, 2008 report from Dr. Panagos who treated appellant since March 1999 for severe, chronic cervical pain related to degenerative disc disease that resulted in multiple cervical surgeries. Dr. Panagos opined that appellant reached maximum medical improvement. He advised that appellant's condition made it medically impossible for him to work in his chosen profession due to increasing pain and cervical disc degeneration associated with working over a drafting board, working in the field and traversing outdoor areas.

In a decision dated June 15, 2009, the Office denied modification of the June 6, 2006 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the

⁴ Gary J. Watling, 52 ECAB 357 (2001).

diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 factors identified by the claimant.⁵

ANALYSIS

It is not disputed that appellant's duties as a supervisory community planner included keyboarding, leaning over a drafting board, carrying items, air travel, riding public transportation, rotating his head and neck, walking and climbing and crouching to view field sites, manholes and building structures. It is also not disputed that appellant has been diagnosed with C4 neuropathy, C5-6 herniated disc, chronic pain syndrome, multilevel cervical fusion, radiculopathy, compensatory hypermobility at intervening C4-5 level, cervical disc disorder, failed fusion at C5-6 and degenerative disc disease. Appellant has not submitted sufficient medical evidence, though, to establish that his diagnosed cervical conditions and degenerative disc disease were causally related to specific employment factors or conditions. He did not submit a rationalized medical report from a physician addressing how specific employment factors may have caused or aggravated his claimed conditions.

Appellant submitted reports from Dr. Ubelhart, from November 7, 1991 to June 26, 2002, who noted a history of appellant's neck pain commencing when he was 16 years old and fell from a trampoline and noted that his symptoms worsened in the summer of 1991. In reports dated November 7 and 21, 1991, Dr. Ubelhart diagnosed C4 neuropathy, old post-traumatic injury and C5-6 herniated disc and opined that appellant's C3-4 condition was related to his old injury. His reports are insufficient to establish the claim as the physician appears to attribute appellant's cervical condition to a trampoline injury which occurred when appellant was 16 and not his work duties. In none of the reports, did Dr. Ubelhart specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.⁶

Appellant submitted various reports from Dr. Panagos who noted treating appellant since 1994 for neck pain that started when he fell off a trampoline as a child. On February 27, 2002 Dr. Panagos diagnosed chronic pain syndrome due to the failure of the cervical fusions and secondary abscesses from trigger point injections. These reports are insufficient to establish the claim as they did not address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.⁷ Additionally, Dr. Panagos appeared to attribute

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

⁶ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁷ *Id.*

appellant's condition to a childhood injury and not work activities. Similarly, in an April 10, 2002 attending physician's report he noted a history of appellant's trampoline injury in 1975 and subsequent neck injury during air travel. Dr. Panagos diagnosed chronic pain syndrome, multilevel cervical fusion and radiculopathy and noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. However, the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁸ Likewise, a January 5, 2008 report from Dr. Panagos noted appellant's diagnoses and disability status but did not specifically address how particular aspects of appellant's employment would have caused or aggravated any diagnosed medical condition.

Reports from Dr. Powers are also insufficient to establish appellant's claim. Reports from October 18, 1994 to June 6, 2002 diagnosed appellant's condition but did not address whether his employment caused or aggravated a diagnosed condition. In an April 24, 2002 attending physician's report, Dr. Powers diagnosed cervical disc disorder and noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. However, as noted, an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value and insufficient to establish causal relationship. Other reports from Dr. Powers dated June 6 and July 8, 2002 noted appellant's neck injuries in the 1970's that left him with mild cervical discomfort. He also related that appellant reported a subsequent cervical spine injury on a work-related trip on July 26, 1991. Dr. Powers opined that appellant's clinical history suggested the events of July 1991 were causally related to the cervical spine symptoms that led to his surgery and subsequent treatment. While these reports provide some support for causal relationship, they are insufficient to establish the claimed cervical condition was causally related to his employment duties. Dr. Powers, at best, provides only vague support for causal relationship by noting that appellant's clinical history "suggests the events of July 1991" were causally related to his cervical spine symptoms. He provided no medical reasoning to support his opinion on causal relationship and there are no contemporaneous medical reports supporting such a relationship.⁹ Additionally, Dr. Powers did not clearly address how nonemployment factors, such as appellant's childhood neck injury, might have affected his current cervical condition. Therefore, his reports are insufficient to meet appellant's burden of proof.

Likewise, a May 25, 2007 report from Dr. Powers noted a history of appellant's trampoline injury and his reported neck stress during temporary duty in August 1991. Dr. Powers opined that work duties involved lifting weights, repetitive movements of the head, neck and upper body increased appellant's cervical symptomology. He did not provide medical rationale explaining how any particular work duties performed during a particular period would cause or aggravate appellant's neck condition nor did he explain why the neck condition would

⁸ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

⁹ The Board notes that Dr. Ubelhart's more contemporaneous reports from 1991 do not implicate employment factors as a cause or contributor to appellant's condition.

not be the sole result of the childhood neck injury. In a March 13, 2008 report, Dr. Powers noted appellant underwent a multilevel cervical spine fusion which resulted in permanent biomechanical changes in his neck. He opined that medical literature showed that these disc changes are more likely than not aggravated, worsened and accelerated by appellant's work duties. This report is insufficient to establish the claimed cervical condition as he did not provide sufficient medical rationale in which he explained the reasons behind his conclusion nor did he explain how particular medical literature applied to appellant's specific situation.¹⁰

Consequently, the medical evidence is insufficient to establish a causal relationship between specific factors or conditions of employment and the diagnosed medical conditions.

On appeal, appellant's asserts that his condition was employment related and the Office failed to thoroughly evaluate the record. The record reveals that the Office performed a thorough analysis of appellant's medical records, specifically reviewing reports from appellant's treating physician's Drs. Ubelhart, Panagos and Powers from November 7, 1991 to March 13, 2008. Appellant further asserts that he submitted statements from his supervisors and himself which supported causal relationship, however, causal relationship is a medical issue and it generally must be established by reasoned or rationalized medical evidence.¹¹ The Board notes that appellant's claim has been denied because he failed to provide sufficient medical evidence explaining the reasons particular factors or conditions of his employment caused or aggravated any of his diagnosed medical conditions.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he developed an employment-related injury in the performance of duty.

¹⁰ See *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007) (newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship as they are of general application and are not determinative of whether the specific condition claimed was causally related to the particular employment injury involved).

¹¹ See *M.D.*, 59 ECAB ___ (Docket No. 07-908, issued November 19, 2007).

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 28, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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