

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of ALLEN T. FELDER and DEPARTMENT OF THE NAVY,  
PORTSMOUTH NAVAL SHIPYARD, Portsmouth, N.H.

*Docket No. 97-1628; Submitted on the Record;  
Issued May 17, 1999*

---

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant sustained a traumatic injury on April 13, 1995 as alleged.

On April 13, 1995 appellant, then a 42-year-old pipefitter, was helping to lift a storage cabinet when the cabinet shifted and appellant strained to correct it. He stated that he had pain and numbness in the neck, left arm and left hand. In a July 8, 1995 statement, appellant stated:

“As previous[ly] stated in my CA-1 form filed on May 1, 1995 that Steve Lincoln, Fred Stachan and myself were assigned to renovate the old P.M.G.-365 office into a work area in Building #178. The duties included erecting wooden walls (2x4-sheetrocking) moving equipment from building #233 to building #178. My coworkers and I sheetrock[ed] the wall[s], sanded them down to prepare for painting. Then we started to bring in equipment, cabinets, shelvings and assorted pipe fittings, hoses. We proceeded to stack the cabinets on top of another, which consists of a base bottom with drawers and a top cabinet with a door with shelves inside. One cabinet we were stacking started shifting when we had it up in the air. I tried to correct the situation to keep the cabinet from falling on me. I was struggling to keep myself and the cabinet balanced because the cabinet weight approx. 200 lb. and is approx. 30” [wide] x 32” [length] x 36” [height]”

“The immediate effects was that I hurt my left arm, hand and one finger. I thought it was just minor aching. I had felt a little flushed so I sat down to get my composure. I really did [not] feel anything was serious[ly] wrong at that moment. So after sitting for approx[imately] 15 min[utes] I continued to finish our work, placing and stacking cabinets.”

“The following morning I felt a little sore and tight but I thought I could work it out by doing my regular duties, but as the days wore on the pain seemed to

progress when I was [not] doing anything. I knew then something was seriously the matter after taking medication and the pain still escalated.”

“As previous[ly] stated in [the above paragraphs] is the exact reason why I did[not] seek medical attention right away. I was seen for the first time on April 17, 1995 at Portsmouth Hospital by Dr. Donavon Albertson.”

“As previous [ly] stated ... that [the employment injury] happened on Thursday, April 13, 1995, Friday, April 14, 1995 when I woke up I felt sore and tight, Saturday, April 15, 1995 I felt worse, being real tight in a discomfoting way I stayed in bed most of the day and took Tylenol, applied heat and ice to [my] left shoulder and neck. Sunday, April 16, 1995 when I got up I was extremely tight but I slowly got dressed for church, but I could [not] stand the pain so I went home and rested taking more Tylenol and icing with heat. Monday, April 17, 1995 I got up I could hardly lift my head up. I went directly to Portsmouth Hospital because nothing was making me better I was getting worse.”

In an April 17, 1995 note, Dr. Thomas M. Barton, a Board-certified orthopedic surgeon, indicated that appellant complained of neck, shoulder and elbow pain. He noted that appellant had gradual left shoulder pain especially with elevation. He diagnosed probable supraspinatus tenosynovitis. A note from the nurse assistant indicated that appellant had neck pain radiating into the left shoulder and down the left arm into the elbow. Appellant did not report any apparent injury.

In an April 19, 1995 report, Dr. Barton stated that appellant reported no specific injury to his neck but indicated that he had repetitive use of his arms with lifting and twisting his neck. He noted that appellant had pain in his neck extending down his left arm to the elbow. He reported that appellant had significant tenderness over left paraspinal musculature down to the scapula which was compatible with a trapezoidal inflammation. X-rays showed minimal spurring of the cervical spine with mild disc narrowing. Dr. Barton diagnosed cervical sprain from repetitive demand.

In an April 17, 1993 emergency room report, Dr. Donovan Albertson, Board-certified in emergency medicine, indicated that appellant was seen for gradual left shoulder pain especially with elevation. Appellant gave a history of waking up with neck pain the day before which radiated down into the left shoulder and left arm to the elbow. He noted that the shoulder was nontender but elevation was painful. Dr. Albertson reported that range of motion was normal. He diagnosed probable supraspinatus tenosynovitis. He received a prescription for Percocet. In an April 22, 1995 emergency room report, Dr. Albertson indicated that appellant was seen for acute cervical disease with left C7-8 radiculopathy. He noted that appellant was given injections of Meperidine and Hydroxyzine twice while he was in the emergency room and received a prescription for Oxycodare. In an April 23, 1995 report, Dr. Albertson stated that appellant was seen for severe left shoulder, left arm and neck pain. He noted that appellant had these symptoms of progressive nature for the past “couple weeks.” He diagnosed an acute cervical disc herniation with left C7-8 radiculopathy.

In an April 24, 1995 note, Dr. Barton indicated that appellant had been seen for numbness extending down the left arm to the left index finger and had been referred for a magnetic resonance imaging (MRI) scan. In an April 28, 1995 report, Dr. Barton reported that the MRI scan showed mild to moderate spinal stenosis at C5-6 and C6-7. He commented that the stenosis at C5-6 was due to a combination of disc and bony osteophyte while the C6-7 stenosis was for the most part bony osteophyte or bony tissue, centrally and to the left. He stated that appellant's examination revealed irritation of the C6 nerve root which corresponded to the findings of the C6-7 osteophyte. He indicated that the C5-6 findings were of no significance. In a May 8, 1995 report, Dr. Barton reported that appellant had a mild sensory deficit to light touch over the left index finger which was in the C6 nerve root distribution. In a May 22, 1995 report, Dr. Barton stated that appellant demonstrated persistent signs of C6 nerve root irritation. In a June 12, 1995 note, Dr. Barton stated that appellant had excellent resolution of his C6 neuropraxia symptoms and noted that the only residual symptom was some minimal numbness at the tip of the index finger. He commented that appellant had minimal neck pain. Dr. Barton released appellant to return to light-duty work.

In a July 28, 1995 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that fact of injury was not established. In an accompanying memorandum, an Office claims examiner stated that the evidence showed that the claimed event occurred at the time, place and in the manner alleged. She indicated, however, that the medical evidence submitted did not relate appellant's condition to the specific incident given by appellant but to repetitive demands to the arms.

Appellant requested a hearing before an Office hearing representative but subsequently withdrew his request and asked for reconsideration. He submitted in support of his request some of the medical notes from Dr. Barton. In a June 26, 1996 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and, therefore, insufficient to warrant review of the prior decision.

Appellant requested reconsideration and submitted additional evidence. In a July 9, 1996 report, Dr. Barton stated:

“[Appellant] returns to see me because of some discrepancy with regard to the documentation of his injury. [Appellant] is a patient I had followed for some time for a herniated disc at C5-6, as documented by an MRI. The specific date-of-injury was April 16, 1995, at which time he was lifting some furniture with two other guys and one of the other people that was lifting the furniture with him slipped and all the weight of the furniture went on to him and he experienced neck strain and some pain into his shoulder. The next day he had pain into his left arm and then over the next day or so after that pain into his left hand. I diagnosed a neuropraxia of C6 stemming from this specific incident.”

In a July 29, 1996 note, Dr. Barton corrected the date-of-injury to April 13, 1995. He stated that appellant's current examination revealed no evidence of any sensory deficit to his C6 nerve distribution or to any other nerve distribution peripherally to the left arm. Dr. Barton commented that the left arm was normal compared to the right side.

In an October 10, 1996 merit decision, the Office denied appellant's request for modification of the July 28, 1995 decision. Appellant again requested reconsideration. In a February 10, 1997 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was repetitious and, therefore, insufficient to warrant review of the prior decisions.

The Board finds that appellant sustained a traumatic injury in the performance of duty.

To accept fact of injury in a traumatic injury case, the employee must establish by the weight of the reliable, probative and substantial evidence the occurrence of an injury while in the performance of duty, at the time, place and in the manner alleged and that the injury resulted from a specific event or incident. Where a claim of compensation is predicated upon a traumatic injury, the employee must establish the fact of injury by proof of an accident or fortuitous event having relative definiteness with respect to time, place and circumstances and having occurred in the performance of duty, and by proof that such accident or fortuitous event caused an injury as defined by the Federal Employees' Compensation Act and its regulations. Fact of injury should be supported by medical evidence based upon a history of injury specific to the dates alleged in appellant's claim; where this is lacking, the reports submitted by a claimant are of diminished probative value. Thus the burden of establishing the occurrence of the injury at the time, place and in the manner alleged has not been met. Similarly, medical reports submitted by a claimant are of diminished probative value where they do not contain a rationalized medical opinion relating the diagnosed condition to the alleged employment incident.<sup>1</sup>

In this case, the Office did not dispute that appellant was injured at the time, place and in the manner alleged. The only issue, therefore, was whether the medical evidence related appellant's condition to the April 13, 1995 employment incident. Drs. Barton and Albertson, in their initial reports, noted that appellant complained of severe pain in the neck and left shoulder. Initially, Dr. Barton did not comment on the cause of appellant's neck and left shoulder pain. However, in his July 9, 1996 report, Dr. Barton stated that appellant's left shoulder and left arm conditions were caused by the April 13, 1995 employment incident. He, therefore, related appellant's conditions of cervical strain, C6 neuropraxia and shoulder pain to a specific incident. This evidence is sufficient to meet appellant's burden of proof. The case will be returned to the Office for approval of continuation of pay and payment of appropriate compensation for any period appellant lost from work due to the April 13, 1995 employment injury, which includes the period through June 12, 1995 when Dr. Barton indicated that the neuropraxia had resolved and appellant was able to return to light duty.

---

<sup>1</sup> *Daniel J. Overfield*, 42 ECAB 718 (1991).

The decisions of the Office of Workers' Compensation Programs, dated February 10, 1997, October 10 and June 16, 1996, are hereby reversed and the case is returned to the Office for appropriate action as set forth in this decision.

Dated, Washington, D.C.  
May 17, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member