

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES E. PARKER and DEPARTMENT OF THE ARMY,
SCHOFIELD BARRACKS, HI

*Docket No. 98-1745; Submitted on the Record;
Issued February 23, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury while in the performance of duty.

On January 11, 1995 appellant, then a 49-year-old painter, filed a claim for compensation alleging that on January 10, 1995 he sustained an injury while in the performance of duty. Appellant alleged that he was hit by a man on a bicycle which caused an elbow injury and a "sore body."

In a duty status report dated July 18, 1995, Dr. Thomas McNorton, a neurologist, stated that appellant had sustained a cervical radiculopathy as a result of his January 10, 1995 work related incident, and that appellant could return to work with lifting and sitting restrictions.

On August 21, 1997 appellant filed a claim for recurrence of disability alleging that, after returning to work following the original injury, he was limited in performing his regular duties as a result of a pinched nerve in his neck and left wrist. Appellant noted that he had had a sharp pain in his right neck and pain in his left shoulder since his return to work. The employing establishment noted that it had placed appellant on light duty consisting of answering phones and delivering mail.

On January 28, 1998 the Office of Workers' Compensation Programs notified appellant that it needed additional information in order to process his claim including medical reports regarding his original January 10, 1995 injury and a medically rationalized opinion on the relationship between the diagnosed condition and his federal employment. The Office notified appellant that it would keep his claim open for 30 days for receipt of this information. On the same day the Office also advised appellant that if it accepted his original January 10, 1995 injury it would then need to consider appellant's claim for a recurrence of disability, and that he would need to submit medical evidence that would establish a causal relationship between appellant's original injury and his claimed recurrence of disability.

In a decision dated March 2, 1998, the Office denied appellant's claim for compensation on the grounds that he failed to establish fact of injury. The Office noted that, although the claimed event occurred, appellant failed to submit medical evidence that would establish that an injury occurred in connection with the claimed event.

In a physical therapy report dated March 14, 1995 and received by the Office on March 2, 1998, appellant's therapist stated that he had resolving inflammation of the right shoulder and muscle strain of the trapezius muscle.

In a medical report dated May 28, 1997 and received by the Office on March 2, 1998, Dr. McNorton stated that he had examined appellant on that day and found that appellant had sustained right occipital neuralgia, left superficial radial entrapment neuropathy possible concurrent left C6 radiculopathy. He noted that he had performed a right greater occipital nerve block that day and arranged for a magnetic resonance imaging (MRI) scan of the cervical spine with particular attention to C1-2.

In a medical report dated June 16, 1997 and received by the Office on March 2, 1998, Dr. Daniel Erdman, a specialist in diagnostic radiology, stated that an MRI taken on June 13, 1997 revealed central disc herniation at the C6-7 level and a diffuse annular bulge at the C5-6 level and bilateral neural foraminal narrowing at the C5-6 and C6-7 levels. He recommended a bone scan.

In a medical report dated July 2, 1997 and received by the Office on March 2, 1998, Dr. Joel Okazaki, Board-certified in radiology, stated that a bone scan and x-rays taken on July 1, 1997 revealed activity in the posterior elements of the cervical spine at C2-3 on the right and C3-4 on the left and bilaterally at C5-6. X-rays suggested arthritis. A cervical spine series revealed spinal muscle spasm, degenerative changes of the posterior elements at C2-3 and C3-4, and degenerative disc disease with anterior spurring from C3 through C6 and decreased disc space at C5-6. He noted that the neural foramina is patent.

In a medical report dated July 18, 1997 and received by the Office on March 8, 1998, Dr. McNorton stated that an electromyogram (EMG) taken that day revealed left C6-7 polyradiculopathy. In a medical report dated July 22, 1997, also received on March 2, 1998, Dr. McNorton stated that upon review of appellant's medical tests he had right occipital neck pain due to compromise of the right C3 root. He also noted that MRI and EMG findings were consistent with left C6-7 radicular complaints. Dr. McNorton recommended a neurological/spine surgical consultation for a multi-level cervical spine disease. He also recommenced an interim course of physical therapy.

In a medical report dated February 7, 1998 and received March 2, 1998, Dr. McNorton stated that an EMG taken on that day revealed right carpal tunnel syndrome and "right C-3 radiculopathy; mild, chronic."

In a narrative report dated February 24, 1998 also received on March 2, 1998, appellant stated that, after he initially returned to his regular duties, his aches and pains subsided, but that he again felt neck pain and pains in the left shoulder in May 1997.

In a letter decision dated March 3, 1998, the Office notified appellant that his claim remained denied. The Office stated that appellant's March 6 and March 14, 1995 reports were not signed by a doctor and thus had no probative value, and that his subsequent medical submissions failed to establish a causal relationship between his original incident and his current medical condition.

The Board finds that appellant has failed to establish that he sustained a compensable injury while in the performance of duty.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; 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 diagnosed condition is causally related to the employment factors identified by the claimant.¹

In this case, the Office found that the incident occurred as alleged. However, the Office also found that no medical evidence had been submitted to establish that the incident caused a compensable injury. Appellant submitted two physical therapy reports in March 1995, which noted his condition. The Board has long held that reports of physical therapists are not medical reports and thus have no probative value.² Further, the medical reports, although noting the fact of several medical conditions, failed to establish any causal relationship between the January 10, 1995 incident and the current medical condition. For example, Dr. McNorton's reports at no time addressed causation or even how the medical condition could have arisen given appellant's federal employment.³ Absent such evidence the Office properly denied appellant's claim.

¹ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

² *Barbara J. Williams*, 40 ECAB 649, 657 (1988).

³ *Arlonia B. Taylor*, 44 ECAB 591 (1993).

The decisions of the Office of Workers' Compensation Programs dated March 3 and 2, 1998 are hereby affirmed.⁴

Dated, Washington, D.C.
February 23, 2000

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁴ The Board notes that it was unnecessary for the Office to determine appellant's recurrence of disability claim because the original injury was denied.