

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

PATRICIA S. ARNEY, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Atlanta, GA, Employer**

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**Docket No. 04-1349
Issued: November 30, 2004**

Appearances:
Patricia S. Arney, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 27, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated March 4, 2004, which denied her claim for compensation for a right C6 cervical radiculopathy and a right total hip replacement. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that her cervical and right hip conditions are causally related to an accepted November 17, 1989 injury.

FACTUAL HISTORY

This case has previously been before the Board on appeal. In a decision dated February 8, 2002, the Board reversed the Office's March 6, 2000 decision which terminated appellant's compensation benefits on the grounds that she had refused an offer of suitable employment.¹ The Board noted that the record contained evidence that appellant had developed

¹ Docket No. 00-1659 (issued February 8, 2002).

other medical conditions, which included an emotional condition, cervical radiculopathy and a hip condition which required surgical intervention, subsequent to her accepted conditions which the Office did not take into account in determining whether she could perform the duties described in the offered position. The history of the case as set forth in the Board's prior decision is incorporated herein by reference.

The Office accepted that on November 17, 1989 appellant, then a 48-year-old flat sorter operator, sustained a left wrist strain and somatoform pain disorder. Following the Board's February 8, 2002 decision, the Office reinstated payment of compensation for total wage loss. On April 24, 2002 appellant advised the Office that she wished to pursue a claim that her other medical conditions were work related.

The record reflects that appellant filed two claims. In an initial November 17, 1989 traumatic injury claim, appellant stated that her left wrist started to hurt while she was loading the console with boxes of flat mail weighing approximately 20 to 70 pounds and that she was not able to lift boxes thereafter. In an occupational claim filed January 22, 1990, appellant alleged that the pain in her hands and wrists were caused by her work activities.² The occupational disease claim was subsequently doubled into the current file.

The evidence contemporaneous to appellant's work injury reflects the following: In a December 29, 1989 report, Dr. Lennard Wilson, a neurologist, related that "there was absolutely no neck pain and the right side was not involved." He performed an electromyogram (EMG) and nerve conduction studies and opined that there was nothing to suggest any radicular involvement, brachial plexus injury or obvious thoracic outlet syndrome. In a March 7, 1990 report, Dr. Dayle Hawthorne reported that x-rays of the cervical spine showed degenerative changes which could indicate cervical disc disease. He indicated that the cervical spine problem would be a contributing factor to her disability not caused by the injury but "perhaps aggravated by it."³ In a January 10, 1991 report, Dr. Winston B. Chutkan, an orthopedic surgeon and second opinion physician, reported that appellant denied any pain in her neck and noted no abnormality in the cervical spine.

There was no further evidence pertaining to the claimed conditions until 1994. In an October 3, 1994 report, Dr. Ralph D'Auria, a physiatrist, stated that appellant had a history of bilateral upper extremity pain, right foot pain and left hip pain resulting from a trauma sustained during an on-the-job injury on November 17, 1989 while reaching for a metal container. He noted that appellant sustained trauma to the upper extremity, shoulder and also trauma to the low back. In a report received October 25, 1994, Dr. G. Lance Matheny, an orthopedic surgeon and second opinion physician, performed an impairment evaluation regarding the accepted left wrist condition. He noted that the x-rays of the cervical spine revealed degenerative changes at C4-5 and C5-6; an October 1994 nerve conduction study revealed right C6 radiculopathy and a bone scan showed degenerative joint disease of the cervical spine. Dr. Matheny diagnosed chronic bilateral arm, wrist and hand pain, weakness and numbness probably secondary to cervical radiculopathy. He noted that appellant did not have specific neck pain but opined that the work

² The Office assigned this claim file number 06-0483229.

³ Dr. Hawthorne's credentials are not discernable from the record.

injury exacerbated what degenerative changes may have been present at that time in her neck. Dr. Matheny did not respond to an October 16, 1995 Office request to clarify his opinion.

In a May 6, 1996 report, Dr. D'Auria advised that a recent arthrogram of the wrist revealed a tear of the triangular fibrocartilage and that a March 28, 1996 bone scan was positive. He stated that the development of post-traumatic arthritis in the wrist would increase the likelihood of secondary involvement and secondary trauma to the shoulder, neck and upper extremity. On November 17, 1998 Dr. D'Auria noted that appellant had a history of osteoarthritis of both hips, particularly the right hip, for which she might have to undergo an eventual bilateral total hip replacement. On September 14, 1999 Dr. D'Auria reported that appellant had increased neck pain and also that she was scheduled for a right hip replacement on October 22, 1999.

In an October 5, 1999 report, Dr. Jane St. Clair, a physiatrist and associate of Dr. D'Auria, opined that appellant's neck pain and cervical radiculopathy may have stemmed from the initial work injury of November 17, 1989. A November 17, 1999 magnetic resonance imaging (MRI) scan of the cervical spine was interpreted as unremarkable, with some mild anterior spondylytic change at the C6-7 level.

In a decision dated April 24, 2002, the Office denied appellant's claim for compensation for the claimed conditions of right C6 radiculopathy and the right hip replacement on the basis that the medical evidence failed to establish that those conditions were causally related to the November 7, 1989 work injury.

In a June 21, 2002 letter, appellant requested an oral hearing, which was held on February 6, 2003. Appellant testified at the hearing and submitted additional medical evidence. With regard to her right hip, appellant submitted: a March 23, 1998 report from Dr. Maurice Jove, a Board-certified orthopedic surgeon, which noted that appellant had some degenerative changes in her acetabulum, which might require a hip replacement; a copy of the February 16, 2000 operative report of the hip replacement; progress reports from Dr. Jove after the surgery; a June 8, 2000 report from Dr. Robert E. Karsch, a Board-certified orthopedic surgeon, concerning appellant's complaints after her hip replacement; a June 13, 2000 lumbar myelogram and CT lumbar myelogram and a June 5, 2000 MRI scan of the lumbar spine.

In a decision dated April 8, 2003, the Office hearing representative affirmed the Office's April 24, 2002 decision denying the causal relationship of the additional claimed conditions.

In a January 26, 2004 letter, appellant requested reconsideration of the Office's April 8, 2003 decision. She argued that, although her wrist was the initial source of her pain, she did not understand how the Office did not allow her other medical conditions. She further asserted that the Office should have authorized a current cervical MRI scan which her physician had requested. Appellant also submitted additional medical evidence. In a July 31, 2003 report, Dr. St. Clair noted the history of the 1989 injury and diagnosed chronic neck pain and chronic trapezius pain. The physician noted that she did not spend any time examining the lower extremity as she did not want to give appellant the impression that her lower extremity problems were related to the work-related injury.

In a September 3, 2003 report, Dr. Shoshana Kreinces, a chiropractor, provided a history of the 1989 injury, a full examination which included x-rays of the cervical and thoracic spines, and diagnosed cervical subluxation, cervical disc degeneration, cervical/brachial syndrome, and cervicgia. She discussed the requirements of appellant's job and concluded that appellant's condition was not permanent and stationary at this time. She further opined that appellant was experiencing continuing trauma from the work-related injury. Progress notes were also submitted.

An October 30, 2003 report, Dr. Daniel H. Silcox, a Board-certified orthopedic surgeon specializing in the spine, noted the history of the 1989 work injury, provided an impression of left arm radiculopathy and opined an MRI scan was necessary to render a full evaluation. He stated that an MRI scan could reveal a disc herniation which, if that were the case, would make the symptoms of the left upper extremity more of a compressive neuropathy of the upper extremities. With the exception of the MRI scan, Dr. Silcox advised that he did not recommend any further treatment with regards to appellant's work accident.

An article from the internet and a January 27, 2004 report from Claudia Crenshaw, Ph.D., R.N., which discussed how appellant's various pain conditions affected her emotional condition were also submitted.

By decision dated March 4, 2004, the Office denied modification of the April 8, 2003 decision finding that the evidence failed to support appellant's claim that her cervical or right hip conditions were causally related to her November 17, 1989 work injury.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of his or her claim, including that any specific condition or disability for which she claims wage-loss compensation is causally related to the employment injury.⁵ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors.⁶ The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁷

ANALYSIS

Appellant alleges that her November 17, 1989 work injury, which the Office had accepted for a left wrist strain and a somatoform pain disorder, caused, contributed to or aggravated her neck condition and right hip condition, for which she underwent a hip

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Tammy L. Medley*, 55 ECAB ___ (Docket No. 03-1861, issued December 19, 2003).

⁶ *Beverly A. Spencer*, 55 ECAB ___ (Docket No. 03-2033, issued May 3, 2004).

⁷ *See Phillip L. Barnes*, 55 ECAB ___ (Docket No. 02-1441, issued March 31, 2004).

replacement on February 16, 2000. Appellant, however, did not submit rationalized medical evidence establishing that her claimed neck and right hip condition were due to the November 17, 1989 work injury. Initially, appellant did not mention any involvement of her neck or right hip in either her traumatic injury or occupational claims. With respect to the right hip replacement surgery of February 16, 2000, the record contains no specific medical opinion relating the need for this surgery to the November 17, 1989 work injury. Regarding the cervical condition, the EMG/nerve conduction testing Dr. Wilson performed in December 1989 noted no radicular involvement while the EMG/nerve conduction testing on January 13, 1992 was reported as normal. Radiculopathy at C6 was not diagnosed until October 8, 1994.

Although Dr. Hawthorne, in his March 7, 1990 report, opined that the 1989 work injury “perhaps” aggravated the degenerative changes in appellant’s cervical spine, he failed to provide sufficient rationale for his opinion which is couched in speculative terms. The Board has held that an opinion, which is speculative in nature, is of diminished probative value on the issue of causal relationship.⁸ Moreover, Dr. Hawthorne’s opinion on causal relationship is of little probative value since it contains a conclusory statement on causal relationship not supported by any medical reasoning.⁹

The other medical evidence submitted by appellant either does not address causal relationship between the claimed conditions and the accepted employment injury or does not provide medical reasoning in support of their conclusions. Dr. D’Auria opined on October 3, 1994 that appellant sustained trauma to her upper extremity, shoulder, hip and low back during the November 17, 1989 work injury while on, May 6, 1996, he opined that the development of post-traumatic arthritis in the wrist made the development of secondary trauma more likely. However, Dr. D’Auria offers no medical explanation for these conclusions. Dr. Matheny opined that the work injury exacerbated the degenerative changes in appellant’s neck but he provided no medical explanation for this opinion. Similarly, Dr. Silcox diagnosed a left arm radiculopathy as stemming from the 1989 work injury but he did not provide any reasoning to support his opinion. Although Dr. St. Clair opined that appellant may have a herniated disc in the cervical spine which may have occurred due to the compensation for the wrist pain, Dr. St. Clair provided no rationale for her opinion and the November 17, 1999 MRI scan of the cervical spine was noted as being unremarkable.

In September 2003, Dr. Kreinces, a chiropractor, diagnosed cervical subluxation, cervical disc degeneration, cervical/brachial syndrome and cervicgia and concluded that appellant was experiencing continuing trauma from his work injuries. However, as a chiropractor is only considered a physician to the extent that they treat a spinal subluxation as demonstrated by x-ray to exist,¹⁰ Dr. Kreinces is only considered a physician with regard the cervical subluxation that she diagnosed based upon x-ray. She did not provide medical reasoning to discuss how or why appellant’s diagnosed subluxation was related to her work injury of November 17, 1989, and she would not be competent to address any condition other than a spinal subluxation. Furthermore,

⁸ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁹ *Albert C. Brown*, 52 ECAB 152 (2000).

¹⁰ *See* 5 U.S.C. § 8101(2).

there were no x-rays contemporaneous with the original injury from which a diagnosis of spinal subluxation was made.¹¹ The Board also notes that the evidence submitted from appellant's clinical psychologist, Claudia Crenshaw, is of limited probative value as her opinions pertaining to appellant's physical condition are beyond her scope of specialty.¹²

With regard to the internet article, this is not determinative of the cause of appellant's condition. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship to establish that a claimed condition is related to an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.¹³

The Board finds that appellant did not meet her burden of proof to establish that her claimed cervical and right hip conditions are causally related to her November 11, 1989 work injury.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that her claimed cervical and right hip conditions are causally related to the November 17, 1989 work injury.

¹¹ See *Linda L. Mendenhall*, 41 ECAB 532 (1990) (the greater the delay in testing, the greater the likelihood that an event not implicated by the employee has worsened the injury claimed or has caused the condition for which the employee seeks compensation; when the delay becomes so significant that it calls into question the validity of an affirmative opinion based at least in part on that testing, such a delay diminishes the probative value of the opinion offered).

¹² See *Mary S. Brock*, 40 ECAB 461 (1989); see also § 8101(2).

¹³ *William C. Bush*, 40 ECAB 1064 (1989).

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 30, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member