United States Department of Labor
Employees' Compensation Appeals Board

STEVEN L. FRANCISCO, Appellant	)	
and	)	**Docket No. 05-1173**
	)	**Issued: August 9, 2005**
DEPARTMENT OF THE ARMY, PACIFIC MISSILE TESTING CENTER, Point Mugu, CA, Employer	)	

Appearances:
Steven L. Francisco, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On May 3, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 3, 2005 merit decision denying his recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on or after September 8, 1997 due to his August 5, 1990 employment injury.

FACTUAL HISTORY

On August 6, 1990 appellant, then a 34-year-old boiler plant equipment mechanic, filed a traumatic injury claim alleging that he fractured two ribs in his left back when he fell while coming down a ladder at work on August 5, 1990. He stopped work on August 5, 1990 and

returned to his work on August 15, 1990. Appellant had lifting restrictions for several weeks and then returned to his regular work. The Office accepted that appellant sustained fractures of his 11th and 12th ribs on the left.[1]

The first medical report of record dated after August 1990 is a report of magnetic resonance imaging (MRI) scan testing performed on September 15, 1997. This report reveals that appellant had degenerative changes at L2-3, L4-5 and L5-S1. In a report dated July 9, 1998, Dr. Charles J. Curatalo, an attending Board-certified neurosurgeon, stated that appellant reported that "his troubles began in September 1997 without any definite preceding injury." Dr. Curatalo diagnosed a small C7-T1 disc protrusion and chronic neck, shoulder girdle, and occipital head pain.

On July 19, 2001 Dr. Samuel D. Small, an attending osteopath, performed an anterior cervical discectomy and fusion at C5-6 and C6-7. Dr. Small's preoperative diagnosis was degenerative disc disease at C5-6 and C6-7 with angular tears and discogenic neck pain and instability.[2]

On March 24, 2003 Dr. Richard J. Sanders, an attending Board-certified surgeon, performed a right supraclavicular neurolysis of C5, C6, C7, C8 and T1 as well as a total anterior middle scalenectomy and resection of the right first cervical rib stump. Dr. Sanders diagnosed right thoracic outlet syndrome and noted that appellant reported that his symptoms dated to 1990 when he fell off a ladder and sustained a whiplash injury. He stated that appellant reported his symptoms got suddenly worse in 1998 following a "hyperextension event in a swimming pool."

In a March 27, 2003 report, Dr. Christopher J. Centano, an attending physician Board-certified in physical medicine and rehabilitation, indicated that appellant reported sustaining rib fractures in 1990 due to a fall at work and that in 1998 he awoke one morning with severe neck pain. Dr. Centano stated his belief that appellant initially sustained rib fractures and a thoracolumbar injury which led to tightness in the thoracolumbar junction and associated upper lumbar myotomes. He indicated that over time this area became tighter and that appellant learned to live with this condition. Dr. Centano posited that appellant did not use his thoracolumbar junction when he engaged in cervical extension and therefore he had been "overloading" below the cervicothoracic junction.

On July 12, 2003 appellant filed a claim alleging that he sustained a recurrence of disability on September 8, 1997 due to his August 5, 1990 employment injury. He asserted that he experienced neck, shoulder and upper extremity pain after his August 5, 1990 injury and

[1] The record suggests that appellant underwent bilateral carpal tunnel surgery in September 1990, but the reports from such surgery are not contained in the record.

[2] It appears that in March 2000 appellant underwent a transaxillary resection of his left first cervical rib and that, in June 2000, he underwent a transaxillary resection of his right first cervical rib. The record does not contain the surgical reports for these procedures, although several physicians later indicated that the surgery did not relieve appellant's cervical pain.

indicated that using tools worsened the pain. Appellant stated that his symptoms had become more severe.[3]

Appellant submitted an April 11, 2003 report in which Dr. Sanders stated:

> "The operations that I performed on [appellant] in March 2003 were primarily the result of a whiplash injury sustained in 1990 when he fell from a ladder. This resulted in pain in his neck and forearms. Within a few days of the injury, numbness and tingling developed in both hands."

By decision dated November 17, 2003, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after September 8, 1997 due to his August 5, 1990 employment injury. The Office stated that appellant's attending physicians did not adequately explain how the rib fractures of the 11th and 12th ribs sustained on August 5, 1990 could be related to the severe thoracic to cervical spine problems that appellant complained of at a much later date.[4]

On November 1, 2004 appellant requested reconsideration of his claim arguing that his current thoracic and cervical conditions were related to the injury he sustained on August 5, 1990. Appellant submitted an August 30, 2004 report of Dr. Jacob E. Tauber, an attending Board-certified orthopedic surgeon, who noted that appellant "had a significant injury in the course of his employment for the Federal Government when in 1990 he had a fall at work and sustained cervical rib fractures" and indicated that appellant reported that around 1997 or 1998 there was a "poll incident" which increased his symptoms. Dr. Tauber then stated, "With reasonable medical probability, this set the stage for the onset of symptomotology with the entire process of an injury along with subsequent healing and scarring that would occur and rendered his nerves more susceptible to injury." He diagnosed thoracic outlet syndrome, history of anterior cervical discectomy and fusion and history of carpal tunnel syndrome and noted:

> "In summary, my opinions are the following: first, that the patient has a congenital deformity that predisposed him to developing problems that in and of itself would have become a problem in light of the fact that the patient was able to carry out strenuous duties until September 8, 1990.[5] September 8, 1990 certainly set a cascade of events in the fact that the patient has carried out strenuous and repetitive motion duties that are currently responsible for his ongoing condition and for his prior need for care. In my opinion, the need for carpal tunnel surgery, need for rib resection, and all the care for the thoracic outlet syndrome and cervical spine are contributed to by his repetitive and strenuous employment duties in the course of his employment."

[3] Appellant did not stop work in September 1997. He indicated that he used annual and sick leave when he stopped work for his various surgeries.

[4] It should be noted that the Office inadvertently stated that appellant's claim was accepted for cervical rib fractures. Appellant's claim was accepted for fractures of the 11th and 12th ribs which are located in the lower back.

[5] Dr. Tauber incorrectly listed the date of injury as September 8, 1990 rather than August 5, 1990.

By decision dated February 3, 2005, the Office affirmed its November 17, 2003 decision. The Office found that Dr. Tauber's report was of limited probative value regarding appellant's claimed recurrence of disability due to the August 5, 1990 employment injury.[6]

LEGAL PRECEDENT

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.[7] This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.[8] Where no such rationale is present, medical evidence is of diminished probative value.[9]

ANALYSIS

The Office accepted that appellant sustained fractures of his 11th and 12th ribs on the left due to a fall at work on August 5, 1990. On July 12, 2003 he filed a claim alleging that he sustained a recurrence of disability on September 8, 1997 due to his August 5, 1990 employment injury. He suggested that his mid to upper back, shoulder, neck and upper extremity pain was related to the August 5, 1990 injury. Appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after September 8, 1997 due to his August 5, 1990 employment injury.

On March 24, 2003 Dr. Sanders, an attending Board-certified surgeon, performed a right supraclavicular neurolysis of C5, C6, C7, C8 and T1 as well as a total anterior middle scalenectomy and resection of the right first cervical rib stump. In an April 11, 2003 report, Dr. Sanders stated these procedures "were primarily the result of a whiplash injury sustained in 1990 when he fell from a ladder." He noted that this injury resulted in pain in appellant's neck and forearms and stated, "Within a few days of the injury, numbness and tingling developed in both hands." Dr. Sanders suggested that appellant's cervical and thoracic problems in 2003 were related to his August 5, 1990 employment injury. However, appellant's claim was accepted for injury to the ribs in his low back in 1990 and Dr. Sanders did not provide medical rationale for his apparent opinion that appellant sustained a cervical injury at that time. The Board notes that the record reveals that appellant did not seek out any substantial medical care between late 1990

[6] The Office indicated that appellant also filed a claim (file number 13-2120920) alleging that his current condition and disability were due to the performance of his work duties over time. This occupational disease claim is not the subject of the present appeal (file number 13-0928059). Appellant also asserted that he was entitled to schedule award compensation due to his August 5, 1990 employment injury and, by decision dated December 6, 2004, the Office determined that appellant was not entitled to a schedule award. Appellant has not appealed this decision to the Board and the matter is not currently before the Board.

[7] *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

[8] *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[9] *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

and late 1997. Although Dr. Sanders indicated that appellant complained of neck and upper extremity pain after August 5, 1990, he did not explain why the medical record was silent regarding neck and upper extremity complaints for a period of approximately seven years.

In a March 27, 2003 report, Dr. Centano, an attending physician Board-certified in physical medicine and rehabilitation, Dr. Centano stated his belief that in 1990 appellant sustained rib fractures and a thoracolumbar injury which led to tightness in the thoracolumbar junction and associated upper lumbar myotomes. He indicated that over time this area became tighter and stated that because appellant did not use his thoracolumbar junction when he engaged in cervical extension he had been "overloading" below the cervicothoracic junction. Therefore, Dr. Centano suggested that appellant's mid to upper back and cervical problems were related to his August 5, 1990 employment injury. Dr. Centano did not provide adequate medical rationale in support of his apparent opinion on causal relationship. He provided no findings on examination or diagnostic testing to support his theory that appellant's mid to upper back and cervical problems were related to the rib fractures in his low back. Dr. Centano did not explain how such a relationship could exist given that appellant did not seek any substantial medical care for about seven years and did not consistently complain of mid to upper back and cervical pain until approximately seven years after August 5, 1990.

In an August 30, 2004 report, Dr. Tauber, an attending Board-certified orthopedic surgeon, stated that appellant "had a significant injury in the course of his employment for the federal government when in 1990 he had a fall at work and sustained cervical rib fractures" and posited that "this set the stage for the onset of symptomotology with the entire process of an injury along with subsequent healing and scarring that would occur and rendered his nerves more susceptible to injury." However, Dr. Tauber did not provide any medical rationale in support of his opinion on causal relationship. His opinion is of limited probative value for the further reason that it is not based on a complete and accurate factual and medical history.[10] Dr. Tauber stated that appellant sustained cervical rib fractures on August 5, 1990, but appellant sustained injury to an entirely different part of the body, the 11th and 12th ribs located in the low back. He also did not provide any explanation of why appellant did not consistently complain of mid to upper back and cervical pain until seven years after August 5, 1990, nor did he make reference to any findings on examination or diagnostic testing to support his assertions about appellant's condition.[11]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.[12] Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

[10] *See William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

[11] Dr. Tauber also suggested that appellant's condition at the time of examination was related to his repetitive work duties. Appellant filed another claim alleging that his current condition and disability were due to the performance of his work duties over time, but this occupational disease claim is not the subject of the present appeal.

[12] *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability due to his August 5, 1990 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' February 3, 2005 decision is affirmed.

Issued: August 9, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board