

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HENRY D. ANDRESEN and DEPARTMENT OF THE NAVY,
MILITARY SEALIFT COMMAND, Oakland, Calif.

*Docket No. 96-2683; Submitted on the Record;
Issued December 4, 1998*

DECISION and ORDER

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

The issue is whether appellant sustained an injury in the performance of duty on June 16, 1995, as alleged.

On April 15, 1996 appellant, then a 70-year-old machinist/deck engineer, filed a claim for compensation alleging that on June 16, 1995 he sustained injuries to his upper arms in the performance of duty.

By letter dated June 6, 1996, the Office of Workers' Compensation Programs advised appellant that he needed to submit additional information regarding his claim for compensation including a detailed narrative medical report containing a well-rationalized medical opinion as to the relationship between his diagnosed condition and his federal employment.

On June 26, 1996 the Office received several documents from appellant in support of his claim. In a September 28, 1995 treatment note, Dr. Lance N. Brigham, appellant's treating physician and a Board-certified orthopedic surgeon, stated that he had examined appellant that day, noted his history of injury and recommended bilateral shoulder arthrograms. In an October 3, 1995 medical opinion, Dr. Margaret R. Linn, Board-certified in radiology, stated that appellant's bilateral shoulder arthrograms taken that day revealed a normal right shoulder and no evidence of left shoulder rotator cuff tear noting, however, that "there is calcific tendinitis." In an October 5, 1995 treatment note, Dr. Brigham reviewed the arthrograms and treated appellant for bursitis. In a June 21, 1996 medical report, Dr. Brigham noted that appellant had bilateral impingement syndrome which "seems to be realistic," and recommended surgery. He noted that appellant "has failed conservative care and has chronic impingement."

In a decision dated July 15, 1996, the Office determined that the evidence of record was insufficient to establish that a specific event occurred on June 16, 1995 giving rise to appellant's claim for compensation. The Office noted that appellant did not seek medical care for the injury for three months after the alleged incident, and failed to file a claim for compensation until over

ten months had elapsed since the alleged incident. Given the absence of any witnesses to the alleged incident, the amount of time between the alleged incident and the time appellant sought treatment as well as the time between the date of filing and the alleged incident, and the absence of a rationalized medical opinion which would establish a causal relationship between the condition and the alleged incident, the Office denied appellant's claim on the grounds that appellant had failed to establish that the incident occurred.

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States" within the Act, that the claim was timely filed within the applicable time limitation of the Act, that an 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon traumatic injury or an occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ In this case, the Office found that the evidence of record failed to support that an employment incident occurred. However, the Board notes that it is not disputed that appellant was performing his duties, climbing the after steering compartment ladder, when the claimed injury occurred. The Board finds that, although the employing establishment indicated on the claim form that the alleged incident could not be verified through witnesses, appellant has consistently maintained that he sustained an injury while attempting to descend a ladder while in the performance of duty. Additionally, the history contained in the treatment notes was consistent with that presented by appellant on the claim form. As the Board has held, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁵ Consequently, the Board finds that appellant was performing his duties as alleged on June 16, 1995.

The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Daniel R. Hickman*, 34 ECAB 1220 (1983).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Elaine Pendleton*, *supra* note 1.

⁵ *See Robert A. Gregory*, 40 ECAB 478 (1989).

relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁶

In this case, there is no medical evidence supporting a causal relationship between appellant's employment and his diagnosed upper arm condition in the performance of duty. There is no reasoned opinion from a physician addressing whether appellant's employment duties caused the alleged employment injuries. The treatment notes from Dr. Brigham and the medical report from Dr. Linn were insufficient to establish appellant's claim as they were devoid of a history of the mechanism of injury.⁷ As such, these reports are of diminished probative value. The Office advised appellant of the type of evidence needed to establish his claim, however, such evidence has not been submitted. Therefore, the evidence of record is insufficient to meet appellant's burden of proof.

The decision of the Office of Workers' Compensation Programs dated July 15, 1996 is modified to reflect that an employment incident occurred on June 16, 1995 at the time, place and in the manner alleged. The decision is affirmed as modified.

Dated, Washington, D.C.
December 4, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁶ *Kathryn Haggerty*, 45 ECAB 383 (1994); *see* 20 C.F.R. § 10.110(a).

⁷ *See Barbara J. Williams*, 40 ECAB 649 (1989).