

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY D. SOTO and DEPARTMENT OF THE NAVY,
MILITARY SEALIFT COMMAND PACIFIC, Oakland, CA

*Docket No. 01-846; Submitted on the Record;
Issued February 11, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established a causal relationship between his diagnosed condition of Mooren's Ulcer and the work-related injury on either February 25 or May 22, 1994.¹

The Board finds that appellant has not established a causal relationship between his current condition and his work-related injury.

On March 17, 1997 appellant filed a claim for traumatic injury alleging that on February 25, 1994, while working as a junior supply officer, he sustained an injury to his left eye while aboard the flight deck of the U.S.N.S. Mars.

In an undated narrative, appellant said that on February 25, 1994 as he was attempting to cover exposed food pallets with a tarp or bag on the flight deck during a storm at sea, "a gush of wind blew the ... bag and the tip end ... hit my left eye." Appellant then was examined by the medical officer who provided him with an eye patch and restricted him from duty that day. The next day appellant remained in pain and attempted to see the medical officer. However, he had left ship for one month and when he returned, appellant's pain had subsided and he did not seek additional medical treatment while on board ship. Appellant stated that "all this can be confirmed by Mr. [Manual] Santana [the supply officer]."

In a medical report dated March 17, 1997, Dr. Mark J. Mannis, a Board-certified ophthalmologist, stated that Department of Ophthalmology, University of California Davis Medical Center, has managed appellant's Mooren's Ulcer of the left cornea since September

¹ A review of the record fails to disclose that the Office of Workers' Compensation Programs accepted a work-related injury on either February 25 or May 22, 1994. Appellant claimed an injury on February 25, 1994, while an eyewitness, in an October 23, 1997 statement, recalled that the work incident occurred on or about May 20, 1994. The hearing representative stated at the hearing that the issue was whether appellant's Mooren's Ulcer was causally related to the work incident on February 25, 1994. Appellant and his counsel, present at the hearing, did not object.

1996. He stated that appellant developed this condition “while on duty at sea during the six-month tour on the U.S.N.S. Mars, from February 25 to August 29, 1994. During this time he was seen by a medical officer on board. The diagnosis was not determined until he was later seen by a specialist in the Philippines, at which time he was then referred to the United States for advanced treatment. Based on the course and progress of his disease, I have no doubt that this problem began during his time at sea.”

By letter dated August 13, 1997, the Office advised the employing establishment to submit medical records pertaining to appellant’s condition, including copies of all clinical notes and test results related to his claimed condition. It also requested a medical report to include a history of injury, examination findings, diagnosis and the doctor’s opinion, with medical reasons, as to whether the reported work incident caused or aggravated his condition.

In a report dated December 27, 1996 and received by the Office on September 17, 1997, the employing establishment submitted a report from Dr. James V. McDarby, a Board-certified ophthalmologist, who stated that appellant had “chronic progressive (illegible) corneal thinning,” and did not believe that appellant would be fit to return to full duty. He recommended that appellant return to the United States.

In a report dated February 13, 1997 and received by the Office on September 17, 1997, Dr. Mannis stated that he had treated appellant for his eye condition and performed an anterior keratitis and repeat conjunctiva resection for Mooren’s Ulcer.

In a report dated March 4, 1997 and received by the Office on September 17, 1997, Dr. Mannis stated appellant could return to regular work, but “for the safety of your eye since this is a situation that is changeable, it would be necessary for you to be working in a circumstance where there is access to an ophthalmologist.”

In a report dated April 28, 1997 and received by the Office on September 17, 1997, Dr. Mannis stated that appellant now had a corneal ulcer in the right eye similar to the left eye. He added: “Consider the development of a corneal ulcer in his remaining eye a serious development which requires aggressive and thorough attention.”

In an attending physician’s report dated August 13, 1997 and received by the Office on September 17, 1997, Dr. Mannis stated that appellant had “severe Mooren’s Ulcer in both eyes.”

In a letter dated October 2, 1997, the Office stated that appellant’s medical evidence did not “indicate that your condition of Mooren’s Ulcer of the left eye is the result of any eye injury that you received.” The Office further noted that there was no known etiology of Mooren’s Ulcer and that it is usually seen in older people. The Office left the record open for 30 days so appellant could submit evidence to buttress his claim.

In a report dated October 14, 1997, Dr. Mannis stated:

“[A]lthough [appellant] does suffer from what we have diagnosed as Mooren’s Ulcer, we cannot rule out the possibility that this entire process was related to his injury. Mooren’s Ulcer is an autoimmune phenomenon in which presumably there is an alteration of tissue, which is then reacted to by the autoimmune cells

and autoantibodies. Although the condition is bilateral, it is certainly possible that the autoimmune disease was stimulated by an alteration in his own tissue engendered by the injury to his left eye. I would concur that there is certainly no evidence that his condition is trauma related. However, it is certainly a conceivable possibility that the initial tissue alteration was trauma related and the fact that it is present in both eyes certainly does not rule out trauma as the etiology.”

In a letter dated October 23, 1997, Mr. Santana stated that he was appellant’s supervisor from February to June 1994 and that on or about May 20, 1994 appellant injured his eye while attempting to cover exposed food pallets on the flight deck of the U.S.N.S. Mars. Mr. Santana referred appellant to the military specialist officer (MSO) for medical treatment that day, who restricted appellant from further duty. “The next morning [appellant] was instructed by me to return to sickbay for a follow-up and he was unable to see the MSO. Shortly thereafter (a day or so later), the MSO was removed from the ship and to the best of my recollection, [appellant] received no further treatment. By the time the MSO came back, the discomfort initial injury [appellant’s] eye was gone.”

The Office subsequently referred appellant, a copy of his medical file and a statement of accepted facts to Dr. Robert Peabody, a Board-certified ophthalmologist, for a second opinion. In the statement of accepted facts, the Office noted:

“On February 25, 1994 the claimant was covering pallets of food with plastic tarps/bags when a gust of wind blew the tip of a tarp/bag into the claimant’s left eye....

“In September 1996 the claimant presented for treatment with Dr. Mannis for treatment of a left eye ulcer. The claimant returned [to] Dr. Mannis during January 1997, after several months at sea. [He] determined that the [appellant] had a complete recurrence of his peripheral ulcerative keratitis. During April 1997, the claimant developed the same condition in his right eye.”

In a report dated December 8, 1997, Dr. Peabody stated that the date of injury was May 22, 1994 when a tarp became loose and hit his left eye and caused a corneal abrasion. Although the abrasion cleared up after three or four days, appellant began having more problems about three or four months later. Dr. Peabody noted that Dr. Mannis’ care including peripheral keratectomies of both eyes and a penetrating corneal replacement of the left eye. He noted that appellant’s “main diagnosis is Mooren’s Ulcers in both corneas.” He added:

“The question as to the etiology of the injury of 1994 and the present problems with the patient’s corneas is difficult to answer. However, after stating that exception, I know of no studies or data available that has indicated that corneal abrasion of an eye will lead to Mooren’s Ulcers. I also do not know of any medical underlying facts, literature or statement of opinions that would indicate that if trauma and Mooren’s Ulcers are related that the development of a corneal ulcer of the second eye is due to the presumption of the trauma relating to Mooren’s Ulcers in the injured eye.”

Dr. Peabody also noted: "I also concur that there is a small probability, less than 10 percent, that the injury of the left eye did cause autoimmune reaction of the left eye, which could cause that particular problem to be exacerbated."

In a supplemental report dated March 4, 1998, Dr. Peabody stated that there was no medical data in the record that indicated that appellant's autoimmune reactions were related to the 1994 injury. He added: "However, there is a large body of knowledge within autoimmune reactions that is just now beginning to be understood. Therefore, a small probability does exist that an antigen related to some type of injury to the cornea could create an autoimmune reaction that could cause this problem."

By decision dated March 12, 1998, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that appellant's Mooren's Ulcer was causally related to his 1994 eye trauma.²

By letter dated April 12, 1998, appellant, through counsel, requested an oral hearing. A hearing was held on January 27, 1999; the hearing representative stated that appellant filed a claim for injury that occurred on February 25, 1994 which resulted in a condition of Mooren's Ulcer. The hearing representative noted that the Office denied the claim on the grounds that the evidence of record did not establish that the Mooren's Ulcer was causally related "to the employment incident or factors of employment." He then noted that the issue was whether appellant's Mooren's Ulcer was causally related to the work incident of February 25, 1994.

By decision dated March 19, 1999, the hearing representative affirmed the Office's March 12, 1998 decision denying benefits. The hearing representative found that the weight of the medical evidence rested with Dr. Peabody's reports who provided a rationalized medical opinion establishing that appellant's Mooren's Ulcer was not causally related to the employment incident of February 25, 1994. The hearing representative noted that there was no conflict in medical opinion inasmuch as Dr. Mannis' opinion was speculative and thus was not in conflict with Dr. Peabody's reports.

By facsimile dated November 6, 1999, appellant requested reconsideration. In support of his request, he submitted an October 15, 1999 report from Dr. Felicísimo D. de Castro, who stated that appellant injured his left eye on May 22, 1994 while on duty, that he was diagnosed with "a rare type of peripheral ulcerative keratitis -- Mooren's Ulcer" and subsequently referred to the United States for further evaluation and management. He added:

"The association between Mooren's Ulcer and trauma has long been observed, but the precise pathophysiologic mechanism remains unknown. There is evidence that it is an autoimmune process, which reminds us of sympathetic ophthalmic where perforating or penetrating eye injury can incite a devastating autoimmune response that blinds not only the injured eye but also even more severely the other

² In its March 12, 1998 decision, the Office's finding of fact section notes: "The weight of the medical evidence established that the etiology of Mooren's Ulcer is unknown and there is no causal relationship between the diagnosed condition and the February 25, 1994, traumatic injury." In the Office's memorandum, appellant's condition is referred to as "the 1994 trauma to the claimant's left eye."

eye. This reaction may occur from 5 days to 50 years after the injury. In Mooren's Ulcer there is likewise a variation regarding the time of onset following the initial injury and there is also the predilection for involvement of the other eye.

"Although the mechanism remains unknown it would be a mistake to say that trauma does not cause Mooren's Ulcer.... Statistically the association is there but the explanation eludes us.

"This lack of definite explanation impairs our capacity to derive conclusions about this case, so we must rely on expert opinion.

"Dr. Mark J. Mannis ... is the most qualified. ... To Dr. Mannis there is no doubt that [appellant's] problem began during his time at sea...."

By decision dated March 1, 2000, the Office denied appellant's request for reconsideration. The Office found that Drs. Mannis and Peabody's reports were repetitive, but that Dr. de Castro's report was new and, therefore, was reviewed on the merits. The Office noted that Dr. de Castro opined that the Office should accept that the condition was causally related because the lack of an explanation impairs the ability to provide a conclusion and since Dr. Mannis is better qualified than Peabody, his opinion should govern. However, the Office found that Dr. de Castro's medical report failed to establish that appellant's condition was causally related to an employment factor and denied modification.

By letter dated August 7, 2000, appellant requested reconsideration. In support of his petition, he submitted a June 15, 2000 report from Dr. Mannis and a June 27, 1997 report from Dr. Salah D. Salman.

In his June 15, 2000 report, Dr. Mannis noted a familiarity with appellant's history of injury and treatment and stated:

"While we cannot adduce absolute proof to the fact, we feel that it is quite likely that this ulcer may have been induced by human trauma to the eye. Ocular trauma may sometimes trigger change in the ocular tissue, which result in the development of autoimmune disability such as Mooren's Ulcer.

"[Appellant's] ulcer was progressive and required a corneal transplant in the left eye for therapeutic and optical purposes. He subsequently developed a peripheral ulcerative process in the right eye. The process regressed, however, after the corneal transplant in the left eye stabilized.

"It is always difficult to pinpoint precisely the causes of autoimmune processes of the type we have here. However, trauma is a recognized cause of Mooren's Ulcer and the changes that occur in one eye can be stimulated in the second eye as a result of the trauma-stimulated autoimmune cascade."

By decision dated November 21, 2000, the Office denied modification finding that Dr. Mannis' medical report failed to establish that appellant's condition was causally related to an employment factor.³

An employee seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period 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.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

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.⁷ An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. He has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. However, his statement alleging that an injury occurred at a given time and manner is of great probative value and will stand unless refuted by substantial evidence.⁸

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal 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.⁹

³ The Office had previously reviewed Dr. Salman's report.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Duane B. Harris*, 49 ECAB 170 (1997).

⁶ *Id.*

⁷ *Wendell D. Harrell*, 49 ECAB 289 (1998).

⁸ *Carmen Dickerson*, 36 ECAB 409 (1985).

⁹ *Ronald C. Hand*, 49 ECAB 113 (1997); 20 C.F.R. § 10.115.

Regarding the first component, appellant in this case stated in his claim form that on February 25, 1994 he sustained an injury to his left eye when he was attempting to cover exposed food pallets on the deck of a ship during a rain storm. His supervisor at the time stated in October 1997, more than three years after the incident, that he recalled the incident in the same detail as appellant but thought that it occurred in May 1994. He noted that he ordered appellant to see the medical officer on the day of the incident as well as the next day, noting also that the medical officer had been recalled and that appellant was unable to see him.

The Board finds that appellant's statements and the statement of the supervisor provide a consistent history of injury that appellant sustained an injury to his left eye while in the performance of duty on board the U.S.N.S. Mars on February 25, 1994. Further, the record contains no evidence that the incident did not occur. Thus, the Board finds that the contemporaneous evidence of record supports that the incident occurred at the time, place and in the manner alleged.

Regarding the second component, however, the Board finds that appellant has failed to establish that his Mooren's Ulcer was caused by the February 25, 1994 work-related injury.

Dr. Mannis stated that appellant developed this condition "while on duty at sea during the six-month tour on the U.S.N.S. Mars, from February 25 to August 29, 1994." However, in a subsequent report, Dr. Mannis stated that "there is certainly no evidence that his condition is trauma related." Given the speculative and contradictory nature of Dr. Mannis's reports, they have limited probative value in establishing appellant's claim.¹⁰ Similarly, the October 15, 1999 report from Dr. de Castro, which stated that the precise pathophysiologic mechanism between Mooren's Ulcer and trauma remained unknown also failed to establish a causal relationship and thus is of no probative value.¹¹ Further, Dr. Peabody, the second opinion specialist, stated that he was not aware of any studies or data that indicate that a corneal abrasion will lead to Mooren's Ulcers.¹²

Although the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal.¹³

A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.¹⁴

¹⁰ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹¹ *Michael E. Smith*, 50 ECAB 313 (1999).

¹² Although Dr. Peabody noted that the date of injury was May 22, 1994, treatment history is not a fatal error in his history of injury since appellant's supervisor noted that the injury occurred on May 20, 1994.

¹³ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

¹⁴ *Jean Culliton*, 47 ECAB 728 (1996).

The Board has held that in assessing medical evidence, the weight of such evidence is determined, *inter alia*, by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the doctor's opinion.¹⁵ Given these factors the Board finds that the weight of the medical evidence of record fails to establish that appellant's current disability is causally related to his February 25, 1994 employment injury. There is no rationalized medical opinion evidence of record, which establishes that appellant had any disability causally related to his February 25, 1994 work-related injury.

The November 21 and March 1, 2000 decisions of the Office of Workers' Compensation Programs are modified to find that the evidence of record is sufficient to establish that the incident occurred at the time, place and in the manner as alleged on February 25, 1994 and affirmed as modified.¹⁶

Dated, Washington, DC
February 11, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁵ *Id.*

¹⁶ The Board has jurisdiction over Office decisions decided within one year of appellant's appeal. The March 12, 1998 and March 19, 1999 Office decisions were issued more than one year from the date of appellant's appeal.