

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

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**MICHAEL R. SHAFFER, Appellant**

**and**

**U.S. GOVERNMENT, Employer**

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**Docket No. 04-233  
Issued: March 12, 2004**

*Appearances:*  
*Michael R. Shaffer, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
WILLIE T.C. THOMAS, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On October 3, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated September 10, 2003 which found that he failed to establish that his medical condition was caused by his incarceration as a prisoner of war. 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 established that he sustained an injury causally related to his internment by the Imperial Japanese Government during its occupation of the Philippine Islands from 1941 through 1945.

**FACTUAL HISTORY**

On September 7, 1999 appellant filed a Form WC-3 claim for injury or disability benefits by a civilian American citizen, pursuant to section 5(f) of the War Claims Act of 1948. Appellant indicated that he was incarcerated in the Philippines by the Imperial Japanese Government from May 1942 to February 4, 1945. He alleged that he experienced difficulty in walking and neurological problems in his lower extremities due to a severe vitamin B-12 and

thiamine deficiency while on a “prison camp diet.” Appellant provided an excerpt of a medical article which discussed the neurological consequences of severe thiamine deficiency. In a March 31, 2000 letter, appellant described how his diet at the prison camp consisted mainly of rice and soup, and how he lost almost 60 pounds over the course of his internment.

In a report dated December 1, 1999, Dr. William T. Morgan, a Board-certified internist, noted that appellant suffered from progressive and chronic immobility and neurological problems with his lower extremities, which required him to use a scooter for mobility. He noted that appellant began receiving B-12 shots after a Schilling test revealed that appellant had an intrinsic factor missing. He opined that appellant’s B-12 and thiamine deficiency were “somewhat consistent with problems which might be attributed to [appellant] having been a prisoner of war.”

In a decision dated December 7, 1999, the Office denied appellant’s claim for compensation on the grounds that the medical evidence was insufficient to establish a causal relationship between his diagnosed medical condition and the fact that he had been a prisoner of war. In a May 8, 2001 decision, the Board affirmed the Office’s denial of compensation.<sup>1</sup>

Appellant filed a request for reconsideration and submitted a July 9, 2001 report from Dr. Regis W. Haid, a Board-certified neurosurgeon, who stated as follows: “We reviewed the myelogram and post myelogram CAT (computerized axial tomography) scan of the cervical and thoracic spine. This does not show any spinal cord compression. From my standpoint appellant has an underlying history consistent with B-12 deficiency and Schilling disease from a POW [prisoner of war] camp.”

In a January 2, 2002 decision, the Office found that the evidence was insufficient to warrant a merit review and denied appellant’s request for reconsideration. Appellant appealed the Office’s decision to the Board. In a June 3, 2002 decision, the Board found that appellant’s case should be reopened for further merit review and vacated the Office’s January 2, 2002 decision. The Board remanded the case for further consideration.<sup>2</sup>

In a decision dated September 10, 2003, the Office denied modification of its December 7, 1999 decision, finding that appellant failed to meet his burden of proof on causal relationship.

### **LEGAL PRECEDENT**

The entitlement to compensation benefits under the Federal Employees’ Compensation Act<sup>3</sup> for civilian American citizens held by or in hiding from the Imperial Japanese Government

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<sup>1</sup> Docket No. 00-1857 (issued May 8, 2001).

<sup>2</sup> Docket No. 02-835 (issued June 3, 2002).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

is derived from the War Hazards Compensation Act<sup>4</sup> and the War Claims Act of 1948.<sup>5</sup> Under 42 U.S.C. § 1701, certain employees who had injuries resulting from a war-risk hazard were entitled to compensation “to the same extent as if the person so employed were a civil employee of the United States and were injured in the performance of duty.” The War Claims Act of 1948 provided that the provisions of 42 U.S.C. §§ 1701-1717 “are extended and shall apply with respect to the injury, disability, or death resulting from injury of a civilian American citizen occurring while he was held by or in hiding from the Imperial Japanese Government, to the same extent as if such civilian American citizen were an employee within the purview of 42 U.S.C. §§ 1701-1717.”<sup>6</sup>

Appellant filed a claim for Federal Employees’ Compensation Act benefits pursuant to the War Claims Act of 1948, asserting that he developed a vitamin deficiency with resulting orthopedic disability as a result of his internment in a prisoner of war camp by the Imperial Japanese Government from 1942 to 1945. It is appellant’s burden to establish his claim. To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the 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 factors identified by the claimant.<sup>7</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and the identified factors.<sup>8</sup> The belief of appellant that the condition was caused or aggravated by the identified factors is not sufficient to establish causal relation.<sup>9</sup> The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background. An opinion on causal relationship can be neither speculative nor equivocal.<sup>10</sup>

### **ANALYSIS**

The Board finds that appellant has failed to establish that his lower extremity disability due to B-12 and thiamine deficiency is causally related to his internment in a prisoner of war

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<sup>4</sup> 42 U.S.C. §§ 1701-1717.

<sup>5</sup> 50 U.S.C. §§ 2001-2017.

<sup>6</sup> 50 U.S.C. § 2004(f).

<sup>7</sup> See *Lourdes Harris*, 45 ECAB 545 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> See *Lourdes Harris*, *supra* note 7.

<sup>9</sup> *Id.*

<sup>10</sup> *Samuel Senkow*, 50 ECAB 370 (1999).

camp as alleged. The Board noted in the prior appeal that Dr. Morgan's opinion was speculative as to the issue of causal relationship; therefore, that opinion does not assist appellant in establishing his entitlement to compensation.<sup>11</sup> Appellant also submitted a two-sentence report from Dr. Haid stating that appellant had an "underlying history consistent with B-12 deficiency and Schilling's disease from a POW camp." Dr. Haid, however, did not address the nature of appellant's diagnosed condition. He also did not report physical findings or otherwise explain, with medical rationale, how appellant's diagnosed Schilling's disease was caused or aggravated by his history of internment in a prisoner of war camp. In the absence of a well-rationalized opinion from Dr. Haid explaining how appellant's tenure in the prison camp led to a vitamin deficiency, and how that vitamin deficiency caused or contributed to the diagnosed medical condition and appellant's alleged disability, the Board is unable to find that appellant is entitled to compensation.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained an injury causally related to his internment by the Imperial Japanese Government during its occupation of the Philippine Islands from 1941 through 1945.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 10, 2003 is affirmed.

Issued: March 12, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>11</sup> See *Samuel Senkow, supra* note 10 (an opinion of causal relationship can be neither speculative nor equivocal).